

Proposed Revision of Northern Spotted Owl Critical Habitat

Frequently Asked Questions

What action is the Service taking?

The U.S. Fish and Wildlife Service (Service) is proposing to revise the critical habitat for the northern spotted owl, which was designated as threatened under the Endangered Species Act in 2012. Specifically, an additional 204,653 acres in Oregon are proposed for exclusion. The proposed exclusions include 184,476 acres of Bureau of Land Management (BLM) lands (172,430 acres located within the [Oregon and California Railroad Revested Lands](#), often referred to as O&C lands). Additionally, a relatively small amount of tribal land that includes approximately 20,000 acres recently transferred under the Western Oregon Tribal Fairness Act to the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians and the Cow Creek Band of Umpqua Tribe of Indians.

Why is the northern spotted owl critical habitat designation being revised?

The northern spotted owl critical habitat rule was challenged in court in 2013 by timber companies, a labor organization, the American Forest Resources Council and several counties. After a ruling by the district court on standing and a reversal and remand by the D.C. Circuit Court of Appeals, the case was pending before the district court. On April 13, 2020, a settlement agreement was filed with the district court in the District of Columbia. Under the terms of the agreement, the Service agreed to propose additional areas for exclusion from the critical habitat designation under section 4(b)(2) of the Endangered Species Act (ESA), and the plaintiffs agreed to dismiss their challenge accordingly.

The proposed revised critical habitat affirms science-based recommendations of the [Northern Spotted Owl Recovery Plan](#). The proposed rule also recognizes that the Secretary may exclude areas of critical habitat for economic, national security or other relevant impacts. Thus, this proposal seeks public comments on whether there are other areas that should be excluded, as well as the relative benefits of exclusion versus inclusion.

What are the Service's commitments under the settlement agreement?

The Service submitted to the *Federal Register* a revised critical habitat rule that identifies proposed exclusions under ESA Section 4(b)(2) on July 15, 2020. The Service will submit a final revised critical habitat rule to the *Federal Register* on or before December 23, 2020, or withdraw the proposed rule by that date if the Service determines not to exclude any additional areas from the designation under ESA Section 4(b)(2).

What are the specifics of section 4(b)(2) of the ESA?

Section 4(b)(2) states that the Secretary shall designate critical habitat and make revisions based on the best scientific data available after considering the economic, national security or other relevant impacts of specifying any particular area as critical habitat. Additionally, the Secretary

may exclude an area from critical habitat if the benefits of excluding the area outweigh the benefits of including the area unless the Secretary determines that the failure to designate such an area will result in the extinction of the species concerned.

Under regulations implementing section 4(b)(2), the Service will consider probable economic, national security and other relevant impacts of revised exclusions for this critical habitat designation (50 CFR 424.19). The Service may also consider other relevant impacts on proposed or ongoing activities. These can include, but are not limited to: (1) partnerships and conservation plans; (2) conservation plans permitted under section 10 of the ESA; (3) impacts to tribal lands and activities; (4) and impacts to federal lands and activities; and (5) ecological benefits of exclusion of lands including protection from increased likelihood of catastrophic wildfire.

What is critical habitat?

All species listed under the ESA are protected from “take” (meaning to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct). Two other major provisions supplement “take” protections to help listed species recover: these are recovery plans and critical habitat protections.

Critical habitat designations do not establish specific land management standards or prescriptions, nor do designations affect land ownership or establish a refuge, wilderness, reserve, preserve, sanctuary, or any other conservation area where no active land management occurs. Critical habitat areas can be actively managed in ways to support species recovery.

In developing a critical habitat proposal, the Service first identifies areas within the range of a species at the time it is listed that have the physical or biological features essential for the conservation of a species and that may require special management. Public review and comments are requested when critical habitat designations are proposed.

Proposed critical habitat designations are often larger than final ones because other factors are taken into account to refine proposals before they are finalized. After identifying areas essential for the conservation of the species and that may require special management, factors such as the economic impacts of proposals and conservation measures already in place that may preclude the need for designating certain areas are considered.

Federal agencies must avoid activities that jeopardize listed species and must ensure any action they authorize, fund or carry out does not destroy or adversely modify areas of designated critical habitat. Federal agencies are required to consult with the Service on proposed actions that could affect a listed species or its critical habitat. In cases where proposed actions would harm a species or its critical habitat, we work with the involved agency to develop “reasonable and prudent” alternatives so a project may go forward.

A critical habitat designation that includes private or other non-federal lands has no direct effect on land uses unless there is a federal nexus, such as an activity that is funded or permitted by a federal agency. However, identifying non-federal lands essential to the conservation of a species informs state and local government agencies and private landowners of the value of the habitat and may help facilitate voluntary conservation partnerships such as Safe Harbor agreements and Habitat Conservation Plans.

What criteria were used in designating critical habitat for the northern spotted owl?

A critical habitat designation identifies areas within the range of a species at the time it is listed that have the physical or biological features essential for the conservation of a species and that may require special management.

