

Finding of No Significant Impact (FONSI)

Revision of Critical Habitat for the Northern Spotted Owl

The U.S. Fish and Wildlife Service (Service) evaluated several alternatives for revising critical habitat for the northern spotted owl (*Strix occidentalis caurina*), pursuant to the Endangered Species Act of 1973, as amended (ESA). The analysis of alternatives is documented in a final environmental assessment (EA) that is incorporated here by reference. Our need in conducting this evaluation was to revise the designation of critical habitat for the northern spotted owl in response to the lawsuit *Carpenters' Industrial Council (CIC) v. Salazar*, 734 F. Supp. 2d 126 (D.D.C. 2010), in which the Federal government requested a remand of the 2008 critical habitat designation. Our action has two purposes. The first purpose of our action is to designate critical habitat in accordance with the ESA and its implementing regulations. Within the context of these statutory and regulatory requirements, our second purpose is to designate areas that are essential to the conservation of the owl, either because they contain essential features or are essential themselves, but simultaneously minimize effects to other land and resource uses by using an efficient network design in determining what is essential and making appropriate use of our statutory authority to exclude lands under section 4(b)(2) of the ESA. We analyzed six alternatives in the final EA:

- A. *Alternative A (No Action) – 2008 Designation of critical habitat.* Under the No Action Alternative, critical habitat for the northern spotted owl would remain as currently designated per the final rule published August 13, 2008 (73 Fed. Reg. 47326). The current designation totals 5,312,400 acres (ac) of Federal lands (Forest Service and Bureau of Land Management (BLM)) in California, Oregon, and Washington.
- B. *Alternative B (Proposed Action and Environmentally Preferable Alternative) – Revise critical habitat similar to that described in the proposed revised rule published March 8, 2012 (77 Fed. Reg. 14062) with no exclusions.* Under this alternative, 13,949,400 ac of critical habitat would be designated on Federal (12,009,400 ac), State (677,600 ac), County and Municipal (20,700 ac), and private (1,241,700 ac) lands. Federal land ownership would include Forest Service (9,527,100 ac), BLM (1,483,700 ac), and National Park Service (998,600 ac). State lands in Washington (233,400 ac), Oregon (228,700 ac), and California (215,500 ac) would be designated. Additional designation would include private land in Washington (189,400 ac) and California (1,052,300 ac), and County and Municipal lands in California (20,700 ac).
- C. *Alternative C – Revise critical habitat as described in Alternative B, but exclude all non-Federal lands with completed conservation agreements.* This alternative would designate critical habitat as described in Alternative B, but would exclude all non-Federal lands with completed conservation agreements (HCPs, SHAs, and other formal agreements). A total of 998,600 ac would be excluded under this alternative, for a total designation of 13,010,600 ac. Lands designated as critical habitat under this alternative include Federal (12,009,400 ac total, with agency ownership the same as under Alternative B), State (8,400 ac in Washington, 228,700 ac

in Oregon, and 215,500 ac in California), County and Municipal (20,700 ac in California), and private (141,400 ac in Washington and 386,500 ac in California). Ownerships with completed conservation agreements that provide essential habitat for northern spotted owls but that would be excluded under this alternative include State lands in Washington (225,000 ac) and private lands in Washington (48,000 ac) and California (665,800).

