



July 6, 2012

Public Comments Processing  
Attn: FWS-RI-ES-2011-0112  
Division of Policy and Directives Management  
U.S. Fish and Wildlife Service  
4401 N. Fairfax Dr. MS 2042-PDM  
Arlington, VA 22203

Dear Sir/Madam;

Thank you for this opportunity to comment. This letter and attached appendices on the proposed designation of Critical Habitat for the threatened Northern Spotted Owl are submitted on behalf of American Bird Conservancy (ABC).

Additional habitat protection is needed to stabilize and eventually recover the Northern Spotted Owl's population and ABC appreciates that the U.S. Fish and Wildlife Service (the Service) has identified nearly 14 million acres of potential Critical Habitat necessary to recover the threatened species and the old-growth ecosystem upon which it depends. With some modest additions, the Final Rule can provide a path towards eventual recovery and delisting of the species.

**ABC supports designating as Critical Habitat all of the 13,961,684 identified acres, and adding all areas within the late-successional reserve network that were excluded, plus any occupied or suitable Northern Spotted Owl habitat that was not identified in the draft.**

ABC is deeply concerned about the draft Rule's encouragement of active management in Northern Spotted Owl Critical Habitat, the changes it suggests to management plans and projects, and logging projects in suitable owl habitat that have already been initiated. The 2010 Final Northern Spotted Owl Recovery Plan is already influencing management changes on federal forests potentially detrimental to the restoration of large blocks of habitat needed to

recover the Northern Spotted Owl such as regeneration of moist forests to create early-seral habitat. The draft Critical Habitat rule could expand this harmful policy and should be revised to instead to favor reducing forest fragmentation by maintaining the system of late-successional reserves to allow the continued formation of large blocks of suitable habitat.

A number of the Recovery Actions in the Final Recovery Plan appear to be contradictory, some calling for the protection of additional owl habitat, while others allowing, even encouraging increased adverse modification. This contradiction is also found in the draft Critical Habitat rule which proposes a significant increase in Critical Habitat acreage while at the same time green-lighting logging techniques proven harmful to owls and owl habitat, eliminating the proven late-successional reserves necessary to ensure large blocks of habitat, and recommending protection only for the very highest quality owl habitat.

The Environmental Assessment concluded that a wide degree of uncertainty would be created in regard to timber outputs, depending on how the Rule was implemented, and which of the advisory Recovery Actions were followed by the land management agencies. While the assessment did analyze different scenarios for timber production, it did not analyze a reserve-less strategy that could potentially allow for logging in currently-protected forests older than 80 years but not yet old enough to be considered high quality owl habitat. At the same time, the Service appears to endorse a policy of reserve-less management on page 94.

A more complete Environmental Assessment is needed for the public to be able to fully assess the potential consequences of this Rule. Similarly, the Economic Analysis is faulty and offers an incomplete look at the economic effects of the Rule by analyzing only the potential value of timber production, while ignoring the monetary benefits of other important values provided by maturing and old-growth forests such as stable stream flows, clean water supplies, and carbon storage.

Based on the available information in the draft Rule and Environmental Assessment, we must assume the elimination of late-successional reserves is a potential application of this Critical Habitat rule and Final Recovery Plan. Therefore the effects of eliminating the reserves should be fully analyzed by the Rule and companion Economic Analysis and Environmental Assessment. And because this analysis is notably absent, and because the Economic Analysis did not analyze the vast majority of economic activity on the forests affected, the public is currently unable to determine the full consequences of the pending rule.

**We therefore urge the Service to make abundantly clear to the public and to the land managing agencies that elimination of the reserves is not an application of, or a recommendation of the final Rule, economic analysis, or environmental assessment.**

The Service is promoting an unacceptably risky strategy in the Final Recovery Plan, Draft Rule and ESA consultations in regard to short-term losses of Northern Spotted Owl, a species that the evidence indicates merits endangered status. The draft Rule leaves many important

questions unanswered. There is a lack of quantification of how many Northern Spotted Owls can be taken or habitat acres degraded, no thresholds are provided that land managers should not exceed, nor is there any indication how many additional owls may (or may not) be gained by the claimed long-term habitat benefits of the projects, or how and where large blocks of habitat will be recovered absent the reserves. Given these uncertainties, a more cautious approach that maintains the reserves created by the Northwest Forest Plan is warranted.

Thank you for this opportunity to comment. In the pages that follow are additional comments on the proposed Critical Habitat rule, essential background, and supporting materials that we hope you will find useful as you develop the final Rule. We look forward to working with the Service to preserve and recover the Northern Spotted Owl.

Sincerely,



Steve Holmer  
Senior Policy Advisor  
American Bird Conservancy



Siskiyou National Forest, Oregon.

## **Comment Letter to President Barack Obama**

Below is a comment letter concerning the Draft Critical Habitat rule from conservation groups and scientific organizations sent to President Barack Obama asking the mature and old-growth forests be protected and the Rule be changed to ensure the system of late-successional reserves created by the Northwest Forest Plan are maintained:

**American Bird Conservancy ✨ Natural Resources Defense Council  
Sierra Club ✨ Center for Biological Diversity ✨ Friends of the Earth  
Endangered Species Coalition ✨ Oregon Wild ✨ Conservation Northwest  
WildEarth Guardians ✨ Cornell Lab of Ornithology ✨ Geos Institute**

July 2, 2012

The Honorable Barack Obama  
President of the United States of America  
The White House  
1600 Pennsylvania Ave NW  
Washington D.C. 20500

Dear President Obama,

The undersigned organizations urge your support for the conservation of the mature and old-growth forests in the Pacific Northwest. These magnificent forests provide clean drinking water for millions of Americans, a world-class tourism destination, sustainable forestry, and habitat essential to the survival of hundreds of species of wildlife.

Conservation of the old-growth ecosystem as symbolized by the Northwest Forest Plan developed under the leadership of President Bill Clinton was a significant environmental advance that ended decades of unsustainable management practices in the region.

Studies show that the Northwest Forest Plan is working as intended to retain mature and old forests, and that the highly fragmented forest ecosystem is growing back into the large blocks of mature forest habitat needed to maintain water quality and recover threatened species such as the Northern Spotted Owl, Marbled Murrelet and Pacific salmon stocks.

Your administration recently released a draft Critical Habitat proposal for the Northern Spotted Owl that identifies sufficient habitat necessary to conserve the threatened species and the old-growth ecosystem upon which it depends. We commend the agency's use of modeling to identify the proposed acreage which we believe represents the best available science.

However, the draft plan and accompanying Presidential Memorandum raise concern because of the proposed active management in owl critical habitat that is not supported by the best available science. Three major scientific societies are advising the administration to conduct more research on the effects of active management on owl populations before treatments are applied more broadly. We agree with the scientists' call for caution.

The draft also includes provisions that could have the unintended consequence of weakening or eliminating habitat protections of the Northwest Forest Plan. We respectfully urge the administration to modify the proposed Critical Habitat rule to ensure that the protected reserves of the Northwest Forest Plan are maintained so that future generations of Americans will be assured they will have an opportunity to enjoy the splendor of these old-growth forests.

Sincerely,

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## TABLE OF CONTENTS

Introductory Letter. . . . .	p. 1
Comment Letter to President Obama . . . . .	p. 4
Table of Contents . . . . .	p. 14
Executive Summary . . . . .	p. 16
American Bird Conservancy . . . . .	p. 18
Review Indicates Endangered Status Warranted for Northern Spotted Owl . . . . .	p. 20
A Conservation History of the Northern Spotted Owl . . . . .	p. 22
Administration Proposes another Western Oregon Plan Revisions . . . . .	p. 25
Okanogan-Wenatchee National Forest Plan Revision . . . . .	p. 27
Volume Driven Restoration is not Restoration . . . . .	p. 28
Flawed Final Northern Spotted Owl Recovery Plan . . . . .	p. 29
Research on Effects of Logging on Owl Populations . . . . .	p. 31
High Quality Habitat Insufficient . . . . .	p. 32
Timber Sales Harmful to the Northern Spotted Owl . . . . .	p. 34
What’s Wrong with the Secretarial Pilot Projects . . . . .	p. 38
Lack of Service Oversight Allowing Take on Private and State Lands . . . . .	p. 40
Benefits of the Northwest Forest Plan . . . . .	p. 41
Northern Spotted Owl Critical Habitat Draft Rule . . . . .	p. 46
The Draft Rule Undermines the Northwest Forest Plan . . . . .	p. 47
Timber Analysis: Agencies Meeting 96% of Funded Volume Target Since 2003 . . . . .	p. 48
Economic Analysis of the Draft Critical Habitat Designation . . . . .	p. 49
Active Management in Critical Habitat . . . . .	p. 52
Adverse Modification of Habitat . . . . .	p. 54

Lack of Scientific Evidence for Active Management . . . . . p. 57

Presidential Memorandum . . . . . .p. 59

Additional Areas Where Critical Habitat Should Be Designated. . . . . .p. 60

Exclusions . . . . . .p. 61

Legal Issues Related to Exclusions and Adverse Modification . . . . . p. 63

Analysis: Draft Rule and Plan Revisions Lower the Bar for Habitat Protection . . . . . p. 63

Recommended Changes . . . . . .p. 64

**APPENDICES**

- A. [A Conservation History of the National Forests](#)
- B. Petition to list the Northern Spotted Owl as Endangered prepared by the Geos Institute
- C. Comments on the Draft Economic Analysis of Critical Habitat Designation for the Northern Spotted Owl by Ernie Niemi
- D. [Email from David Iverson](#), Region 4, dated August 6, 1990, Goodbye Thoughts, and “Inside Out” by Steven P. Smith, a farewell commentary by a Willamette National Forest biologist.
- E. [Scientific Societies Request](#) for Environmental Impact Statement of Proposed Active Forest Management in Spotted Owl Critical Habitat
- F. [Open Letter to President Barack Obama](#) from 229 Scientists in Support of Northwest Forest Plan
- G. [The Wildlife Society Peer Review](#) of the 2010 Draft Revised Recovery Plan for the Northern Spotted Owl
- H. [Summary of Key Findings](#), Northwest Forest Plan: The First 15 Years (1994-2008), (Davis et al 2011), R6-RPM-TP-03-2011
- I. [Watershed Condition Status and Trend](#) (Lanigan et al 2012), General Technical Report PNW-GTR-856, February 2012
- J. Comment letter submitted by Earthjustice on behalf of plaintiff groups
- K. Forest Service and BLM Volume Offered under Northwest Forest Plan (FY 1995 – FY 2010), Region 5 & 6 PTSAR Report, and BLM Timber Sale Information System.
- L. What is Wrong with the Secretarial Pilot Projects by Francis Eatherington, Cascadia Wildlands

## Executive Summary

### **Draft Critical Habitat Rule Weakens Habitat Protection for the Northern Spotted Owl**

Studies show that the Northwest Forest Plan is working as intended to retain mature and old forests, and that the highly fragmented forest ecosystem is growing back into the large blocks of mature forest habitat needed to maintain water quality and recover threatened species such as the Northern Spotted Owl, and Marbled Murrelet.

With some modest additions the draft Critical Habitat proposal for the Northern Spotted Owl identifies sufficient habitat necessary to conserve the threatened species and the old-growth ecosystem upon which it depends. ABC commends the agency's use of modeling to identify a significant increase in proposed acreage which we believe represents the best available science. We support designating all of the identified acres, plus additional areas that warrant designation such areas in late-successional reserves, currently occupied and suitable owl habitat.

However, the draft plan and accompanying Presidential Memorandum raise concern because of the proposed active management in owl critical habitat that is not supported by the best available science. Three major scientific societies are advising the administration to conduct more research on the effects of active management on owl populations before treatments are applied more broadly. We agree with the scientists' call for caution.

The draft also includes provisions that could have the unintended consequence of weakening or eliminating habitat protections of the Northwest Forest Plan. In particular, the provisions in the draft plan encouraging unproven thinning and restoration logging, combined with the expansive definition of adverse modification that allows degradation of owl habitat, have the potential to allow for logging of areas now protected by the Northwest Forest Plan, including mature forests that the Plan had intended to become old-growth.

These provisions, which were repeated numerous times in the draft, appear to intend a substantial increase of timber harvest in the region while providing a minimum of habitat protection, in terms of both total acreage by encouraging unwarranted exclusions, and weaker management standards than the standards and guidelines of the Northwest Forest Plan's late-successional reserves. This language has the potential to allow excessive logging to the detriment of the Northern Spotted Owl population and may foreclose owl recovery by not providing adequate late-successional forest necessary to ensure high quality owl habitat in the future.

There is also concern about changes to land management plans resulting from the Critical Habitat rule and Final Recovery Plan. The Service tacitly endorsed elimination of the owl reserves east of the Cascade Crest by including language favorable to that approach in the Owl Recovery Plan. The proposed Okanogan-Wenatchee Forest Plan revision would eliminate the

existing owl reserves and in the Environmental Assessment (p. 94), it says that would be consistent with Recovery Plan and therefore compatible with owl recovery.

We strongly disagree. It should be noted that this portion of the Draft Recovery Plan was strongly criticized by peer reviewers, but in the Final Plan, their concerns were not addressed.

We respectfully urge the U.S. Fish and Wildlife Service to modify the proposed Critical Habitat rule to ensure that the protected reserves of the Northwest Forest Plan are maintained so that future generations of Americans will be assured they will have an opportunity to enjoy the splendor of these old-growth forests.

### **Recommended Changes**

We urge that the Final Critical Habitat Rule make clear that eliminating the system of late-successional reserves would be detrimental to owl recovery and is not a recommended outcome of this rulemaking, or the Environmental Assessment and Economic Analysis.

The proposal encouraging adverse modification of habitat for ecoforestry purposes is not supported by the best available science. We recommend it be removed from the final rule.

We recommend that the determinations of adverse modification be at the appropriate fine scale to ensure ESA compliance.

We recommend that the standards and guidelines of the Northwest Forest Plan late-successional and riparian reserve systems be used to preclude inappropriate or unsustainable management practices. The Northwest Forest Plan allows for restoration and provides standards and guidelines that are more protective of owls and better suited to experiments in ecological restoration.

Prescriptive requirements to retain trees above a certain age or size to restore the deficiency in old forests, and mapping where large blocks of closed canopy forests will be retained and allowed to mature is necessary to ensure these values will not become subject to mismanagement or overcutting.

Active management in owl habitat should be considered experimental, conducted on a small scale, and monitored to determine its impact on Northern Spotted Owls. The necessity and benefits of active management in owl habitat remains in dispute.

