What action is the Service taking?

The U.S. Fish and Wildlife Service is finalizing revised critical habitat for the northern spotted owl (*Strix occidentalis caurina*), which is listed as threatened under the Endangered Species Act (ESA). This final rule will exclude 204,294 acres of the 9.6 million acres of critical habitat designated in 2012. We are withdrawing the January 15, 2021 rule, which would have excluded 3.4 million acres of critical habitat.

The critical habitat exclusions for the northern spotted owl are composed of 184,133 acres of Bureau of Land Management (BLM) lands, 172,712 acres of which are located within the Oregon and California Railroad Revested Lands, referred to as O&C lands. Additionally, we are excluding 20,161 acres of Tribal land 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 Service withdrawing the January 15, 2021 rule?

The January exclusions rule relied upon a determination by the Secretary that the exclusions would not result in the extinction of the northern spotted owl, based in part on a faulty interpretation of the science. Specifically, the Director and the Secretary overestimated the probability that the northern spotted owl population would persist into the foreseeable future if a large portion of critical habitat was removed and subsequent timber harvest were to occur on those lands. The Service finds in this final rule that while extinction of the northern spotted owl due to the removal of large areas of critical habitat in the January exclusions rule would not be immediate, its eventual extinction due to reduced critical habitat would be a reasonable scientific certainty. Basic conservation biology principles and metapopulation dynamics predict that those remnant and now isolated northern spotted owl subpopulations would likely die off without regular genetic and demographic interaction with northern spotted owls from neighboring subpopulations.

Why was the 2012 northern spotted owl critical habitat designation revised?

In 2013, the northern spotted owl critical habitat rule was challenged in court 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 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 ESA, and the plaintiffs agreed to dismiss their challenge accordingly.

We published a proposed rule to revise critical habitat on August 11, 2020, followed by the January 15, 2021, final rule. On March 1, 2021, we delayed the final rule’s effective date, and solicited public comment on issues of fact, law, and policy raised by the January rule to determine whether further delay of the effective date was necessary. On April 30, 2021, we
extended the effective date again until December 15, 2021 to avoid placing undue risk on the conservation of northern spotted owl caused by allowing exclusions from its designated critical habitat to go into effect while the Service prepared a revision or withdrawal of the January 15, 2021, rule through additional rulemaking to address apparent defects. On July 20, 2021, we proposed a revised critical habitat rule that identified exclusions from the 2012 critical habitat designation. We simultaneously proposed to withdraw the January 15, 2021 rule that would have excluded 3.4 million acres of critical habitat for the owl. A 60-day public comment period on this proposal closed September 20, 2021.

This final revised critical habitat rule affirms science-based recommendations of the revised Northern Spotted Owl Recovery Plan.

**How is critical habitat designated and/or excluded under 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 considers probable economic, national security and other relevant impacts of a critical habitat designation (50 CFR 424.19). We 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 based on national security or homeland security implications.

**What is critical habitat?**

Critical habitat is defined by the ESA as the geographical areas that have the physical or biological features essential to the conservation of a species and that may require special management considerations or protection.

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 meet the definition of critical habitat. Additionally, a designation may identify areas outside the geographical area occupied by the species at the time of listing if it is determined those areas are essential for the conservation of the species. Public review and comments are requested when critical habitat designations are proposed.

**What are the requirements of critical habitat designations?**

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 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 agency involved 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?**

For the northern spotted owl, the physical and biological features include particular forest types of sufficient area, quality and configuration to support the needs of northern spotted owls across the species’ range. This includes habitat for nesting, roosting, foraging and dispersal.

**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 revision?**

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 did not warrant a separate economic analysis as we only proposed to remove (and are now removing) additional areas from critical habitat, thereby further reducing the economic impact.

**Why are additional Tribal lands excluded in the revised critical habitat rule?**

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 Tribal lands unless it is determined essential to conserve a listed species. The Service finds this approach is consistent with the special trust responsibility the federal government has to Tribes to preserve and protect their lands and resources. Additionally, the Service recognizes that many Northwest Tribes have long worked to conserve and monitor species on their lands, making valuable contributions to recovery. Their efforts have supported forest conservation and maintained 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 this critical habitat revision?**

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 populations on BLM lands under the RMPs. The BLM consulted with the Service on the effects of those RMPs, and in our resulting Biological Opinion, we found the BLM’s proposed harvest over time of those areas allocated to the Harvest Land Base would not result in destruction or adverse modification of northern spotted owl critical habitat.

Based on this new information available after the 2012 critical habitat designation, the Service is excluding 184,113 acres of BLM lands from critical habitat where programmed timber harvest is planned to occur under the revised 2016 RMPs.

**Were there opportunities public review and comment on this action?**

The Service sought public review and input when we proposed to revise northern spotted owl critical habitat on July 20, 2021. A 60-day public comment period closed on September 20, 2021.

-FWS-