- D. *Alternative D – Revise critical habitat as described in Alternative B, but exclude all non-Federal lands with completed conservation agreements, all State Parks, and all Congressionally reserved natural areas.* This alternative would designate critical habitat as described in Alternative B, but would exclude all non-Federal lands with completed conservation agreements (as in Alternative C). In addition, all State parks and all Congressionally reserved natural areas (e.g. wilderness areas, national scenic areas, and national parks) would also be excluded. This alternative would exclude the 938,800 ac described in Alternative C. In addition, 100 ac and 164,700 ac of State Parks in Washington and California, respectively, would be excluded. Finally, 2,632,500 ac of Congressionally reserved Federal natural areas would be excluded, of which 998,600 ac are National Park Service lands, and the remaining 1,633,900 ac are managed by the Forest Service and BLM. Exclusions under this alternative total 3,736,100 ac. The total designation under this alternative would be 10,213,300 ac, including Federal (8,000,000 ac of Forest Service and 1,376,900 ac of BLM), State (8,300 ac in Washington, 228,700 ac in Oregon, and 50,800 ac in California), County and Municipal (20,700 ac in California), and private (141,400 ac in Washington and 386,500 ac in California).
- E. *Alternative E – Revise critical habitat as described in Alternative B, but exclude all non-Federal lands and all Congressionally reserved natural areas.* This alternative would designate critical habitat as described in Alternative B, but would exclude the 3,736,100 ac described in Alternative D (private and State lands with completed conservation agreements, State Parks, and Congressionally reserved natural areas). In addition, all remaining State (287,800 ac), County and Municipal (20,700 ac), and private (527,900 ac) lands would be excluded under this alternative, for a total exclusion area of 4,572,500 ac. The final designation under this alternative would be 9,376,900 ac. Land ownership would be limited to Federal lands under Forest Service (8,000,000 ac) and BLM (1,376,900 ac) management.
- F. *Alternative F (Preferred Alternative) – Revise critical habitat as described in Alternative B, but exclude all lands with completed HCPs and SHAs, all private lands, all Congressionally reserved natural areas, all State parks, and revise designation to better incorporate habitat essential for the northern spotted owl.* We added this alternative to our analysis to better meet our purpose and need after refining our exclusion analysis and after receiving comments on our draft environmental assessment, draft economic analysis, and proposal to revise critical habitat. It better meets our Purpose and Need in that it is consistent with our authorities and regulatory discretion and would designate areas essential to the conservation of the species but exclude lands where we believe the benefits or exclusion are greater than the benefits of inclusion in order to minimize the impacts of the designation. Under this alternative, critical habitat would be designated as described in Alternative B, but would exclude all private lands (189,400 ac in

Washington, 1,052,300 ac in California). Washington DNR lands with an HCP (225,000 ac) would also be excluded. Under this alternative 2,632,500 ac of Congressionally reserved Federal natural areas (e.g. wilderness areas, national scenic areas, and National Parks) would also be excluded, as well as 164,800 ac of State parks. Finally, based on public comments and more site-specific information, we revised designation to better incorporate habitat for the spotted owl and minimize land-use impacts, per our purpose and need.

The final designation under this alternative would be 9,578,000 ac. Land ownership would include Federal (7,957,800 ac FS, 1,328,600 ac BLM), State (8,300 ac in Washington, 212,800 ac in Oregon, and 49,800 ac in California), and County and Municipal (20,700 ac in California).

Internal Scoping and Public Involvement

During the development of the proposed revised critical habitat rule, we met on separate and sometimes multiple occasions with multiple interested parties, including the Forest Service and BLM, tribes, State agencies, and non-governmental organizations (representing timber interests and environmental interests). We conducted internal scoping among Service divisions regionally and nationally. We drew on information gathered through this outreach and internal scoping as well as the Service's experience with land-use activities by multiple landowners that occur within northern spotted owl habitats throughout the range of the species. The proposed rule revising designation of critical habitat for the northern spotted owl was published in the Federal Register March 8, 2012, with an initial 90-day comment period (77 Fed. Reg. 14062) that was subsequently extended for another 30 days. The draft EA was announced in the Federal Register on June 1, 2012 (77 Fed. Reg. 3483) and made available to the public for a 30-day comment period. During the public comment period, we held seven public meetings across the 3-state area and one public hearing in Oregon. At all of these events we accepted public comment on the draft environmental assessment, as well as the proposed revised rule and the draft economic analysis.

Impact Analysis

We have considered the direct, indirect, and cumulative effects of designating critical habitat for the northern spotted owl as described in Alternative F (Preferred Alternative) and have determined that this action will not have a significant effect on the human environment. We have also considered public comments received during the comment period. We describe the context and intensity of this action above and summarize here our reasoning for why implementation of Alternative F will not have a significant effect on the environment.