We recommend the Service develop an environmental impact statement to devise a research strategy that addresses this question.

## American Bird Conservancy

American Bird Conservancy (ABC) is a 501(c)(3) non-profit organization whose mission is to conserve native birds and their habitats throughout the Americas. It achieves this by safeguarding the rarest bird species, restoring habitats, reducing threats to bird species, and building capacity to advance bird conservation.

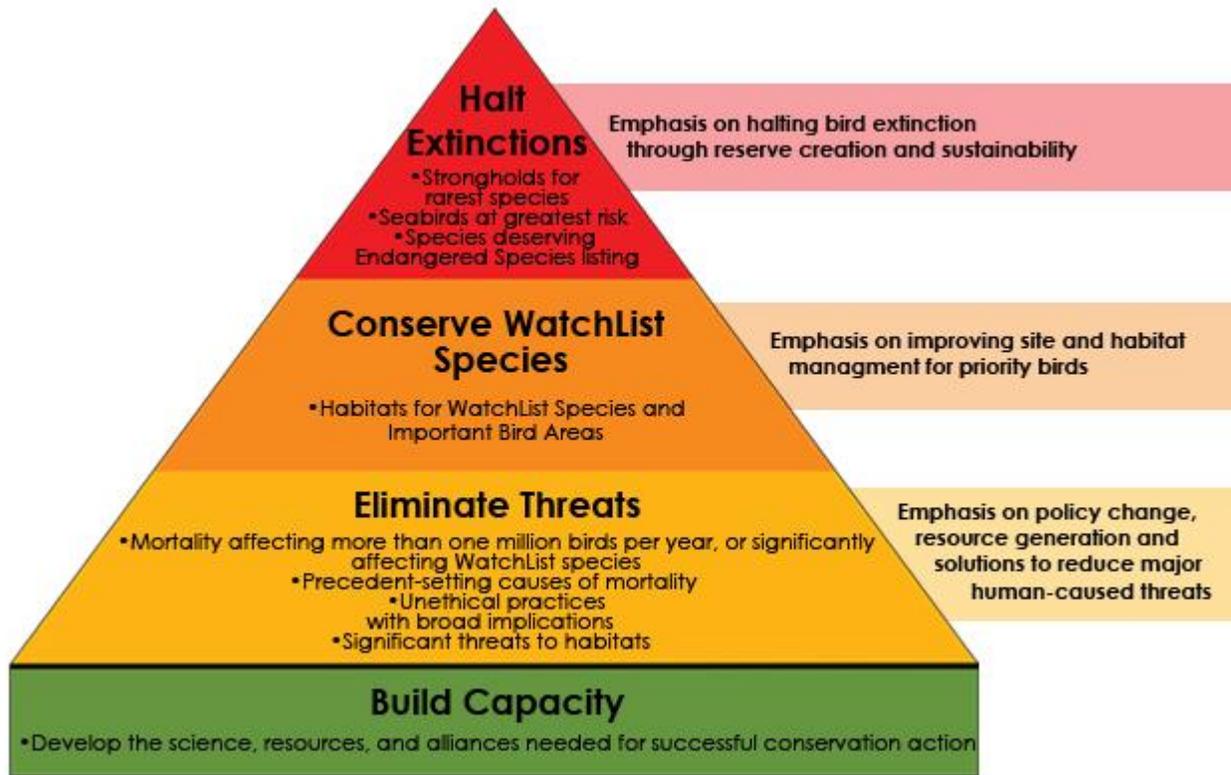
ABC is the only U.S.-based group with a major focus on bird habitat conservation throughout the entire Americas. ABC has more than 8,000 individual members and 30,000 constituents. ABC's members, supporters, and activists enjoy viewing, studying, and photographing migratory birds. Some of its members and constituents routinely observe the Northern Spotted Owl in California, Washington, and Oregon.

ABC is a leading organization working to reduce threats to birds from habitat destruction; from collisions with buildings, towers, and wind turbines; and from toxins such as hazardous pesticides and lead.

ABC uses a variety of mechanisms to achieve these objectives including scientific research and analysis; advocating for bird conservation at the local, state, regional, and federal levels; forming bird conservation partnerships; and pressing for meaningful regulatory changes to address such threats effectively through various means, including rulemaking petitions and litigation. See, e.g., ABC v Fed. Communications Commission, 516 F.3d 1027 (D.C. Cir. 2008) (in response to ABC's review petition seeking protection of migratory birds from collisions with communications towers, the court vacated a part of the order for violation of the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 et seq.).

ABC's staff includes more than 20 scientists with expertise in bird conservation. ABC's scientists have published in many reputed journals such as the Antarctic Journal of the United States, The Auk, Biodiversity Conservation, Biological Invasions, Biological Sciences, Bird Conservation International, Boletín SAO, Canadian Field Naturalist, Chelonian Research Monographs, Colonial Waterbirds, Condor, Cotinga, Ecological Applications, Ecology, Emu, Florida Field Naturalist, International Zoo Yearbook, Journal of Avian Medicine and Surgery, Journal of Field Ornithology, Journal of Raptor Research, Journal of Wildlife Diseases, Journal of Wildlife Management, Molecular Ecology, Neotropical Birding, North American Bird Bander, Oecologia, Ornitología Columbiana, Ornitología Neotropical, Oryx, Pacific Conservation Biology, Proceedings of the National Academy of Science, Proceedings of the Western Foundation of Vertebrate Zoology, Wilson Bulletin, Wilson Journal of Ornithology, and Zoo Biology.

## The American Bird Conservancy Strategic Bird Conservation Framework



The problems facing birds today are myriad and complex, requiring a far-reaching, bold vision for conservation. ABC has developed a unique and successful strategy to preserve bird diversity and maintain or increase wild bird populations. This strategy is fully articulated in *The American Bird Conservancy Guide to Bird Conservation* published in 2010 by University of Chicago Press (ISBN-13:978-0-226-64727-2).

The highest bird conservation priority is halting extinctions, followed by conserving and restoring habitats. In the case of the Northern Spotted Owl draft Critical Habitat rule, the Service is proposing to place lower priority general habitat needs before the specific needs of an endangered species, even to the point of allowing large numbers of Northern Spotted Owls to be killed (taken) and significant habitat to be degraded or completely eliminated for decades. While the stated goal to improve future habitat conditions for the owl is well-intended, this activity is not supported by peer-reviewed studies showing owl populations will benefit, and it is, in fact, pushing an already extremely imperiled species closer to extinction and should be immediately halted.

## Review Indicates Endangered Status Warranted for Northern Spotted Owl

A review of the extensive literature on the Northern Spotted Owl, forest ecology, and



Northern Spotted Owl. Photo by the Service.

conservation biology published over the two decades since the subspecies was listed indicates Northern Spotted Owl populations have continued to decline and now meet the Endangered Species Act's definition of an *endangered species*, that is, it is "...in danger of extinction throughout all or a significant portion of its range...". As a result, stronger conservation measures are needed than the Service is currently considering.

On federal lands, Northern Spotted Owl populations not only continue to decline despite the Northwest Forest Plan, the decline is accelerating and vital rates are deteriorating (Forsman *et al.* 2010). In study areas not managed under the Northwest Forest Plan owl declines are significantly greater (Anthony *et al.* 2006). A recently published large-scale demographic study (Forsman *et al.* 2010) found that the species is declining on seven of eleven active demographic study areas at about 3% annually range-wide, and concluded that the Northern Spotted Owl clearly

is on a trajectory towards extinction. Funk *et al.* (2010) provides evidence for recent genetic bottlenecks in northern spotted owls that increase the vulnerability of the Northern Spotted Owl to extinction.

Currently, the subspecies is already nearly extirpated in much of its range. In British Columbia, as far as we know, all remaining birds are in captivity; few remain on the Olympic Peninsula, Southwest Washington, and the northern portion of the Oregon Coast Range. Populations are very small and isolated in most of Washington where rates of decline are highest. Areas that have little federal land support few or no owls, and Forsman *et al.* (2010) state that as a result, too few Northern Spotted Owls exist in four regions (southwestern Washington, the Coast Range of northwest Oregon, the California Cascades, and much of Washington's Olympic Peninsula) to conduct a demographic study with their methods. Further, the literature suggests

these declines are not likely to lessen even with the latest owl recovery plan in place due to the un-quantified and unmitigated risks accepted in the plan.

Considering that the best available science has documented an ongoing, range-wide decline of the Northern Spotted Owl and its extirpation in many regions that historically were occupied, we are requesting that the Service upgrade the Northern Spotted Owl's Endangered Species Act listing status from *threatened* to *endangered* and take decisive action to stop the further deterioration of the Northern Spotted Owl's population and degradation of its habitat.

The Northern Spotted Owl meets the Endangered Species Act's definition of an *endangered* species because of impacts under four of five criteria established under the Endangered Species Act for determining the status of a species. A brief summary is provided here and the full analysis developed by the Geos Institute is available in the appendix.

### **1. The present or threatened destruction, modification, or curtailment of the owl's habitat or range**

The Northern Spotted Owl is endangered by loss and modification of habitat, due especially to historic and ongoing logging and fire associated management. Over a century of logging has removed much of the Northern Spotted Owls' habitat. In 1990, habitat loss was estimated at 60-88% since the early part of the 19<sup>th</sup> Century. Since the owl was listed in 1990, habitat loss has continued throughout the owls' range. While much of this loss has slowed on federal lands due to the Northwest Forest Plan, habitat loss continues at relatively high rates on nonfederal lands. Additionally, it appears that the effects of past logging still are occurring on both federal and nonfederal lands as increased fragmentation and habitat loss propagate through the ecosystem.

The Northwest Forest Plan assumed a period of decades would be necessary before habitat in many of the late-successional reserves became suitable for owls; only about 36% of the reserves currently are functioning as old-growth forests, with most of the reserves still in various stages of recovery from logging. Additionally, other human actions, including post-disturbance logging and extensive fuel treatments, urban development, livestock grazing, mining, recreation, and road construction, have contributed to past and continue to contribute to present cumulative losses and degradation of Northern Spotted Owl habitat and their prey.

### **2. Disease or predation**

The Northern Spotted Owl is subject to disease and predation pressures that have increased substantially since its listing. Changes in habitat that result in more open areas (e.g., from forest thinning) and increased fragmentation of older forests likely cause an increase in predation by Great Horned Owls, Northern Goshawks, and Red-Tailed Hawks that either increase mortality on adult Spotted Owls or on dispersing juveniles. In addition, Leskiw and Gutiérrez (1998) present evidence of predation on Spotted Owls by Barred Owls, a risk that is growing with increasing overlap in distribution of Spotted and Barred Owls.

### **3. Inadequacy of existing regulations to protect the owl and its habitat**

The Northern Spotted Owl is endangered and its habitat is subject to adverse modification due

to the inadequacy of existing state and federal regulations. Existing regulations have failed to truly protect the Northern Spotted Owl and its habitat on private, state, or federal lands. This failure is evidenced by the continued loss and degradation of owl habitat, the failure to restore habitat damaged by past management practices, and by a demonstrated failure to reverse the decline of the Northern Spotted Owl over the last two decades.

#### **4. Other natural or human caused factors**

The Northern Spotted Owl is endangered by threats associated with the continued increase in Barred Owl populations. These detrimental impacts may be interacting with habitat loss and fragmentation to accelerate the decline of Northern Spotted Owl populations. Barred Owls compete with Northern Spotted Owls and are considered a major threat to Spotted Owls. Collapse of Northern Spotted Owl populations has followed the north to south invasion of the Barred Owl and areas that recently have been invaded by Barred Owls are beginning to show signs of population declines.

### **A Conservation History of the Northern Spotted Owl**

The conservation history of the Northern Spotted Owl offers important lessons that should advise the options developed by policymakers. The consequences of past active management and agency misconduct have engendered mistrust with the public, and are a reason for caution whenever new proposals for active management in owl habitat are considered.

The damage caused to the National Forests by overcutting during the 1960s, 1970s, 1980s, and 1990s has yet to be addressed by the land management agencies. For example, there remains an excess of logging roads on the National Forests and an estimated \$10 billion backlog of road maintenance. The impacts to publicly owned forests are reduced water quality, increased water



filtration costs for downstream communities, and diminished fisheries and aquatic ecosystems.

Agency scientists first confirmed the Northern Spotted Owl's decline and connection to old-growth forest habitat in 1983. But instead of taking steps to moderate habitat loss, a series of legislative riders allowed for record logging levels in owl habitat from 1983 – 1990 and

**Aerial view of fragmentation and road impacts in Oregon's Coast Range.**

listing of the species as threatened was delayed until 1990.

In 1990, Congress passed an old-growth logging rider (section 318 of the FY 1990 Interior Appropriations bill) that overturned two court injunctions that had halted over 140 old-growth timber sales, and orders the Forest Service and Bureau of Land Management (BLM) to offer a fixed volume of timber in Washington and Oregon during that year, about 9.6 billion board feet. It also includes sufficiency language saying citizens could not challenge these projects if they violate environmental laws except for the Endangered Species Act. Many of these projects did not have stream buffers to protect water quality or other minimal environmental safeguards.

Defeat of the next legislative amendment offered in 1991 to prevent environmental review of timber sales in owl habitat, opened the court house door to legal challenges against timber sales proposed in owl habitat. In 1991, Federal Judge William Dwyer then ruled the agency had systematically and deliberately failed to abide by wildlife protection laws.



**Regeneration harvest fragments habitat which is detrimental to the Northern Spotted Owl.  
Mt. Hood National Forest, Oregon.**

Judge Dwyer's scathing ruling and resulting injunctions shut down the region's timber sales program on federal lands. In Congress, public pressure was building for permanent protection of the ancient forests. Only the intervention of Speaker of the House Thomas Foley prevented a House vote on the Ancient Forest Protection Act, a bill that had been championed by Rep. Jim Jontz.

The injunctions and political gridlock prompted intervention by incoming President Bill Clinton.

A forest summit was held in Portland, Oregon in 1993, and agencies were directed to develop the Northwest Forest Plan. This was a first of its kind, multispecies and ecosystem conservation plan intended to protect late-successional forests and riparian areas, as well as the Northern Spotted Owl, Marbled Murrelet, Pacific Salmon stocks, and 600 other old-growth-dependent species. The Plan went into effect in 1994 and it remains today the best available conservation framework of its kind.

