

## **Appendix 9. History of Timber Management on Nonfederal Lands and the Forest Practice Rules**

The California Department of Forestry and Fire Protection (CAL FIRE; <http://www.calfire.ca.gov/>) enforces the laws that regulate logging on privately-owned lands in California. These laws are found in the 1973 Forest Practice Act which was enacted to ensure that logging is carried out in a manner that will also preserve and protect California's fish, wildlife, forests, and streams. Additional rules enacted by the California Board of Forestry and Fire Protection (BOF) are enacted as state regulations and are collectively referred to as the Forest Practice Rules. The Forest Practice Rules implement the provisions of the Forest Practice Act in a manner consistent with other laws, including the California Environmental Quality Act (CEQA) of 1970, the Timberland Productivity Act of 1982, the Porter Cologne Water Quality Act, and CESA.

CAL FIRE ensures that private landowners abide by these laws when harvesting trees. Although there are specific exemptions in some cases, generally all commercial harvesting operations for private landowners from ownerships composed of small parcels to large timber companies with thousands of acres are required to comply with the Forest Practice Act as implemented by the Forest Practice Rules.

A Timber Harvesting Plan (THP) is generally the environmental review document submitted by landowners to CAL FIRE which outlines the timber to be harvested, how it will be harvested, and the steps that will be taken to prevent damage to the environment. THPs are prepared by Registered Professional Foresters (RPF) following the provisions of the Forest Practice Rules. The THP process substitutes for the Environmental Impact Report process under CEQA because the timber harvesting regulatory program has been certified pursuant to Public Resource Code section 21080.5.

In early 1990, the Department began preparation for a possible Northern Spotted Owl listing decision by the USFWS by selecting and training 13 Department biologists in owl biology and ecology. These biologists would become the first "designated biologists" who would consult on proposed THPs. Concurrently, the BOF worked with CAL FIRE, USFWS and the Department to design emergency rules and procedures that would be adopted in the event of listing. The rules identified descriptions of Northern Spotted Owl habitat, requirements for surveys and consultations, and standard measures for timber operations to avoid take. The rules called for consultations between plan proponents and Department designated biologists. The USFWS worked with BOF and CAL FIRE staffs and others to amend the initially adopted emergency rules; amendments to the rules occurred several times as knowledge of the Northern Spotted Owl increased and with experience gained through implementation of the consultation process. The BOF ultimately adopted Forest Practice Rules sections 919.9 [939.9] and 919.10 [939.10] in March 1991, which describe options and procedures that can be used in THPs to avoid take of Northern Spotted Owl or to proceed under incidental take authorization.

Section 919.9 [939.9] includes subsections (a) through (g), which are procedures (referred to as "options") among which THP submitters must select and then must follow for THPs within the range of the Northern Spotted Owl or the "Northern Spotted Owl Evaluation Area" as defined in the Forest

Practice Rules, and for THPs that are situated outside of this Evaluation Area that are within 1.3 miles of known owl activity centers. The option that is selected must meet on-the-ground circumstances. The information that each option requires is to be used by CAL FIRE to evaluate whether or not the proposed timber operations under the THP would result in unauthorized Northern Spotted Owl take. Subsections (a), (b), (c) and (f) involve CAL FIRE consulting with a Spotted Owl Expert (SOE). An SOE is defined in the Forest Practice Rules as a person with requisite documented education and experience whose qualifications have been referred by CAL FIRE to USFWS or the Department for evaluation. Each of the options that can be used in THPs to avoid unauthorized take of Northern Spotted Owl are described below:

Subsection (a) provides the project proponent the option before a THP is filed of requesting an SOE to complete a preliminary review of the proposed timber operations to evaluate whether Northern Spotted Owl take would occur. The SOE must apply the criteria for Northern Spotted Owl take avoidance specified in Section 919.10 [939.10], and must inform the project proponent whether the proposed timber operations would or would not cause take. In practice, if an SOE concludes take would be avoided, the results of such a preliminary review would be included in a THP when submitted to CAL FIRE for filing, review and approval.

Subsection (b) includes a list of information the project proponent must disclose in a THP; including functional Northern Spotted Owl habitat within and outside the THP area both before and after harvest, known owl detections, information on owl surveys conducted and results and other information. It requires a discussion of how functional Northern Spotted Owl habitat will be protected according to criteria presented in Section 919.10.