Designation of critical habitat is not a ground-disturbing action. The direct effect of designation is the identification of those areas on the landscape that meet the definition of critical habitat for the northern spotted owl, which has no effect on environmental conditions on the ground. All other effects that may occur as a result of this identification would occur later in time and would be indirect effects under NEPA. For this action, the primary indirect effect is to require Federal agencies to consult under section 7 of the ESA on actions they authorize, fund, or carry out to ensure that their actions are not likely to destroy or adversely modify critical habitat as those terms are used in section 7. In the event an action

may “destroy or adversely modify” critical habitat, any reasonable and prudent alternatives suggested by the Service must be able to be implemented in a manner consistent with the intended purpose of the action and the scope of the action agency’s legal authority and jurisdiction, and be economically and technologically feasible. In this sense, the designation of critical habitat does not change the environmental status quo; it only requires federal agencies to avoid adverse modification of the designated areas.

Even if some actions later in time may be considered indirect effects of this designation, we cannot assess them because they are not reasonably foreseeable. We do not know: (1) what actions other Federal agencies, in accordance with their own missions and statutory and regulatory authorities will request to consult on; (2) how actions may be modified as a result of section 7 consultation, if at all; or (3) how or whether the agencies might modify their management proactively to avoid destroying or adversely modifying critical habitat. Similarly for non-Federal lands, we do not know: (1) what actions will be undertaken that would have a Federal nexus; (2) how or if they may modify their actions proactively to avoid destroying or adversely modifying critical habitat; or (3) how or whether State, County, or Municipal landowners will respond. Despite these uncertainties, State lands that would be designated as critical habitat under Alternative F are unlikely to be affected based on interviews with State managers who concluded that they do not anticipate revising their current management as a result of designating critical habitat. The County and Municipal lands designated as critical habitat under Alternative F are also unlikely to be affected as their management objectives do not typically involve commercial timber harvest or substantial habitat modification. There will be no effects to private landowners as these lands have been excluded under Alternative F.

We have considered the context of designation as proposed under Alternative F (Preferred Alternative). We have considered the intensity of the effects of designation as proposed under Alternative F (Preferred Alternative). We have considered both beneficial and adverse effects of the action and determine they are not significant. The action will not significantly affect public health and safety, nor will there be a significant effect on unique characteristics in the area. We have determined that designation of critical habitat is not precedent-setting and would not result in uncertain, unique, or unknown risks and determined. We have considered the effects of past, present, and reasonably foreseeable future actions, in combination with our Preferred Alternative, and determined these cumulative impacts are not significant. Designation of critical habitat under the Preferred Alternative would not violate any environmental protection law as it is not a ground disturbing activity; nor would it affect the eligibility for listing sites in the National Register of Historic Places. Finally, we have considered effects to endangered species and found that designation of critical habitat under the Preferred Alternative would have a neutral or beneficial effect on listed species.

We also considered the degree to which impacts of the action may be highly controversial and found that they are not. We concluded that the designation of critical habitat is not a ground disturbing activity, does not change the environmental status quo and, as a result, does not result in significant or highly controversial impacts to the environment. We have also clarified the relationship of active forest management with critical habitat and with the NWFP to address misunderstandings brought forth in

public comments; as a result of these clarifications, we do not consider the impacts to be significant or highly controversial.

Determination

Alternative F will fully meet the purpose and need for the revised designation of critical habitat for the northern spotted owl described above and in more detail in the final EA. We determine that implementation of Alternative F does not constitute a major Federal action significantly affecting the quality of the human environment under the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969 (as amended). As such, an environmental impact statement is not required. This FONSI constitutes notice for the decision for selecting Alternative F of the Final Environmental Assessment for Revision of Critical Habitat for the Northern Spotted Owl.

Public Notice

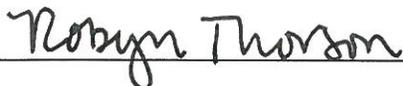
A link to the electronic copy of this FONSI will be posted on the northern spotted owl critical habitat page of the Service's Oregon Fish and Wildlife Service website:

<http://www.fws.gov/oregonfwo/Species/Data/NorthernSpottedOwl/CriticalHabitat/default.asp>

The environmental assessment for the proposed revision of critical habitat has been prepared and will also be available at the above website. Hard copies of the EA and FONSI can be requested from the Oregon Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2600 SE 98th Ave., Suite 100, Portland, Oregon, 97266, 503-231-6179.

References

Final Environmental Assessment: Revision of Critical Habitat for the Northern Spotted Owl. 2012. U.S. Fish and Wildlife Service, Region 1. Portland, Oregon.



Regional Director, Region 1

U.S. Fish and Wildlife Service

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Date