The Emergency Rescissions Act of 1995, better known as the “salvage logging rider” or “lawless logging”, suspended most environmental laws from June 1995 until December 1996 to allow the Forest Service to address forest health emergencies. Instead of legitimate restoration, the public witnessed hundreds of old-growth and roadless area timber sales offered for sale, including dozens in the Pacific Northwest that had been previously ruled illegal by federal courts.

Strong public opposition and hundreds of protests ensued. Pressure on the Clinton Administration led then Secretary of Agriculture Dan Glickman to cancel over 150 of the roadless area projects that had been offered under the Rider, but many of the old-growth sales were logged.

Agency budgeting and the system of incentives created by Congress to boost logging played a role in the management abuses that occurred under the rider. In 1976, the Forest Service Salvage Fund was created to expedite the removal of insect-infested, dead, damaged, or down timber. Salvage sale revenues are deposited in the Salvage Fund to pay for additional projects. The Fund created an incentive for managers to promote salvage sales, because forest managers keep the sales receipts instead of returning the funds to the Treasury.

The Interagency Review on the Salvage Program of 1996 found that the fund creates a financial incentive for agency managers to choose salvage logging when other restoration activities that do not return receipts to the agency would be more appropriate. Other incentives such as the KV fund were found to create a similar problem. By allowing the Forest Service to keep all timber sale receipts instead of returning the proceeds of selling the public’s timber to the Treasury, a powerful incentive has been created for the agency to overcut the forest to maintain their own budgets and staffing levels.

In the aftermath of the Salvage Logging Rider, multiple attempts were made in Congress and by the subsequent Bush Administration to expedite logging by weakening or eliminating environmental protection and public involvement for timber sales nationwide. Most of these efforts, such as Rep. Bob Smith’s Forest Health Bill of 1997, were unsuccessful, but the Healthy Forests Restoration Act of 2003 did pass and was signed into law by President Bush, although only after significant changes were made to target projects towards thinning around homes and communities.

Repeated attempts were also made to reduce or eliminate key protections of the Northwest Forest Plan, including agency proposals to eliminate the survey and manage requirement, and

the aquatic conservation strategy protecting streams and degraded watersheds. The Northern Spotted Owl Critical Habitat designation and Owl Recovery Plan offered by the Bush Administration were heavily criticized as scientifically flawed and biased against the Northwest Forest Plan.

A later investigation by the Department of Interior's Inspector General confirmed that political interference had prevented the Service from preparing a scientifically sound Recovery Plan. This contributed to the Recovery Plan being remanded and the Critical Habitat designation being thrown out.

In addition, BLM developed and publicly promoted the Western Oregon Plan Revisions (WOPR), a scientifically flawed plan that would have eliminated the late-successional reserves or allowed logging in reserve to increase logging of federal mature and old-growth forests managed by BLM in Oregon by 400%. Independent scientific reviews, including those by the U.S. Environmental Protection Agency and National Marine Fisheries Service, found the plan would likely cause significant harm to the forests, water quality, and threatened species. A review of the draft plan by BLM's own science assessment team found numerous deficiencies.

The WOPR planned for the elimination of 680 known nesting sites of the threatened Northern Spotted Owl, and another 600 known nesting sites of the Marbled Murrelet, a threatened sea bird that also depends on old-growth forests. The BLM's flawed WOPR analysis concluded that owl and murrelet populations would not be harmed by increased logging, but BLM refused to consult with Service wildlife experts on its plan. A federal judge ruled the WOPR illegal in March 2012.

## **Administration Proposes another Western Oregon Plan Revision**

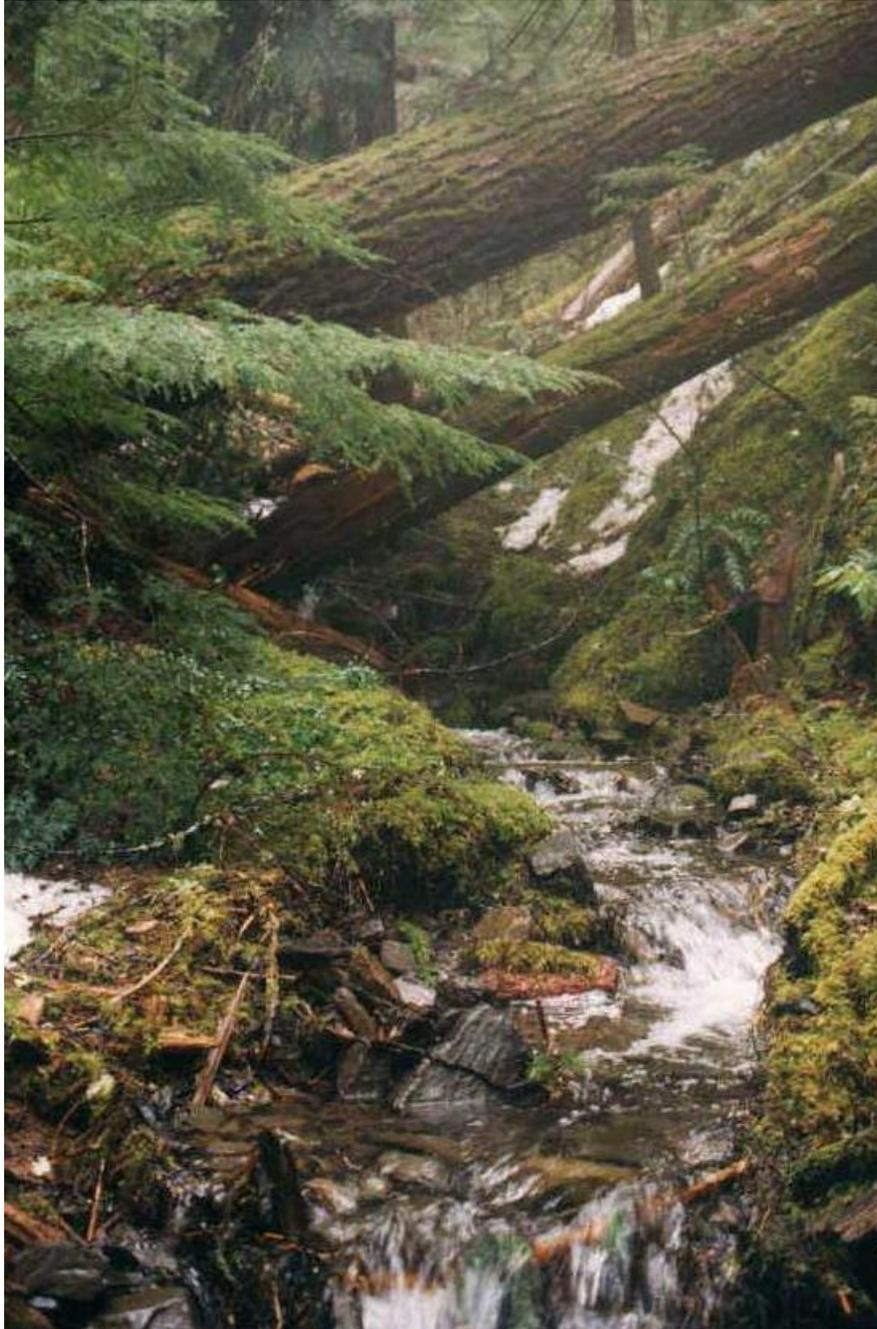
The Administration has announced a [new planning process](#) for BLM-managed lands in Oregon. Based on the Notice of Intent (NOI) and the Administration's press statements, the plan shows a bias towards active management and proposes a significant departure from the Northwest Forest Plan by encouraging regeneration in moist mature forests. This is harmful to the Northern Spotted Owl by risking take of individual birds and habitat, increasing forest fragmentation, and setting back the needed expansion of the old-growth forest ecosystem over time to provide for owl recovery.

For example, the NOI states:

*"The revisions to the existing RMPs will determine how the BLM will actively manage BLM-administered lands in western Oregon to further recovery of threatened and endangered species, provide clean water, restore fire-adapted ecosystems, produce a sustained yield of timber products, and provide for recreation opportunities."*

The statement shows a high degree of bias because it falsely assumes active management can

accomplish all of those things. In fact, past active management that resulted in excessive logging and road building is the reason we have threatened and endangered species in the region. Active management, while producing timber volume, also harms water quality and diminishes recreational opportunity. Active management has also been shown to increase, rather than decrease fire risk if expensive follow up treatments to remove or burn slash piles and to conduct managed burns are not carried out.



**The Northwest Forest Plan is working to restore degraded watersheds and protect clean drinking water supplies.  
Willamette National Forest, Oregon.**

It also ignores the benefits of preservation. The Wilderness Society has released a report [Wilderness and Water Mix Well](#) on the relationship between healthy watersheds and protected lands in the National Forest System. The report found that only 38% of watersheds where active management is greatest were functioning properly, 58% were at risk, and 5% were impaired. In contrast, protected lands scored much higher; 80% of Wilderness is functioning properly and only 18% at risk and 1% impaired. Roadless areas scored in second place with 64% functioning properly, 34% at risk and 2% impaired.

This new WOPR planning effort is essentially BLM pulling out of the Northwest Forest Plan. This undermines the integrity of the Plan, which provides an adequate regulatory mechanism to conserve the Northern Spotted Owl and other wide-ranging species. The importance of consistent management across the owl's range has been cited in past court cases.

Two key assumptions behind the biological analysis of the Northwest Forest Plan were that (1) “[r]iparian and Late-Successional Reserves (LSRs) will retain reserve status and will not be available for timber production other than as provided in Alternative 9” and (2) “[a]lternative 9 applies to Forest Service and BLM lands; all future actions on these lands would be consistent with Alternative 9, as adopted in the Record-of-Decision (ROD).” See FEIS at 2-33 to 2-34. (Earthjustice comment letter).

BLM's indicated management direction as expressed by the NOI, violates both of these assumptions.

## **Okanogan-Wenatchee National Forest Plan Revision**

The Okanogan-Wenatchee National Forest Plan Revision has also raised great concern by proposing the elimination of the existing system of late-successional reserves. A Region 6 Forest Service Assessment found that late-successional forests are generally below their historic range of variability, and the availability of snags larger than 20 inches, and snag habitat is generally lacking in some forest types because of past management practices.

While the notice of intent proposes that a designated percentage of the forest will be managed for the owl's benefit, there will no longer be areas where the species' protection is guaranteed. This proposal is not consistent with the Northwest Forest Plan, which provides reserves with guaranteed protections that cannot be ignored at the discretion of the local land managers.

The Forest Service claims that static reserves are no longer a viable strategy for conserving the owl, but to date has not produced credible evidence to support that contention. Portions of the now discredited Northern Spotted Owl Recovery Plan of 2008 reached the same unfounded conclusion, and inclusion of similar language in the 2010 Draft Recovery Plan spawned strong opposition from the scientific societies that peer-reviewed the plan.

The Final Owl Recovery Plan calls for conserving older stands that have occupied or high-value spotted owl habitat, and to “Continue to manage for large, continuous block of late-successional forest.” Without the system of late-successional reserves remaining in place, the agency has not provided any mechanism to ensure that the land management agencies will provide for large, continuous blocks. In fact, given the management history, and continued proposals to further fragment the forest, the importance of maintaining the reserve system should be that much more apparent.

The reviewers found that the science included in the draft was incomplete because numerous studies to the contrary had not been considered. In the final draft, a greater effort was made to reference the omitted studies, but the conclusions remained the same. For example, evidence presented in Hanson *et al.* (2009) on fire risk was cited but not used.

Several new studies have been published that also analyze satellite images of the forest, and have found that high intensity, “catastrophic” fires have not been increasing in Northern California, or on the Eastside. As a result, we believe the plan overestimates fire risk. Similarly, the Hanson study was also not used regarding the rates of recruitment relative to rates of loss to stand-replacing fires, resulting in an overestimation of the amount of reserve likely to be lost.

In addition, the management standards proposed for portions of the former late-successional reserves could be potentially harmful to many species of wildlife, including the Northern Spotted Owl. The proposed Okanogan-Wenatchee forest plan would allow for significantly greater road densities (more than 15%) than allowed in the current six owl reserves and possibly eight others depending on agency interpretation changes in summer road use. Allowing greater fragmentation and road densities would reduce the amount of suitable owl habitat in those areas, not to mention increasing fire risks, and should not be allowed.

## **Volume Driven Restoration is Not Restoration**

The Obama Administration has committed itself to a significant increase in logging on the National Forests as indicated by the February 2012 report “Increasing the Pace of Restoration and Job Creation on our National Forests.” A March Forest Service memo to Region 6 calls for a 20% increase in volume this year, and that it is to fall under the rubric of restoration.

We question whether legitimate restoration can be accomplished when meeting timber volume targets is the primary management directive. Hard timber targets on the National Forests were ended because evidence emerged that it was causing harm to the forests, and to the Forest Service itself.

Included in the appendix is a farewell letter from Steven Smith, a wildlife biologist from Willamette National Forest detailing mistreatment of agency biologists at the hands of timber

managers. Here's one excerpt:

*“Even more disheartening is attending meetings where the spotted owl gets blamed for this internal crisis as well. A strange paradox since Forest Service managers are ultimately responsible for the spotted owl crisis as well.”*

A return to timber target driven management would mark a huge setback that threatens to undo the agency's progress towards professional integrity and stewardship. We urge the Service to oppose Forest Service and BLM plans to increase timber production under the guise of restoration. It threatens the Northern Spotted Owl and risks returning the Forest Service and BLM to the errant ways of their past as well as delegitimizing other much needed restoration work on federal lands.

## **Flawed Final Northern Spotted Owl Recovery Plan**

Concern is being raised by scientists that active management in suitable owl habitat is not supported by the best available science. There are currently no peer-reviewed studies showing Spotted Owls benefit from the proposed logging treatments, while others show short-term harm to owl and prey base from thinning with declines lasting up to 30 years.



**Northern Spotted Owl. Photo by the Service.**

Estimates of owl habitat loss from fire are not based on defensible data sources and we remain concerned that the agency is operating on the unproven and unanalyzed assumption that Northern Spotted Owls are not resilient to fire. All three subspecies of Spotted Owl exist in fire adapted forests. At the same time, the agency fails to address the problem of post-fire logging which degrades and eliminates legacies, habitat for the owl's prey base, and owl foraging areas.

Given the 2.9% annual decline in owl population, it is not acceptable to allow for short-term losses of owls in the hope that improved habitat conditions might prove beneficial to the species someday in the distant future. But this is precisely what the draft Plan is calling for.