For the northern spotted owl, these features include particular forest types of sufficient area, quality and configuration to support the needs of territorial owl pairs throughout the year distributed across the species' range. This includes habitat for nesting, roosting, foraging and dispersal. Additionally, a designation may identify areas outside the geographical area occupied by the species at the time of listing. This is based on a determination that such areas are essential for the conservation of the species and contain one or more of those physical or biological features essential to the conservation of the species.

How are critical habitat lands managed?

The ESA does not require that critical habitat areas be set aside and left alone; they can and should be actively managed to promote the health of ecosystems. For the northern spotted owl, for example, the Service strongly supports active forest management where appropriate, even in critical habitat areas, if it helps restore overall forest health. The Service works in close coordination with the U.S. Forest Service and Bureau of Land Management since most northern spotted owl critical habitat is on lands these agencies manage. The 2012 northern spotted owl critical habitat designation included 1,328,612 acres (537,670 hectares) of BLM lands and 7,957,787 acres (3,220,399 hectares) of U.S. Forest Service lands.

One kind of active management that the U.S. Forest Service and BLM are applying in certain areas of critical habitat is "ecological forestry." This approach may include carefully applied prescriptions such as fuels treatment to reduce the threat of severe fires, thinning to help older trees grow faster, and restoration to enhance habitat and return the natural dynamics of a healthy forest landscape.

What is the likely economic impact of the critical habitat proposal?

The Service completed a thorough economic analysis on the 2012 northern spotted owl critical habitat that evaluated timber harvest-related and other potential economic impacts. This report is available [here](#). These additional exclusions do not warrant a separate economic analysis as we are only proposing to remove additional areas from critical habitat and the economic impact will be further reduced. The Service is seeking any updated information of the economic impact of the proposed or other areas nominated for exclusion to further inform the decision-making process.

Why are additional tribal lands excluded in the revised critical habitat proposal?

American Indian tribal governments are sovereign nations with inherent powers of self-governance. In accordance with Secretarial Order 3206 (*American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act*) critical habitat shall not be designated on Indian lands unless it is determined essential to conserve a listed species. The Services believe that this is consistent with the special trust responsibility the Federal government has to Indian people to preserve and protect their lands and resources. Additionally, the Service recognizes that many northwest tribes have long worked to conserve and monitor northern spotted owls on their lands, making valuable contributions to recovery. These efforts have supported forest conservation and maintained tribal cultural values.

Excluding tribal lands from the critical habitat designation would have the benefit of promoting federal policies regarding tribal sovereignty and self-governance and promote a positive working relationship between the Service and the tribes, while having a very small reduction in the benefits of designation. The Service is committed to our ongoing collaborative efforts that advance the mutual conservation goals of the U.S. and tribal governments.

Why were some BLM lands excluded in the critical habitat proposal?

In 2016, BLM revised their Resource Management Plans (RMPs) for western Oregon. The management direction provided in the RMPs is used to develop and implement specific projects and actions during the life of the plans. In their revised 2016 RMPs, BLM incorporated key aspects of the recovery plan for the northern spotted owl and the Service expects an overall net improvement in spotted owl conservation on BLM lands under the RMPs.

Based on this new information available after the 2012 critical habitat designation, the Service is proposing to exclude 184,476 acres (74,654 hectares) of BLM lands from critical habitat where programmed timber harvest is planned to occur under the revised 2016 RMPs.

Are there opportunities for public review and comment on the critical habitat proposal?

Yes. The Service seeks public review and input whenever critical habitat designations are proposed or revised and we encourage anyone with an interest in or impacted by northern spotted owl critical habitat designations to provide comments. A 60-day public review and comment period began on August 11, 2020, when the northern spotted owl critical habitat proposal was published in the *Federal Register*.

Comments must be received or postmarked on or before October 13, 2020. Comments submitted electronically using the Federal eRulemaking Portal ([link](#)) must be received by 11:59 p.m. Eastern Time on the closing date.

You may submit comments by one of the following methods:

(1) Electronically: Go to the Federal eRulemaking Portal (<http://www.regulations.gov>). In the *Search Box* enter FWS–R1–ES–2020–0050, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on “Comment Now!”

(2) By hard copy: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R1–ES–2020–0050, U.S. Fish and Wildlife Service, MS: JAO/1N, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

Send comments only by the methods described above. All comments will be posted on <http://www.regulations.gov>. This generally means that any personal information you provide us will also be posted.

Availability of supporting materials: For the proposed critical habitat exclusions, the coordinates or plot points or both from which the maps are generated are included in the administrative record and are available at www.fws.gov/oregonfwo, at <http://www.regulations.gov> under Docket No. FWS–R1–ES–2020–0050, and in coordination with the Oregon Fish and Wildlife Office, 2600 SE 98th Ave, Suite 100, Portland, Oregon 97266. Any additional supporting information that we may develop for the proposed critical habitat exclusions will also be available at the Service website and field office set out above, and may also be included in the preamble and/or at <http://www.regulations.gov>.

Will the Service hold a public hearing?

The Service will hold a public hearing if requested in accordance with its regulations, and in accordance with any then-applicable COVID-19 restrictions. Requests for a public hearing must

be received in writing, at Oregon State Fish and Wildlife Office, 2600 SE 98th Ave, Suite 100, Portland, Oregon 97266 by September 25, 2020.

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