*“While proposed Federal actions must comply with requirements of the Act, actions with some short-term adverse impacts to spotted owls and critical habitat, but whose effect is to conserve or restore natural ecological processes and enhance forest resilience in the long term, should generally be consistent with the goals of critical habitat management.”*  
*(Executive Summary p. 8)*

The proposed Critical Habitat rule relies heavily on the Final Northern Spotted Owl Recovery Plan and cites it as if it were a peer reviewed document. However, the Final Owl Recovery Plan was never peer reviewed. In addition, peer reviewers identified many faults in the Draft Recovery Plan, particularly concerning active management and the need for maintaining owl reserves that were never corrected in the Final.

For example, the summary of The Wildlife Society (TWS) review states:

*"Other aspects of the 2010 DRRP are flawed and many are not based on best available science. The lack of a permanent proposal for a reserve system is a major problem that prevents full review of the 2010 DRRP. We believe this will necessitate further peer review prior to finalization of a recovery plan. The Service's strategy for no reserves in dry forests in the eastern Cascades is exacerbated by the proposals for aggressive management of these dry forests because the treatments will reduce the amount of closed canopy forests in the landscape and reduce the amount and suitability of habitat for the subspecies. These proposals are not based on a complete review of the available science and they rely on unpublished reports. In addition, there has been no formal accounting of how closed canopy forests can be maintained with the widespread treatments that are being proposed. Management actions, which are not based on good science, in dry forests with no reserves will likely lead to failure to achieve recovery criteria."*

The TWS review also noted that in at least a dozen instances, important studies with bearing on these issues, and that often contradicted the intended management direction were excluded from the analysis. It can be concluded that the agency had cherry-picked studies supporting one view while actively ignoring opposing studies. The Society concluded in its typically diplomatic fashion that:

*"In summary, we commend the Service for their intent to use the best available science in developing the 2010 DRRP for the Spotted Owl; however, we found strong evidence that this was not the case throughout much of the Plan. The Service should make a comprehensive effort to base their recommendations and guidelines on the best available science so that they are in compliance with Secretarial Order #3305 issued by Interior Secretary Salazar on September 29, 2010 and the Presidential Memorandum of Scientific Integrity."*

Unfortunately, no such effort was made to correct the scientific deficiencies identified in the TWS review. While some of the omitted studies were cited in the final recovery plan, the same unsubstantiated conclusions in support of logging in owl habitat and eliminating owl reserves on the Eastside were reached.

Another team of five scientists (Hansen, Bond, Odion, DellaSala, Baker) that reviewed the draft concluded, *"...there are considerable deficiencies in the 2010 draft recovery plan where the Fish and Wildlife Service did not make use of best science, untested assumptions regarding risks of active management vs. fire, and unpublished literature in assessing forest recruitment vs. late-*

*successional “losses” post-fire.”*

The group of scientists urged the Service to recommend retention of all existing late-successional reserves, additional new reserves to create greater connectedness across the landscape, and greater protections from logging, especially post-disturbance logging within late-successional reserves.



**Old-growth forests in the Pacific Northwest and northern California store more carbon per acre than any other forests in the world.**

## **Research on Effects of Logging on Owl Populations**

The scientific societies are urging the agency to develop an Environmental Impact Statement on the effects of thinning and ecoforestry on Northern Spotted Owl populations. To date the agency has no evidence that thinning or ecoforestry benefits owl populations, but we know that many of the projects will, in fact, cause short-term harm.

The need for this type of research was identified by Jack Ward Thomas in the 1990 Interagency Science Report, which also found that logging had not been found to be compatible maintaining suitable owl habitat, and the need for a precautionary approach that requires treatments be proven before broadly implemented.

*“We propose a two-part conservation strategy. The first stage, prescribes and implements the steps needed to protect habitat in amounts and distribution that will adequately ensure the owl’s long-term survival. The second stage calls for research and monitoring to test the adequacy of the strategy and to seek ways to produce and sustain suitable owl habitat in managed forests. Insights gained in this second stage can be used to alter or replace habitat conservation areas prescribed in the first stage, but only if the modified strategy can be clearly demonstrated to provide adequately for the long-term viability of the owl.” (ISC p 2)*

*“The ability to harvest timber in currently suitable owl habitat and have that habitat remain suitable has not been clearly demonstrated.” (ISC p 104)*

*“Allow silvicultural treatments that have been tested or demonstrated through experimentation to facilitate the development of suitable habitat, such as planting trees.” (ISC p 325)*

More recently the Forest Service Fifteen Year Monitoring Report on the Northwest Forest Plan states:

*“First, there is very little research documenting the effect of wildfire on spotted owls and spotted owl demography. In light of losses of nesting/roosting habitat to wildfires as high as 10 percent in some provinces, we need to understand how fire severity, spatial patterns of wildfire, and fuel reduction management treatments might affect owl habitat use, prey populations, and owl demography. We recommend increased research and monitoring on this subject to better inform managers on how to manage habitat in fire-prone areas.”*

## **High Quality Habitat Is Insufficient**

The best available science and the continuing decline of Northern Spotted Owl populations indicate that the agency should designate as Critical Habitat and protect all suitable owl habitat, not just high-quality owl habitat. The definition of high quality owl habitat needs to be made more inclusive to ensure sufficient habitat will be conserved to allow for recovery.

In its review of the draft recovery plan The Wildlife Society raised concern about the narrow definition of high quality owl habitat being proposed. The Society notes that the proposed definition is only a subset of suitable habitat. Their analysis then states:

*“...by limiting the definition of high quality habitat to a fairly narrow range of habitat conditions, management agencies will be able to justify thinning or commercial harvest in a broad range of naturally regenerated stands. Most of these naturally regenerating stands originated from fire and usually are suitable spotted owl habitat; therefore, they are not likely to be greatly “improved” by management. In western Oregon and Washington such stands are typically comprised of large trees that are 80-160 years old, and include scattered (i.e., residual) old-growth trees that survived wildfires. These stands may not meet the strict definition of high*

quality habitat, but they are often the best remaining habitat in the heavily harvested or burned landscapes that are managed by the Bureau of Land Management and Forest Service. They often occur in small patches, isolated among large areas of young forest within these disturbed landscapes, and they often serve as nest sites for spotted owls as well as refugia for species such as flying squirrels and tree voles, which are important prey of northern spotted owls. Because of the high timber volume in these stands there is intense pressure to log them. Commercial thinning is often recommended as a prescription to reduce risk of fire or improve forest conditions for owls in these stands, despite the fact that it is usually unclear if thinning will either improve these forests as habitat for owls or accelerate their transition from suitable to high quality habitat.

This uncertainty was one of the reasons that the Northwest Forest Plan included recommendations to restrict thinning in naturally regenerated stands over 80 years old in western Oregon and Washington. This restriction should be retained in the final Critical Habitat Rule.



**Downed woody debris and legacy trees are important elements of quality habitat for the Northern Spotted Owl and its prey base.**

Under the proposed Rule, it is likely that the issue of whether a particular habitat meets the high quality standard will become an area of ongoing controversy and dispute, and as the TWS analysis indicates, it has the potential to leave unprotected large acreage in the 80-160 year range. These forests are currently protected if they are in late-successional reserves, but if the

reserves are eliminated, these areas become subject to logging that will set back the recovery of owl habitat by many decades.

TWS recommended changes to the draft that were not incorporated into the final:

"Therefore, we recommend that the Service use a more inclusive definition of high quality habitat that would encompass a variety of late-successional forest types (i.e. mature and old-growth forests) in which spotted owls nest, roost, and forage. We also recommend that the Service take a more conservative approach and not recommend thinning in naturally regenerated stands over approximately 80 years old, especially when those stands include remnant old-growth trees. These stands will be the spotted owl nesting habitat of the future (if they are not already), and thinning them will most likely represent habitat loss for spotted owls and their prey, both in the near and long term. Such habitat loss will be in conflict with the Service's recovery criteria and delisting objectives as stated in the recovery plan."

## **Timber Sales Harmful to the Northern Spotted Owl**

Forest Service Region 5 and now the BLM with the Pilots are moving forward with the type of active management envisioned in the Final Recovery Plan and Draft Critical Habitat rule. The results are not encouraging. Projects are resulting in take of Northern Spotted Owls, loss of Critical Habitat, controversy, appeals and litigation. There are better policy alternatives.

### The Beaverslide Project

The Beaverslide Project on the Six Rivers National Forest proposes to remove and degrade owl habitat claiming it will provide long-term benefits after causing short-term harm. The proposed active management will degrade 850 acres of "low to moderate quality" nesting and roosting habitat, and 2,162 acres of foraging habitat.

The project was approved only several months before the owl Recovery Plan was completed and is being challenged by Conservation Congress and Environmental Protection Information Center who argue that due to new information from the Recovery Plan and other studies, the Fish and Wildlife Service should reinstate consultation.

The plaintiffs argue that the agency has violated the ESA for failing to consider new information and for failing to use the best available science; violated the National Environmental Policy Act for failing to consider direct, indirect, and cumulative effects for its action the owl, its habitat, and its prey; and that the Forest Service violated the National Forest Management Act by failing to comply with monitoring requirements of the Six Rivers National Forest plan.

The 2011 Recovery Plan requires that "active management" projects explicitly evaluate the short-term effects to Spotted Owls and their prey while considering the long-term benefits of

such projects, especially in Spotted Owl core areas. There are significant adverse short-term direct impacts to owls and to the owl's prey from commercial thinning and other management activities (Forsman et al. 2004, Manning et al. 2012). The Forest Service failed to consider these studies in its Biological Assessment because it predated the Recovery Plan.

The 2011 Revised Northern Spotted Owl Recovery Plan states:

"Research directly evaluating spotted owl responses to vegetation management including thinning, fuels reduction, and management intended to restore ecosystem functions is needed to address...whether thinning operations designed to create future spotted owl habitat result in site abandonment during or after the operation and what types of vegetation management operations will spotted owl to persist in existing territories (2011 RP at III-46 to III-47)."

This lack of information should cause the Service to take a precautionary approach, but instead the agency appears to be moving ahead as though those questions have been answered. To date, we see no indication the agency is even attempting to answer these questions and its work on the Beaverslide project shows a remarkable abdication of the agency's responsibility to conserve and recover a threatened species.

In the project area, "twelve of the thirteen Northern Spotted Owl territories are currently below threshold within the 0.7 mile radius and all territories are below threshold within the 1.3 mile radius" below which reproduction is diminished. But, the Service failed to consider the 2011 Recovery Plan's discussion about direct effects of thinning on Northern Spotted Owl's, or several other studies concerning decreased use by Northern Spotted Owl of harvested areas and reduced forage in stands that have been thinned or selectively logged for one to five decades. Without an explicit evaluation of short-term impacts to Northern Spotted Owls, it appears that implementation of the project will likely adversely affect the Northern Spotted Owls in the project area.

In an expert declaration in the case, Dominick DellaSala, chief scientist of the Geos Institute states: "The fact that all of these owl territories are below the Services' thresholds is a significant factor in analyzing potential harm to the resident owls in this area because any further degradation of the owl's structural habitat, or the owl's prey habitat is likely to cause significant short-term adverse effects on the owls, which may disrupt essential behavior patterns, including breeding, feeding, or sheltering...there is no analysis in the Biological Assessment that describes the short-term effects on the spotted owls that reside in the remaining territories...and the Service only presents its conclusions about the long-term habitat needs of the owl. The Service ' fails to ensure that they meet the requirements of the 2011 Recovery Plan that the area, "retain sufficient nesting, roosting, and foraging habitat within the provincial core-use area and within the provincial home range to support, breeding, feeding, and sheltering."

DellaSala also notes the area is already heavily fragmented from past active management and that "any additional fragmentation from road building (even temporary roads) or logging is

likely to adversely impact owl occupancy" and could facilitate invasion of the area by Barred Owls.

In addition, the Forest Service failed to take a hard look as required by the National Environmental Policy Act at the short-term effects on the owls and their prey. The agency analysis admits that "timber harvest and associated management activities may have a short-term negative effect on Northern Spotted Owl by modifying suitable owl habitat", but it never provides the necessary "hard look" to determine whether this short-term negative effect could cause additional reductions in "productivity and survivorship" in these below threshold activity centers, and it also failed to discuss the potential adverse indirect effects from the short-term reduction in the owl's prey base.

The Forest Service then makes numerous statements about the project benefits, but never provides any quantifiable or the required detailed hard look to substantiate those conclusions. For example, there is no disclosure that flying squirrels may not again use these areas for 20 years or that Northern Spotted Owls may not again forage in these areas for decades, or that this may lead to a loss of productivity and survivorship. The Forest Service' failure to take a hard look at the direct and indirect impacts of thinning and other management activities on the Northern Spotted Owls and their prey base in already degraded activity centers is unreasonable, arbitrary, capricious, and otherwise in violation of NEPA.

Because the project would reduce the amount of snags in the project area, it is important to look at the effect that would have on species that require snags such as the Western Screech Owl. There is essentially no Western Screech Owl population data for the project or planning area making Forest Service assertions that these species habitats are sufficient impossible to verify. Other species that may be negatively affected by snag removal in the project area include the Red-breasted Sapsucker, White-headed Woodpecker, Downy Woodpecker, Hairy Woodpecker, Brown Creeper, Vaux's Swift, and Flammulated Owl.

### Goose Logging Project

Conservation groups have filed a legal challenge against the 2,100 acre Goose timber sale in the Willamette National Forest, Oregon for the potential damage to streams and endangered species habitat it may cause if carried out unchanged. The project would remove large mature trees from riparian buffers, adversely modify 454 acres of suitable Northern Spotted Owl habitat, and the agency did not analyze or disclose the impacts the logging will have on competition with Barred Owls.

### Rio Climax Timber Sale

Four conservation groups are protesting a BLM Medford District's plan to log trees larger than 30 inches in diameter and construct a new logging road because this will likely to adversely affect habitat of the Northern Spotted Owl.

### Kelsey Peak Timber Sale, Six Rivers National Forest

The project proposes 1,521 acres of commercial thinning, 51 acres of late mature forest restoration and another 237 acres of low thinning considered as stand improvement (TSI). There are 13 owl activity centers in the project area. Fuel and thinning treatments within nesting-roosting habitat would amount to 327 and 85 acres respectively, for a total of 412 acres for all action alternatives. (DEIS p. 94) Within Northern Spotted Owl territories, Alternative 2A and 4 would thin 83 acres and Alternative 3 would thin 82 acres of nesting, roosting Northern Spotted Owl habitat that may cause short-term habitat degradation (DEIS 252).

### Algoma EIS, Shasta-Trinity National Forest

The project area is in Northern Spotted Owl Critical Habitat and proposes to thin 5,600 acres of mixed conifer in natural stands and plantations, including 930 acres of sanitation treatments and 640 acres in Riparian Reserves, 1,100 acres of natural and activity generated fuels with mechanical and prescribed fire and an additional 200 acres with under burning. Including the future projects in the CHU from Table 14, there will be a 50 percent degradation of Northern Spotted Owl foraging habitat for 30 years, possibly longer. One stated purpose of the project is to produce LSR reserves to serve as habitat for the Northern Spotted Owl, yet the entire project area is in already suitable owl critical habitat. This logic would make sense if the FS were converting unsuitable habitat or plantation habitat to become nesting/foraging habitat. There is no need for forestry "improvements".

### Mudflow EIS, Shasta-Trinity National Forest

The agency preferred Alternative 2 proposes 1626 acres of thinning of mixed conifer stands, 594 acres of plantations, 185 acres of ponderosa pine sanitation, 197 acres of regeneration, 189 acres of wet meadow logging, 121 acres of shaded fuel break, 45 acres of black oak restoration. 134 acres of regeneration is proposed for a plan amendment that would reduce the 15% retention guidelines. 88% of the project area is within designated Critical Habitat CA-2 for the Northern Spotted Owl.

### Pettijohn HFRA LSR EIS, Shasta-Trinity National Forest

The project is within Clear Creek Late Successional Reserve (LSR) and Critical Northern Spotted Owl Habitat. Silvicultural methods include 802 acres (and 58 acres in Riparian Reserve (RR)) of Tractor thinning from below, 104 acres (and 16 acres in RR) of Cable logging, 153 acres (and 22 acres in RR) of Helicopter logging and 1,995 acres of FMZs that include mastication and hand pile/burn concentrations. The Biological Assessment page 51 for the Pettijohn project determined that the proposed actions "may affect and likely adversely affect the northern spotted owl through the reduction of habitat quality". Existing NRF habitat would be degraded in about 1,793 acres due to FMZ and thinning prescriptions. Existing foraging habitat would be downgraded to connectivity habitat in about 288 acres due to thinning prescriptions.

### Gemmill EIS, Shasta-Trinity National Forest

1,279 acres commercial logging, 10 Northern Spotted Owl Activity Center's - The project proposes to; commercial thin 1,279 acres of that 300 acres is within Riparian Reserves (RR), 751 acres of mature forests and 528 acres of old-growth forest, thin from below 268 acres to reconstruct a 30 year old ridge top fuel break, 44 acres of plantation thinning, reduce fuels on 27 acres adjacent to private property, reconstruct 23.6 miles of road, construct 0.5 miles of "temporary" road. In LSR and Northern Spotted Owl Critical Habitat.

### Petersburg Pines HFRA EA, Klamath National Forest

The project area boundary encompasses 10,380 acres. The proposed action is comprised of five main treatment types comprised of 7,350 acres: Thinning 2,332 acres with variable density thinning followed by fuels reduction activities (935 acres Tractor, 1,147 acres Skyline Yarder and 250 acres Helicopter); prescribed burning on 2,753 acres; fuel reduction activity in shaded fuel breaks on 879 acres; roadside fuels reduction activities on 1,288 acres and fuels reduction activities immediately adjacent to private property on 98 acres. The Proposed Action would "modify" 164 acres of N/R habitat within 1.3 mile home ranges and 755 acres of F habitat. Within Northern Spotted Owl 1.3 mile home ranges the Proposed Action may downgrade or remove approximately 79 acres of N/R habitat and 80 acres of forage habitat. Within Core Areas 17 acres of N/R and 45 acres of F would be modified.

Alternative 3 would modify 141 acres of N/R habitat and 834 acres of forage habitat. Understory burning and Fuel breaks could be detrimental to Northern Spotted Owl habitat and have the potential to downgrade and remove habitat within the project area by removing or reducing the suitable habitat characteristics within units. Shaded fuel breaks could be detrimental to Northern Spotted Owl habitat by reducing the amount and/or types of snags, CWD, understory vegetation and prey. Combined treatments within 1.3-mile Northern Spotted Owl home ranges would modify 560 acres of N/R and 1247 acres of foraging habitat. The Proposed Action would remove/downgrade N/R habitat within home range for a reproductive pair.

### Smokey HFRA, Mendocino National Forest

Approximately 80% of the project area is within the Buttermilk Late Successional Reserve (LSR). 933 of commercial "thinning" is proposed within 737 acres in LSR and 196 acres in the Matrix land allocation. Mechanical fuels treatments are proposed on 637 acres, prescribed fire on 2689 acres, pre-commercial thinning on 400 acres, understory thinning and meadow enhancement on 1763 acres.

## **What is Wrong with Secretarial Pilot Projects in Moist Forests**

Secretary of the Interior Ken Salazar has initiated a series of Pilot Projects on lands managed by

the Bureau of Land Management that seek to test new ideas in ecoforestry. Two moist forest Pilot Projects are being implemented to test the theories of Drs. Norm Johnson and Jerry Franklin using regeneration harvest to produce high-quality early-seral forests. These are the Roseburg BLM Pilot and the Coos Bay BLM Pilot.

After tracking the BLM's two moist forest pilot projects, Cascadia Wildlands, a partner of American Bird Conservancy has identified significant problems, detailed in full in the appendix.

In our view, these moist forests are already providing Spotted Owl habitat and therefore should be retained. We encourage the BLM to discontinue implementation this type of harvest, especially in the new proposed Resource Management Plans. In addition, the Coos Bay BLM Pilot proposes to log over 900 healthy, rare, Port Orford Cedars and jeopardizes hundreds more that are retained, even old-growth trees.

The BLM has argued there is a need to break through "gridlock", implying that environmentalists have stopped all logging. This is not true. The Coos Bay BLM has been selling 150% of their target volume over the past five years with virtually no controversy. Roseburg BLM has been close to their target volume. There is no gridlock in our forests, and there are better ways to promote high-quality early-seral habitat, such as not salvage logging after a natural disturbance.



**The Siuslaw National Forest in Oregon has operated a successful and noncontroversial timber sale program for the past decade.**

## **Lack of Service Oversight Allowing Owl Take on Private and State Lands**

The U.S. Fish and Wildlife Service needs to do more to enforce the ESA against take of the Northern Spotted Owl on private lands. When asked about this at a public open house concerning the draft Critical Habitat rule, Oregon State Director Paul Henson stated that the agency had tried to enforce ESA Section 9 against Boise Cascade in one case twenty years ago and was ruled against by the court, and therefore would not make another Section 9 enforcement attempt for take on private lands. We like to see federal agencies doing everything it can to conserve the rapidly declining owl.

During the last administration, a Service program to review California timber sale plans and provide technical assistance to landowners was discontinued. As a result, these sales, that were formerly were often modified to mitigate the most likely harm to owl or owl habitat, are now proceeding unchanged.

The Environmental Protection Information Center has been compiling owl take information gathered by analyzing Timber Harvest Plans of Sierra Pacific Industries, Inc. whose actions, including logging, road building and other disturbance in northern California that result in significant habitat degradation and destruction that is likely to actually kill and injure Northern Spotted Owls. Sierra Pacific's actions result in unlawful take of Northern Spotted Owl by significantly impairing the essential behavior patterns of nesting, roosting, and foraging in violation of Section 9(a) of the ESA.

A review of seventeen Timber Harvest Plans with at least one Northern Spotted Owl activity center in or near the THP boundary. In total these will destroy over 1,000 acres of nesting/roosting habitat, and over 3,500 acres of foraging habitat. This constitutes illegal take under the ESA. Additional habitat will be destroyed by Sierra Pacific in areas where occupancy and use by the Northern Spotted Owl is unknown, and because the company does not share all information about Northern Spotted Owl on its property, additional take can be assumed.

Sierra Pacific currently lacks an HCP for management of their lands. Conservations groups are requesting the company halt logging or disturbance of owl habitat and immediately begin working with the Service to develop an HCP. We further urge the Service to renew the program of review timber harvest plans in California.

Regarding management of state lands in Washington State, the Society for Conservation Biology review of the draft owl Recovery Plan states: "One reviewer who is familiar with the actions of state agencies in Washington suggests that the regulations seem designed to facilitate continued declines in, rather than recovery of, Northern Spotted Owl populations."



**Forest practices on state and private lands in Oregon such as this are detrimental to Northern Spotted Owls, Marbled Murrelet and water quality.**

### **Benefits of the Northwest Forest Plan**

[The Northwest Forest Plan](#) is a significant environmental achievement of the Clinton Administration that should be built upon and extended by the Obama Administration. We believe this would be the best policy from a forest and wildlife management perspective. It is also the only mechanism available to provide legal certainty and ensure that an adequate regulatory mechanism remains in place to conserve and recover wide-ranging threatened species in the region.

**What follows are a series of summaries and excerpts from Northwest Forest Plan documents detailing the management philosophy, standards and guidelines, and results.**

The Forest Service Ten Year Review of the Northwest Forest Plan found that, overall, the Plan’s conservation strategy and reserve network appear to be working as designed. The total area of medium and large older forests on federal lands in the Plan increased by more than 1 million acres during the ten-year period, almost double the anticipated amount. The Plan’s outcomes for Spotted Owls were expected to take at least a century. Spotted Owl population declines

were expected for the first 40 to 50 years under the Plan, with owl populations stabilizing in the mid-21<sup>st</sup> Century and possibly increasing after that as owl habitat recovery exceeded loss.

### **FEMAT: Report of the Forest Ecosystem Management Assessment Team**

Option 9: thinnings are allowed in any stand regardless of origin up to 80 years; salvage of areas larger than ten acres where trees have been killed by catastrophic events.

The requirements for the Matrix under Option 9 vary by area:

For most National Forests in Washington, Oregon, and California, 15 percent of trees would be retained following harvest; half of that volume would be left in small intact patches of late-successional forest and the rest dispersed throughout the harvest unit.

For National Forests in the Oregon Coast Range, and the Olympic and Mt. Baker-Snoqualmie National Forests, retention requirements would be reduced because of the extent of Riparian Reserves and Marbled Murrelet protection in those areas.

For Bureau of Land Management districts in Oregon, retention varies from 6 to 25 large green trees per acre depending on location, with 150-year rotations prescribed for some areas.

\* For federal forests in northern California, long rotations are prescribed for conifer and mixed conifer/hardwood (180 years) and hardwood (100 years) forests.

Five options (1, 3, 4, 5, and 9) specifically require **protection of specified rare and locally endemic species** associated with late-successional forests within the Matrix. All options except 7 and 8 require surveys and protection of occupied marbled murrelet nesting sites. Other protective measures may be added to provide for at-risk species under each option.

### **Late-Successional Reserves**

Under Option 9, Late-Successional Reserves are based on boundaries that represent an integration of previous efforts (Johnson et al. 1991; USDI 1992c). They incorporate some portion of the reserves from each of those previous efforts and include new areas designated to protect Key Watersheds. Thinning or silvicultural treatments inside Reserves require review by an interagency oversight team to ensure that they are beneficial to the creation of late-successional forest conditions. Activities that would be permitted in the western and eastern portions of the range are described separately below. Salvage of dead trees would be based on guidelines adapted from the Final Draft Recovery Plan for the Northern Spotted Owl (USDI 1992c) and would be limited to areas where catastrophic loss exceeded ten acres.

#### West of the Cascades

There is no entry allowed in stands older than 80 years of age. Thinnings (pre-commercial and commercial) may occur in stands up to 80 years of age regardless of the origin of the

stands (plantations planted after logging or stands naturally regenerated after fire or blow down). The purpose of these silvicultural treatments is to be neutral or beneficial to the creation and maintenance of late-successional forest conditions.

#### East of the Cascades and the eastern portion of the Klamath Province

Given the increased risk of fire in these areas due to more xeric conditions and the rapid accumulation of fuels as the aftermath of insect outbreaks and drought, there are additional management activities allowed in late-successional reserves. Guidelines to reduce risks to large-scale disturbance are adapted from the Final Draft Recovery Plan for the Northern Spotted Owl (USDI 1992c). These guidelines can be found at the end of the chapter.

#### [Northwest Forest Plan Record of Decision & Standards and Guidelines](#)

Late-successional reserves: Late-successional reserves are to be managed to protect and enhance old-growth forest conditions. For each late-successional reserve (or group of small reserves), managers should prepare an assessment of existing conditions and appropriate activities. No programmed timber harvest is allowed inside the reserves. However, thinning or other silvicultural treatments inside these reserves may occur in stands up to 80 years of age if the treatments are beneficial to the creation and maintenance of late-successional forest conditions.

In the reserves east of the Cascades and in Oregon and California Klamath Provinces, additional management activities are allowed to reduce risks of large-scale disturbance. Salvage guidelines are intended to prevent negative effects on late-successional habitat. Non-silvicultural activities within late-successional reserves are allowed where such activities are neutral or beneficial to the creation and maintenance of late-successional habitat. Thinning or other silvicultural activities must be reviewed by the Regional Ecosystem Office and the Regional Interagency Executive Committee.

Alternative 9, like all of the other action alternatives, applies the same criteria for management of habitat on both Forest Service and BLM lands. This was done in order to accomplish most efficiently the dual objectives discussed above -- that is, achieving the biological results required by law, while minimizing adverse impact on timber harvests and jobs. The inefficiencies involved in applying different criteria on Forest Service and BLM land have been noted in previous analyses. For example, in the Report of the Scientific Analysis Team ("SAT Report"), the team found that BLM's plans were relatively high-risk, when compared to the plans of the Forest Service, in terms of conserving the northern spotted owl. As a result, the SAT found that in order for the Forest Service to "make up for significantly increased risks," it would have to dramatically increase the size of protected areas on Forest Service land (SAT Report, pp. 12-13).

In addition, Alternative 9 offers one advantage that the other alternatives do not — its

inclusion of adaptive management areas. Adaptive management involves experimentation, identifying new information, evaluating it, accounting for it in discretionary decisions, and determining whether to adjust plan direction. The object is to improve the implementation and achieve the goals of the selected alternative. Each of the alternatives incorporates the principles of adaptive management to some extent, but Alternative 9 is the only one that specifically allocates ten adaptive management areas, which may be used to develop and test new management approaches to achieve the desired ecological, economic, and other social objectives.

These AMAs offer the opportunity for creative, voluntary participation in forest management activities by willing participants. We recognize that this will take time, effort, and a good-faith commitment to the goal of improved forest management. Many of the potentially participating communities and agencies have different capabilities for joining this effort. Our approach to implementing this initiative will recognize and reflect these differences as we seek to encourage and support the broadest possible participation. Moreover, Alternative 9 allows silvicultural activities, such as thinning young monoculture stands, in late-successional reserves when those activities will enhance late-successional conditions.

#### **Forest Service Ten Year Review (2003)**

Overall, the Plan's conservation strategy and reserve network appear to be working as designed.

- The total area of medium and large older forests on federal lands in the Plan area gained more than 1 million acres during the ten-year period, almost double the anticipated amount.
- Spotted Owl populations declined about 7.5 percent per year across their northern range and 2 percent per year across their southern range. Declines may have resulted from habitat loss, Barred Owls, and other factors.
- The loss of habitat was less than expected, as less timber was harvested and less habitat was lost to wildfire than expected.

The Plan's outcomes for Spotted Owls were expected to take at least a century. Spotted Owl population declines were expected for the first 40 to 50 years under the Plan, with owl populations stabilizing in the mid-21<sup>st</sup> Century and possibly increasing after that as owl habitat recovery exceeded loss.

#### **Forest Service Fifteen Year Review (2008)**

The NWFP projected that over a time horizon of ten decades, LSOG forest could be restored and maintained at desired levels. In this second monitoring cycle...these analyses indicate a NWFP-wide decline in federal LSOG slightly less than what was anticipated (FEMAT 1993); however, losses in some

provinces (e.g. Oregon Klamath) were higher than the projected 2.5 percent decadal rate of loss. Helping to offset these losses is the potential for future recruitment in the next few decades (fig. 1-7). Furthermore, the results support assumptions made in the NWFP that the primary role in maintaining or restoring LSOG and related habitats would fall to federal lands. Specifically, federal lands contain less than half of the total forest land, but the federal share of total LSOG increased from 65 to 67 percent over the monitoring period. Harvesting removed about 13 percent (approximately 491,000 ac) of LSOG on nonfederal lands. Loss of LSOG on federal land due to harvest was less than 0.5 percent (approximately 32,100 ac).

The study found that: "...the current analysis of habitat within and around the large reserve network validates the assumption that the repetitive design of large reserves can absorb losses without resulting in isolation of population segments. Not enough time has passed for us to accurately detect or estimate significant recruitment of nesting/roosting habitat, however increases were observed in "marginal" younger forests indicating that future recruitment of nesting/roosting habitat will occur as anticipated, within the next few decades."

The most recent estimate for Northern Spotted Owl population trends on federally administered lands is a 2.8 percent annual rate of decline, which is slightly lower than the 2.9 percent estimated by Forsman et al. (2011), which included two additional nonfederal study areas not managed under the NWFP. The rate of decline is highest in the northern portion of the range (Washington), where populations are estimated to have declined 40 to 60 percent since 1994. Populations remain stationary in the central portion of the owl's range, located in southwestern Oregon (fig. 2-4).

### **Marbled Murrelet Findings in 15-Year Report**

Declining murrelet population trends and habitat losses underscore the need to minimize the loss of suitable habitat, especially in the relatively near term (next 40 to 50 years at least), until re-growing forests develop the structure needed for marbled murrelet nesting. The observed population decline, about four percent per year at the NWFP-area scale, was not unexpected, as population demographic models have predicted murrelet populations to be declining south of Canada in the range of three to seven percent per year (McShane et al. 2004, USFWS 1997).

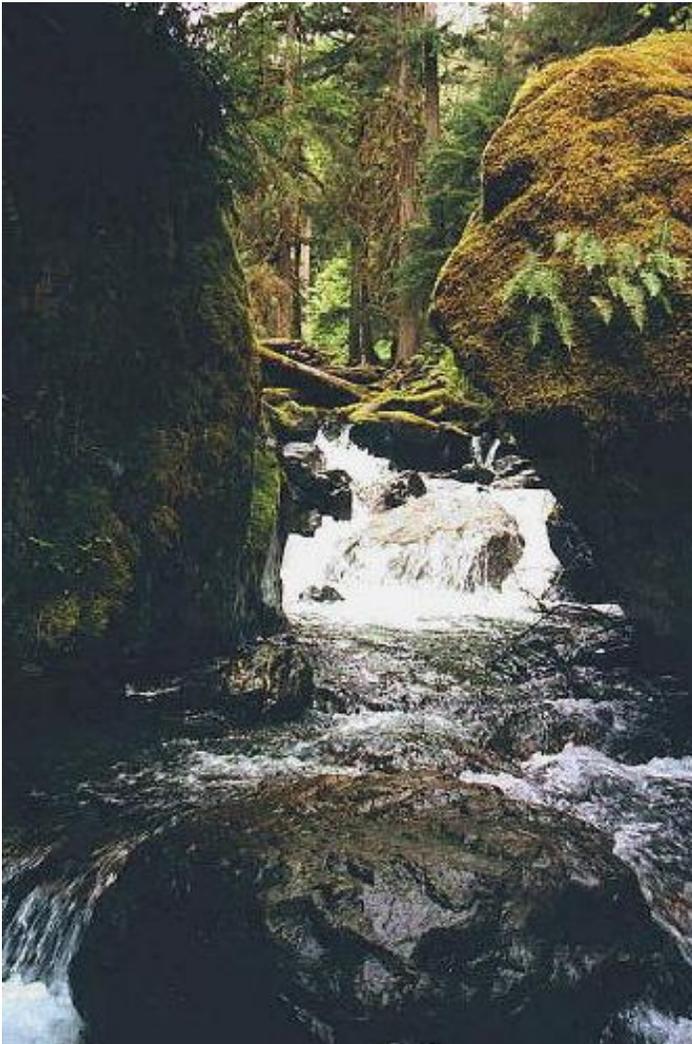
In light of the observed population declines and habitat losses, continued management of federal NWFP lands to conserve existing potential nesting habitat and to promote development of new nesting habitat is essential. It is not clear what other actions could be taken on federal lands to help reverse the population decline. Management to reduce risk of losses to fire would be important if done so that the management action has minimal impact to nesting habitat. The possible causes of observed population decline will require further study, and likely involve several interacting factors. Timber harvest of higher suitability habitat on nonfederal lands is one factor that may contribute to these declines.

### **Watershed Condition Status and Trend 15-Year Report**

A Forest Service [analysis of watershed condition](#) released in Feb. 2012 finds that the Northwest Forest Plan is working well to recover impaired watersheds across the region. Watershed Condition Status and Trend (Lanigan et al 2012) published by the Pacific Northwest Research Station analyzed data from 1994-2008, the first fifteen years of the Northwest Forest Plan and found that 69% of the watersheds in the NWFP area had a positive change in condition as a

result of road decommissioning and vegetation growth. The report summary notes: “Watershed condition was most positive for congressionally reserved lands, followed by late-successional reserves, and then matrix lands.”

## Northern Spotted Owl Critical Habitat Rule



Clean water coming from the Willamette National Forest, Oregon.

After the Bush Administration’s owl Critical Habitat rule and Recovery Plans were remanded by a federal court in 2010, new plans were initiated with a court-ordered Nov. 15, 2012 deadline for the Critical Habitat designation. The best science indicates any final critical habitat designation and management recommendations should exceed the protections of the Northwest Forest Plan, not minimize or ignore them.

**It is vitally important to note that this Critical Habitat designation will guide future management changes in the region. Following publication of the final rule, the land management agencies have indicated that forest and land management plans will be amended to conform to the Critical Habitat rule across the owl’s range. Based on the available information, we must assume the elimination of late-successional reserves is a potential application of this Critical Habitat rule and therefore the effects of eliminating the reserves should be fully analyzed by both the rule and**

**companion economic analysis and environmental assessment. And, because this analysis is notably absent, the public is currently unable to determine the full consequences of the pending rule. Redoing the analysis at this point is impossible given the court-ordered deadline.**

**We therefore urge the agency to make abundantly clear to the public and to the land**

**managing agencies that elimination of the reserves is not an application of, or a recommendation of this rule.**

The rule as drafted endorses a significant departure from the standards and guidelines of the Northwest Forest Plan by promoting active management in owl habitat, potentially weakens habitat protection for the threatened owl further by endorsing elimination of late-successional reserves, neither of which reflect the best available science.

The final Critical Habitat rule should instead provide for additional habitat protection needed to reverse the owl's decline and allow for its eventual recovery. Given past mismanagement, continuing pressure to utilize these forests to meet economic needs and to pay for local government services, and the influx of the Barred Owl, it is essential that firm protections, such as the system of late-successional reserves provided by the Northwest Forest Plan remain in place and that suitable owl habitat be preserved, not subjected to logging.

### **The Draft Critical Habitat Rule Undermines the Northwest Forest Plan**

The draft critical habitat rule notes that the Northwest Forest Plan "...has been successful in the conservation and recruitment of late-successional forest and associated species on Federal lands (Thomas et al. 2006. P. 283) (p.52), but then proceeds to recommend its dismantling based on three main justifications, that commercial timber harvest from matrix lands was insufficient, the lack of active restoration in areas that may contain "uncharacteristically high risk of severe fire," and the a lack of early-seral habitats in moist forests. A careful review of these claims reveals that none of them hold up to scrutiny.

It should be noted the Service appears to be biased against the Northwest Forest Plan by ignoring information and studies in the scientific literature Courtney et al. (2004), Lint (2004), DellaSala and Williams (2006) that demonstrate the importance of reserves and others that show the effectiveness of the overall strategy such as the Forest Service' fifteen year reviews mentioned above. Most recently 229 scientists sent a letter to President Barack Obama urging the preservation of the reserve system created by the Northwest Forest Plan. The letter is included in the appendix. This appearance of bias is of particular concern because that was one aspect of the political interference undermining the 2008 Critical Habitat Rule and Recovery Plan due to demands by Bush administration officials to ignore the requirements of the Northwest Forest Plan.

The Service on page 53-54 of the draft rule sites and appears to be agreeing with Thomas et al concerning improvements to the Northwest Forest Plan. Missing from the list however, was any mention of maintenance of large blocks of habitat necessary for the owl survival and recovery.



**Fragmented forests. Willamette National Forest, Oregon.**

The bias against the late-successional reserves is heard once again on page 54 where it repeats that *“Critical Habitat for the northern spotted owl is not intended to be a “hands off” reserve in the traditional sense. Rather, it should be a hands-on ecosystem management landscape that should include a mix of active and passive actions to meet a variety of conservation goals that support long-term spotted owl conservation.”*

However, on page 131 the draft contradictorily advises *“(3) Continue to manage for large, continuous blocks of late-successional forest.”*

And on page 274 directs for the East Cascades *“In the interim, management actions are needed to protect current habitat, especially where it occurs in large blocks on areas areas of the landscape where it is more likely to be resistant or resilient to fires and other disturbance events.”*

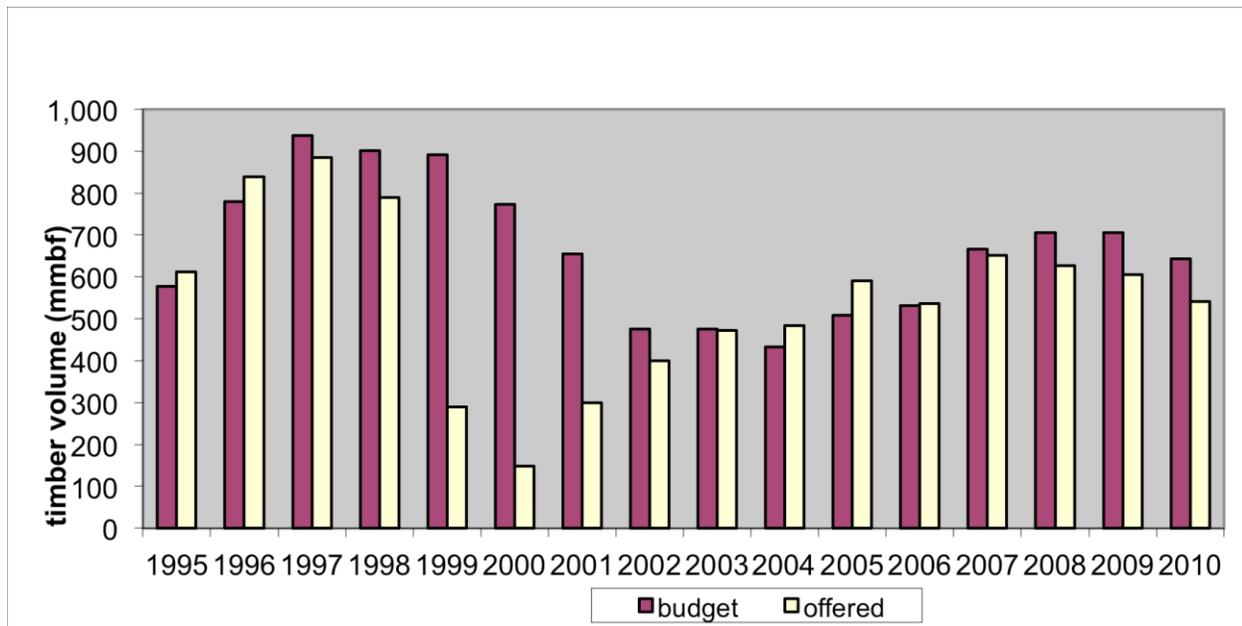
There is no indication how these requirements are to be accomplished under a reserve-less system. And nowhere is there any analysis showing that a reserve-less strategy allowing logging in owl habitat is going to be better for Northern Spotted Owl populations than the current system of protected reserves.

### **Timber Analysis: Agencies Meeting 96% of Funded Volume Target Since 2003**

Timber sale data undermines the idea that the Northwest Forest Plan is not producing a stable flow of timber. The final Northwest Forest Plan was a political compromise that under-delivered on old-growth protection by placing 42% of the remaining acres in the matrix, and overpromised on timber volume. The plan’s billion board foot estimate was never realistic because it is predicated on logging old-growth, which is not supported by the public and that in practical terms has generally been ruled in violation of wildlife protection laws. The estimate was also completed prior to the designation of the riparian reserve network which turned out larger than anticipated. The Bush Administration recognized these factors to a degree, and lowered the allowable sale quantify to 800 million board feet.

A look at timber sale output in the Northwest Forest Plan region reveals the agency is at a sustainable level and meeting the volume targets budgeted by Congress; see Forest Service and BLM Offered under the Northwest Forest Plan included in the appendix. Since 2003, the budget approved by Congress and the Administration has called for 4,668 million board feet from the Northwest Forest Plan area. The agencies have offered 4,507 board feet, or 96% of the planned budget.

In addition, [exports from the region are skyrocketing](#). In 2010 over 2 billion board feet of logs and lumber were exported from the West Coast. In 2011 it topped 3 billion. There is no shortage of logging in the Pacific Northwest.



Source: Forest Service and BLM Volume Offered under Northwest Forest Plan (FY 1995 – FY 2010), Region 5 & 6, PTSAR Report, and BLM Timber Sale Information System.

The Probable Sale Quantity (PSQ) needs to be recalculated to offer a realistic assessment based on conservation needs. Here are some factors to consider:

Clearcutting and regeneration harvest are socially and scientifically unacceptable because removing the majority of the structure harms water quality and does not mimic natural processes. By increasing forest fragmentation it is particularly harmful to the threatened Northern Spotted Owl and Marbled Murrelet.

The need to increase protection Northern Spotted Owls and meet Recovery Action 32 to protect all suitable nesting, roosting, foraging habitat indicates that all suitable nesting, roosting and foraging habitat should be removed from the timber base. Similarly, the need to protect Marbled Murrelet habitat, including both occupied stands, and mature forest to be recruited as high quality nesting habitat indicates that all the mature forests within the range of the marbled murrelet should be removed from the timber base.

The PSQ needs to be recalculated to mitigate for the increasing intensity of management on non-federal lands as a result of the current boom in raw log exports. Harvest rotations are getting shorter and ecological and watershed values are declining and habitat for the Northern Spotted Owl and Marbled Murrelet continue to be lost, so management of federal forest lands must be adjusted to compensate.

In addition, the Rule and accompanying Economic Analysis and Environmental Assessment fail to analyze a range of management options that could meet the objective of ecological restoration and forest resilience while also minimizing harm to the Northern Spotted Owl. For

example, conservation groups have released a report [\*Ecologically Appropriate Restoration Thinning in the Northwest Forest Plan Area\*](#) identifying twenty-years of non-controversial thinning projects in Oregon and Washington that do not rely on removing owl habitat. We urge the Service consider this option as opposed to allowing regeneration of mature forests that are already providing suitable Northern Spotted Owl habitat.

## **Economic Analysis of the Draft Critical Habitat Designation**

The *Draft Economic Analysis* has substantial flaws and fails to provide the Secretary with a sound basis for determining if the economic benefits of excluding any area from the Critical Habitat designation outweigh the economic benefits of including it. Instead, it provides a poorly informed, incomplete, and biased description of these benefits. Consequently, the *Draft Analysis* does not provide a reasonable basis for any determination by the Secretary to exclude any area from the final designation.

**The *Draft Analysis* narrowly focuses on how the designation of critical habitat would affect the timber industry, disregarding its other effects on the economy.** Extensive evidence confirms that timber constitutes a small percentage of the total value of goods and services provided by forests in this region. With its limited focus and pro-timber bias, the *Draft Analysis* cannot provide the Secretary with a solid foundation for weighing the full economic benefits of designating lands against the full economic benefits of excluding them.

**The *Draft Analysis* misconstrues the designation’s timber-related benefits.** The *Draft Analysis* measures the benefits of increased timber production with one eye closed, looking only at the market value of the additional logs and ignoring the costs of producing them.

**The *Draft Analysis* fails to comply with the requirements of Executive Order 12866.** This executive order requires the Secretary, before adopting a final rule to designate critical habitat for the Northern Spotted Owl to describe for the public and base his decision on “the best reasonably available...economic...information concerning the need for and consequences of the intended regulation.”<sup>1</sup> The *Draft Analysis* overlooks far too much of the best, readily available economic information to provide a full picture of the economic consequences of excluding areas from the designation. This conclusion is reinforced by comparing the *Draft Analysis* against the requirements of OMB Circular A-4, which provides guidance for complying with Executive Order 12866.

This guidance requires the Secretary to “consider any important ancillary benefits and countervailing risks” before making any decision to exclude areas from the designation, using “the same standards of information and analysis quality that apply to” the analysis of timber-related impacts.<sup>2</sup> In stark contrast, The *Draft Analysis* arbitrarily focuses on how the designation

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<sup>1</sup> Executive Order 12866, Section 1(7).

<sup>2</sup> OMB Circular A-4, p. 26.

(or exclusion) of different areas would affect timber production, and applying dramatically different standards of information and analysis to describe the other important ancillary benefits of designation. Thus, the Secretary would violate Executive Order 12866 if he were to



rely on the *Draft Analysis* as the basis for a decision to exclude any area from the designation.

These are the findings of Dr. Ernie Niemi who has drafted “Comments on the Draft Economic Analysis of Critical Habitat Designation for the Northern Spotted Owl.” These comments are included in the appendix.

**Active management has economic and environmental costs not accounted for in the draft Rule and accompanying documents.**

## **Active Management in Critical Habitat**

The draft Critical Habitat rule includes extensive language supporting active management in all areas of owl Critical Habitat, including regeneration harvest in moist Westside forests. The draft goes so far as to suggest that forest management goals can take precedence over owl conservation, and that the conservation of this endangered species must be “compatible with broader landscape management goals”:

*We strongly encourage the application of ecosystem management principles and active forest management to ensure the long-term conservation of the Northern Spotted Owl and its habitat, as well as other species dependent on these shared ecosystems. (p. 13)*

*In conclusion, the designation and management of critical habitat for the spotted owl must be compatible with these broader landscape management goals if it is to conserve the spotted owl as required by the Act. It is therefore important to emphasize that spotted owl critical habitat should not be a “hands off” reserve in the traditional sense. Rather, it should be a “hands on” ecosystem management landscape that should include a mix of active and passive actions to meet a variety of forest conservation goals that support long-term spotted owl conservation. It would be inconsistent with the stated purposes of the Act, the Revised Recovery Plan (USFWS*

2011), and the goals of the Northwest Forest Plan (NWFP) if spotted owl critical habitat was narrowly managed and, in so doing, discouraged land managers from implementing scientifically justified measures for conserving forest ecosystem functions and health.(p.15)

*Likewise, in moist and some mixed forests, management of spotted owl critical habitat should be compatible with broader ecological goals, such as the retention of high-quality older forest, the continued treatment of young or homogenous forest plantations, and the conservation or restoration of complex early seral forest habitat (Spies et al. 2007b, pp. 57–63; Betts et al. 2010, pp. 2117, 2126–2127; Swanson et al. 2010, entire). In general, actions that promote ecological restoration and those that apply ecological forestry principles as described in the Revised Recovery Plan (USFWS 2011, pp. III-11 to III-41) are likely to be consistent with the conservation of the Northern Spotted Owl and the management of its critical habitat.*

Recommendation for moist Westside forests:

*“Regeneration harvest, if carried out, should consider ecological forestry principles.” (p.131)*

*For example, some restoration treatments may have an immediate neutral or beneficial effect on existing Northern Spotted Owl habitat (e.g., roads management, some prescribed fire prescriptions). Other treatments, however, may involve reductions in stand densities, canopy closure, or ladder fuels (understory vegetation that has the potential to carry up into a crown fire)—and thus affect the physical or biological features needed by the species. At the stand scale, this can result in a level of conflict between conserving existing Northern Spotted Owl habitat and restoring dry-forest ecosystems. We typically cannot expect to meet both objectives on the same acre if that acre currently functions as suitable Northern Spotted Owl habitat. We can reconcile this conflict, however, by managing at the landscape scale.*

This approach has raised the concern of Society for Conservation Biology, The Wildlife Society, and American Ornithologists’ Union who wrote:

*“These proposed policy changes have the potential to adversely impact federal lands in the Pacific Northwest to the detriment of spotted owls and other federally threatened and endangered species....we are especially concerned about the potential habitat impacts of adopting untested “active management” forestry technique.”*

The groups are asking the Department of the Interior to prepare an Environmental Impact Statement to prepare a scientific approach to test active management forestry’s impact on spotted owl prior to being used at a commercial or landscape scale. We agree with this assessment and urge an end to owl take until the agency can offer an analysis showing what the acceptable limits to owl take and habitat loss are while still providing a high degree of certainty of owl recovery.



Landslides and erosion are potential impacts of active management on steep or unstable slopes. Oregon's Coast Range.

## Adverse Modification of Habitat

The draft Critical Habitat rule further states that if projects have considered ecological forestry principles, that in general these activities would not be considered adverse modification of owl habitat by the Service. As a result of this provision, the normal protections provided by critical habitat to prevent adverse modification may not apply at the discretion of the Service.

*In general, silviculture prescriptions that apply ecological forestry principles to address the conservation of broader ecological processes are compatible with maintaining the proposed critical habitat's essential features in the long term (USFWS 2011, p. III-14). (p. 14)*

*We would anticipate that in most cases, restoration and thinning actions (see **Special Management***

***Actions and Considerations**) at or below this size (500 acres) will likely not adversely affect a given critical habitat subunit; however, such a determination would have to be made on a case-by-case basis, after careful consideration of the specific conditions of the proposed action.*

The Service should evaluate adverse modification at the appropriate scale of individual owl home ranges as geographically defined for each proposed project action, particularly active management; determine jeopardy at the scale of the subunit (approximately 100,000 acres), and cumulative effects need to be evaluated to avoid a level of excessive loss that is currently not quantified.



**The Northwest Forest Plan protects water quality, threatened salmon runs, and habitat for the Marbled Murrelet. Willamette National Forest, Oregon.**

The 1993 Report of the Scientific Analysis Team (SAT) ironically, already thoroughly reviewed the risks associated with logging in suitable owl habitat, and concluded “intentions to selectively cut forest stands to create conditions favorable for spotted owls, represents increased risks to the viability of the spotted owl (SAT p. 145).”

The issue of short-term losses versus long-term habitat gains was also analyzed and the scientists concluded “*that the short-term effect of these actions on habitat loss may be much more significant than the long-term predicted habitat gains.*”

The Scientific Analysis Team report said:

“Lacking experience with selective cutting designed to create spotted owl habitat, such practices must be considered as untested hypotheses requiring testing to determine their likelihood of success. ... Given the uncertainty of achieving such expectations, it is likely that some silvicultural treatments, which have been characterized as largely experimental, may well have an opposite effect from that expected. Consequently, such treatments may hinder the development of suitable habitat or they may only partially succeed, resulting in development of marginal habitat that may not fully provide for the needs of spotted owls. Results which fall short of the expected conditions could occur because of delay or failure to regenerate stands that have been cut, increased levels of wind throw of remaining trees, mechanical damage during logging to trees remaining in the logging unit, the spread of root rot and other diseases. Increased risk of wildfires associated with logging operations that increase fuels and

usually employ broadcast burning to reduce the fuels also increase the risk of not attaining expected results. Such events may spread to areas adjacent to stands that are logged, thereby affecting even more acreage than those acres directly treated.” [SAT p 147-148]

“The combined risks associated with treatment of spotted owl habitat or stands expected to develop into suitable habitat for spotted owls, as discussed above, will likely result in situations where either habitat development is inhibited or only marginal habitat for spotted owls is developed. The exact frequency of these partial successes or failures is unknown. Given the likely cumulative relationship among the risks for each factor, it appears to us that the overall risk of not meeting habitat objectives is high. ... Members of the Interagency Scientific Committee indicated that, because a plan (the Interagency Scientific Committee’s Strategy) was put forth which proposes to reduce the population of a threatened species by as much as 50 percent, providing the survivors with only marginal habitat would be extremely risky and certainly in their minds not ‘scientifically credible’ (USDA 1991:45).” [SAT p 151].

“The transition period (1-50 years) between implementation of the Interagency Scientific Committee’s Strategy and achievement of an equilibrium of habitat and spotted owls is a critical consideration. ... Given the existing risks that face owl populations and the sensitivity of the transition period, the short-term effect of these actions on habitat loss may be much more significant than the long-term predicted habitat gains. We further conclude that, although research and monitoring studies are presently being initiated, no significant new data exist which suggest that the degree of certainty that is expressed in the Bureau of Land Management Draft Resource Management Plans for developing owl habitat silvicultural treatments is justified. Therefore, it is our opinion that the course prescribed in the Interagency Scientific Committee’s Strategy, pertaining to timber harvest in Habitat Conservation Areas, remains the most likely course to result in superior habitat conditions within reserves (i.e., Old-Growth Emphasis Areas). The approach prescribed by the Interagency Scientific Committee’s Strategy preserves options for adjustments in the course of management under a philosophy of adaptive management.” [SAT p 151-152].



**Olympic National Park, Washington State**

According to forest policy expert Doug Heiken of Oregon Wild, “The SAT indicates that these comments apply equally to density management and patch cutting, both of which are being promoted as tools to enhance owl habitat. The SAT also cited concerns about the effect of logging on snags and down woody debris which are essential features of owl habitat. The authors of the Northwest Forest Plan took all this into account and determined that 80 years is a useful place to draw the line between younger forests that are likely to benefit from careful thinning and older forests that are likely to experience net negative consequences. There is no new science to change that conclusion.” ABC urges the Service to not allow for adverse modification of Northern Spotted Owl Habitat by active management or ecoforestry in stands greater than 80 years.

## **Lack of Scientific Evidence for Active Management**

While early-seral habitats are desirable for some species, logging is not the best means to establish early-seral habitat within the range of the Northern Spotted Owl. We recommend that agency utilize natural disturbances and refrain from post-fire logging which has the potential to create abundant high-quality early-successional habitats.

In the draft Rule land managers are encouraged to develop early seral habitat to benefit a variety species but no evidence is presented showing the Northern Spotted Owl benefits from the creation of early seral habitat, nor is there analysis showing what potential harm may come to the threatened species if various levels of direct take and habitat loss or degradation were to occur.



**Open meadows. Mt. Rainier National Park, Washington State.**

The draft Environmental Assessment identified two endangered species, Fender's blue butterfly and Oregon silverspot butterfly whose open, early seral habitat such as grasslands, meadows, oak woodlands, or aspen woodlands may conflict with Northern Spotted Owl management intended to maintain closed canopy forests (p. 52). But the assessment notes that listed plant and butterfly species and their closely associated open habitats are explicitly not included in the proposed critical habitat revision (p.50). The Service concludes on page 62: *"that designation of critical habitat for the Northern Spotted Owl in this alternative would have a neutral effect on those species associated with open, early seral habitats."*

We see no justification to convert nesting, roosting, and foraging habitat of the Northern Spotted Owl to early-seral. Under the Northwest Forest Plan restoration of owl habitat, when it occurs, should hasten creation of owl habitat, not set it back by many decades. This provision is unrelated to owl recovery or sound forest management and should be removed from the final designation.

Other listed species may also be harmed by the proposed active management such as the Marbled Murrelet. The draft Environmental Assessment found that *"Active forest management that is in the vicinity of murrelet nesting stands may be detrimental to the species survival and recovery."* (p. 61) This results from increased fragmentation and opening the forests to crows, ravens, and jays, increasing predation pressure on nesting murrelets. Despite this, there is no prohibition in the draft Rule on the proposed active management to ensure murrelet nesting stands will not be disturbed.

The draft Rule on page 8 on the other hand states: *"Consistent with the best available science and the adaptive management principles outlined in the Revised Recovery Plan for the Northern Spotted Owl, we strongly encourage the application of ecosystem management principles and active forest management to ensure the long-term conservation of the northern spotted owl and its habitat, as well as other species dependent on these shared ecosystems."*

In reality, active management, if conducted near nesting murrelets would be harmful. There is also indications the prey base of the Northern Spotted Owl could also be harmed by active management including thinning, but these factors appear to be glossed over by the draft Rule. And unlike the Northwest Forest Plan, there is no detailed analysis how other listed species will fair under the active management being proposed by the draft Rule.

Studies by Hanson (2009 and 2010) and Miller (2012) have found that dry forests on the Eastside and in Northern California have not seen an increase in severe, high-intensity fires. Most of the acreage burned has been low to moderate severity with generally beneficial ecological effects. The risk of fire to owls also appears to be exaggerated in the final Owl Recovery Plan and draft Critical Habitat rule.

The agency recommends conserving old-growth trees and forests on wherever they are found, including in the matrix lands. This is the most positive development stemming from the final Recovery Plan and draft Critical Habitat rule.

The Rule recommends that for the moist forests in the West Cascades/Coast Ranges of Oregon and Washington “...to conserve stands that support northern spotted owl occupancy or contain high-value northern spotted owl habitat (USFWS 2011, p. III-17). Silvicultural treatments are generally not needed to accomplish this goal.”

However despite this clear statement that active management is not needed in these moist forests, the Draft recommends “dynamic management” in threatened forest types that conserves all stages of forest development where tradeoffs between short-term and long-term risks are better balanced, and recognize the Northwest Forest Plan is now an integrated conservation strategy that contributes to all components of sustainability.

In plain language that says the Service is approving a more discretionary management approach that reduces protections to increase the amount of logging in owl habitat.

## **Presidential Memorandum**

President Barack Obama issued a memorandum to Secretary of the Interior Ken Salazar stating that logging should be allowed and considered an acceptable practice in Northern Spotted Owl Critical Habitat. The memo is of great concern because it is not based on the best available science and makes exaggerated claims about the evidence supporting the Service’s position. It appears to prejudge the outcome and effects of a federal rulemaking and seek a predetermined outcome before the public had even been given a chance to review or comment on the draft Rule. The text of a portion of the memo signed by President Barack Obama follows:

Importantly, the proposed rule recommends, on the basis of extensive scientific analysis that areas identified as Critical Habitat should be subject to active management, including logging, in order to produce the variety of stands of trees required for healthy forests. The proposal rejects the traditional view that land managers should take a “hands off” approach to forest habitat in order to promote species health; on-going logging activity may be needed to enhance forest resilience.

In order to avoid unnecessary costs and burdens and to advance the principles of Executive Order 13563, consistent with the ESA, I hereby direct you to take the following actions:

- (1) publish, within 90 days of the date of this memorandum, a full analysis of the economic impacts of the proposed rule, including job impacts, and make that analysis available for public comment;
- (2) consider excluding private lands and State lands from the final revised critical habitat, consistent with applicable law and science;
- (3) develop clear direction, as part of the final rule, for evaluating logging activity in areas of critical habitat, in accordance with the scientific principles of active forestry management and to the extent permitted by law;

(4) carefully consider all public comments on the relevant science and economics, including those comments that suggest potential methods for minimizing regulatory burdens;

(5) give careful consideration to providing the maximum exclusion from the final revised critical habitat, consistent with applicable law and science; and

(6) to the extent permitted by law, adopt the least burdensome means, including avoidance of unnecessary burdens on States, tribes, localities, and the private sector, of promoting compliance with the ESA, considering the range of innovative ecosystem management tools available to the Department and landowners.

The Society for Conservation Biology, The Wildlife Society, and American Ornithologists' Union raised the same concern about the President's memo stating:

*"We are concerned that this memorandum overstates the quality and quantity of scientific research on the potential benefits of active forest management, especially in the Pacific Northwest on a federally threatened species. In particular, we are unaware of any substantial or significant scientific literature that demonstrates that active forest management enhances the recovery of spotted owls."*

## **Additional Areas Where Critical Habitat Should Be Designated**

ABC believes all occupied and suitable owl habitat should be designated Critical Habitat. Tribal lands important for the recovery of Northern Spotted Owl, such as the 5,400 acre Coquille forest have been excluded. Similarly, portions of the Coos Bay Wagon Road lands and the Cascade-Siskiyou National Monument area in Oregon have also been excluded with little explanation.

We urge the agency to allocate additional critical habitat in prime Northern Spotted Owl habitat adjacent and near to the Monument to include as much dispersal/connectivity habitat as possible. The Monument currently seems to be a functional island of designated Critical Habitat in its surrounding landscape.

Dave Willis, a local conservationist familiar with the area recommends some specific additions we believe beneficial to the Northern Spotted Owl and would urge their inclusion.

"Some of the best canopy in the area is located outside the Monument in and NNW of the Monument's "missing northwest quadrant" in the western half of T39S, R3E. This forest canopy and Northern Spotted Owl habitat is as good or better quality than anything in the Monument CHU itself north of Highway 66. Yet the document designates only ~200 acres of CHU in the far extreme northwest Section 6 corner of the western half of T39S,R3E. The gap in CHU between northern CSNM CHU in ECS2 and the most southeastern CHU in Klamath East Subunit 5 is quite strange – skipping over and excluding some of the best forest canopy in the region. Likewise, in

addition to the gap in CHU designation NNW of the Monument highlighted above, CHU designation on the Monument's east and west sides are also deficient.

Noting the inadequacy of the Monument's current boundaries, a group of scientists with much research and on-the-ground experience in the Cascade-Siskiyou National Monument area has recommended expansion of the Monument in exactly this outside-the-current-Monument area between the Green Springs Summit and Grizzly Peak. (See: Frost, Odion, Trail, Williams et al, *Interim Report – Cascade-Siskiyou National Monument Boundary Study: Identification of Priority Areas for Monument Expansion*, April 2011.) Rather than aid this needed biological bolstering outside current Monument boundaries, the current lack of CHU designation adjacent and near to the Monument undercuts the considered and informed recommendations of this site-specific scientific report – and degrades the habitat connectivity function of the existing Monument itself by further isolating it.”

### **Coos Bay Wagon Road Lands**

Similarly, here is a concern being raised by Francis Eatherington, a local expert regarding the lack of designation on federal lands with likely merit. We believe these lands should be reviewed and the occupied and suitable Northern Spotted Owl designated as Critical Habitat.

“Many of the sections of Coos Bay Wagon Road (CBWR) lands with mature and old growth forests were left out of proposed Critical Habitat, even though these lands had been designated in 1992. Out of 74,500 acres of Coos Bay Wagon Road in Coos Bay and Roseburg BLM Districts, only about 14,000 acres were proposed for critical habitat. The remaining 60,000 contain areas of significant old growth forests and mature forests over 120 years old. For instance, section 1, T28, R11, or section 1, T29, R10, or sections 5 and 19, T28, R7.

14,000 acres of critical habitat that was designated was in current LSR in Coos County. However, no CBWR lands in Douglas County were proposed for critical habitat, not even in the LSR or the ACEC lands managed by Roseburg BLM, where significant old growth forest exists. In Coos County, and on Coos Bay BLM District lands, only some of the existing LSR was proposed a critical habitat. None of the existing matrix was proposed, even though these lands were critical habitat in 1992, and still contains significant stands of mature and old growth forests.”

### **Exclusions**

The draft has identified 13,962,449 acres of potential Critical Habitat, a significant increase in acreage above the 5.3 million acres currently designated. The Administration is recommending that some identified lands be exempted from Critical Habitat designation because they argue the lands are already being conserved or that conservation purposes can better be achieved through exclusion. Here's a brief summary of the proposed and potential exclusions:

Private lands with conservation agreements such as Habitat Conservation Plans (HCPs), and Safe Harbor agreements are proposed for exclusion	711,803 acres
State land with conservation agreements are proposed for exclusion	225,013 acres
State park lands are proposed for exclusion	164,776 acres
Congressionally reserved natural areas are proposed for exclusion	2,631,736 acres
Private lands without formal conservation agreements	555,901 acres
State lands without formal conservation agreements	281,247 acres

The draft includes language favoring the general exclusion of state and private lands, to exclude the proposed lands, and to strongly consider the exclusion of other state and private lands unless it is absolutely essential for owl conservation. Private and state lands without formal conservation agreements are also under consideration for exclusion. Private lands in Oregon were not included the modeling analysis.

If all exclusions were granted, a total of 9,391,973 acres would remain. ABC supports designating all 13,962,449 acres plus additional acres where occupied or suitable Northern Spotted Owl habitat is found.

Private and state land HCPs and Safe Harbor agreements are a means of encouraging landowner support and participation in species conservation. Providing an exemption in this case creates an incentive for landowners that have been cooperative and developed HCP or Safe Harbor Agreement. However, in regard to the Northern Spotted Owl stronger steps to ensure recovery are needed. This exemption should not be granted and all conservation agreements updated to include recovery goals in areas with proposed critical habitat.

Funding shortfalls have led to the potential closing of many California state parks. Some states have made severe cuts in environmental programs and public lands and their management have become increasingly politically polarized. Proposals to privatize public lands are being offered in many state legislatures. As a result, there is no assurance these state park lands will be managed for conservation purposes in the future.

Similarly, political polarization and ongoing efforts to boost logging in owl habitat, dispose of federal lands and to de-designate Wilderness and other conservation designations raise concern that these lands cannot assure the conservation benefits they currently provide. As a result of these threats, the owl should have the added assurance of all occupied and suitable habitat receiving the protection of critical habitat designation.

Private and state lands without conservation agreements should not be excluded. The Owl Recovery Plan states that an additional contribution to owl habitat protection is needed on

private and state lands.

Oregon State Forests in particular are failing to comply with the owl recovery plan. On the Elliot State Forest, the Oregon Department of Forestry (ODF) has abandoned its HCP and its plans fail to comply with the recovery plan with sale proposals in violation of recovery actions 10, 19 and 32. The Elliott's Forest Management Plan says it will only "consider" the recovery plan, but to date, there is no indication it is being followed. ODF now claims forests as young as 51 years old can be suitable nesting habitat, while the agency is clearcutting forests 130-150 years old. In addition, any notion of adaptive management improvements over time is currently impossible. ODF admits that there is no budget for the monitoring necessary for adaptive management, and there is still not even a draft monitoring plan for the Elliott.

### **Legal Issues Related to Exemptions and Adverse Modification**

A review of the draft Rule by Earthjustice found a number of concerns that also influenced ABC's decision to oppose the proposed exemptions. Here is a brief summary of their analysis which is included in full in the appendices.

The proposed critical habitat rule proposes exemptions and active management in designated critical habitat not supported by the law or the best available science. It is recommended that the Service designate all lands, both federal and non-federal, identified as suitable habitat exclusions, and to adopt a much more cautious approach toward logging in designated critical habitat by eliminating or modifying language related to active management in the draft rule. The scale at which adverse modification of critical habitat will be assessed must be clarified to be at the appropriate subunit scale to comply with the intent of the ESA and provide for owl recovery.

### **Analysis: Draft Rule Lowers the Bar for Habitat Protection**

The provisions in the draft plan encouraging unproven thinning and restoration logging, combined with the expansive definition of adverse modification that allows degradation of owl habitat, have the potential to allow for logging of areas that should be conserved to provide the additional habitat needed to stabilize Northern Spotted Owl populations and provide for recovery. This Rule, combined with the elimination of late-successional reserves could allow logging in areas now protected by the Northwest Forest Plan, including mature forests that the Plan had intended to become old-growth.

These provisions, which were repeated numerous times in the draft, appear to allow an increase of timber harvest in the region while minimizing habitat protection, in terms of both total acreage by encouraging unwarranted exclusions, and lax management standards weaker than the standards and guidelines of the Northwest Forest Plan.

This language encouraging active management in Northern Spotted Owl Critical Habitat, particularly on combination with the elimination of reserves has the potential to allow excessive logging to the detriment of the Northern Spotted Owl population and may foreclose recovery by not providing adequate late-successional forest necessary to ensure high quality habitat in the future. Changes to land management plans such as the proposed Okanogan-Wenatchee Forest Plan are being influenced by the Final Recovery Plan, and Draft Critical Habitat rule's and Environmental Assessment's encouragement of a reserve-less strategy.

We urge the Service to reconsider. This approach of allowing the land management agencies broad discretion for active management across the landscape was tested in the decades prior to the Northwest Forest Plan and proved disastrous to the Northern Spotted Owl and Marbled Murrelet and left only fragments of the old-growth ecosystem remaining.

### **Recommended Changes**

We urge that the Final Critical Habitat Rule make clear that eliminating the system of late-successional reserves would be detrimental to owl recovery and is not a recommended outcome of this rulemaking, or the Environmental Assessment and Economic Analysis.

The proposal encouraging adverse modification of habitat for ecoforestry purposes is not supported by the best available science. We recommend it be removed from the final rule.

We recommend that the determinations of adverse modification be at the appropriate fine scale to ensure ESA compliance.

We recommend that the standards and guidelines of the Northwest Forest Plan late-successional and riparian reserve systems be used to preclude inappropriate or unsustainable management practices. The Northwest Forest Plan allows for restoration and provides standards and guidelines that are more protective of owls and better suited to experiments in ecological restoration.

Prescriptive requirements to retain trees above a certain age or size to restore the deficiency in old forests, and mapping where large blocks of closed canopy forests will be retained and allowed to mature is necessary to ensure these values will be not become subject to mismanagement or overcutting.

Active management in owl habitat should be considered experimental, conducted on a small scale, and monitored to determine its impact on Northern Spotted Owls. The necessity and benefits of active management in owl habitat remains in dispute.

We recommend the Service develop an environmental impact statement to devise a research strategy that addresses this question.