Subsection (c) provides the project proponent the option of obtaining from an RPF a certification to be included in the THP that Northern Spotted Owls are inferred absent from the THP area and 1.3 miles outside the THP area based on the results of surveys completed according to the USFWS survey protocol, (USFWS 2012a) and the RPF's personal knowledge and a review of information in the Northern Spotted Owl database maintained by the Department.

Subsection (d) involves the project proponent proceeding under the provisions of an incidental take permit issued by USFWS or the Department.

Subsection (e) allows the project proponent to proceed with timber harvest according to the outcome of a consultation with USFWS. This outcome is memorialized in what is referred to as a "technical assistance letter" from USFWS.

Subsection (f) allows the project proponent to disclose in the THP the outcome of an SOE's preliminary review as described under Subsection (a), to demonstrate that any measures to avoid Northern Spotted Owl take recommended by the SOE have been adopted in the THP and that the proposed timber operations evaluated by the SOE remain substantially the same in the submitted THP.

Subsection (g) is an option appropriate for THPs where one or more Northern Spotted Owl activity centers have been located within the THP area or within 1.3 miles of its boundary. This option requires the RPF to determine and document activity center-specific protection measures to be applied under the THP and that various specified forms and acreages of functional owl habitat (nesting, roosting and foraging) will be retained post-harvest around each activity center. The minimum acreages to be retained after harvest of functional nesting, roosting and/or foraging habitat within 500 feet, 500 to 1,000 feet, 0.7 mile and 1.3 miles around each activity center are specified in this subsection.

Section 919.10 [939.10] of the Forest Practice Rules presents the criteria CAL FIRE is to apply to information provided in the THP and during the THP review period to make a finding as to whether or not the proposed timber operations will avoid Northern Spotted Owl take in the form of “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct,” as defined under the ESA. If CAL FIRE concludes take would occur, it must provide reasons why the determination was made according to criteria presented in section 919.10 [939.10], what information was used in making the determination, and recommend minimum changes to the proposed THP to avoid take. According to Forest Practice Rules Section 898.2, Special Conditions Requiring Disapproval of Plans, CAL FIRE shall disapprove a THP if the THP would cause Northern Spotted Owl take prohibited by the ESA.

Breeding season disturbance buffers and Northern Spotted Owl habitat retention requirements were provided by the USFWS in the 1991 survey protocol, but these were actively refined during the following 12 months. The protocol identified the timing of surveys, number of visits, key owl behaviors that could inform a status determination, and revisit criteria. After being finalized in 1992, the survey protocol, breeding season disturbance buffer and habitat retention requirements remained unchanged for nearly 18 years except for those approved under Habitat Conservation Plans, Spotted Owl Management Plans and Spotted Owl Resource Plans. In 2011, and again in 2012, the Northern Spotted Owl survey protocol was revised (USFWS 2012a).

When consultations with the USFWS were required, they consisted of a field review of the proposed THP area, an evaluation of the pre-harvest and predicted post-harvest habitat typing (its suitability for nesting, roosting, or foraging), the sufficiency of habitat retained post-harvest within 500 feet, 0.7 mile and 1.3 mile of owl activity centers, and an evaluation of the adequacy of the surveys that were conducted (i.e. timing, location, interpretation of results) and their consistency with the USFWS protocol. When appropriate, the Department-designated biologists would evaluate or propose THP-specific habitat and temporal buffers that differed from standard Forest Practice Rules habitat retention and seasonal restriction requirements that would be adopted as enforceable conditions of THPs.

In 1991, a curriculum was designed to train private consulting biologists who could conduct the field and document review portions of a Northern Spotted Owl consultation, although final approval from a Department-designated biologist was still required. University biologists and biological consultants, along with designated Department Timber Harvest Assessment Program staff helped THP submitters to

evaluate their plans with regard to potential take of Northern Spotted Owls. Workshops helped calibrate consultants, RPFs and others regarding owl life history, habitat associations, and so forth. Northern Spotted Owl consultations for most THPs were conducted by the Department designated biologists from 1991 into 1997.

From 1991 through 1997 the Department and, to a much lesser extent, CAL FIRE staff processed Northern Spotted Owl consultations for THPs. Additionally, Department staff participated in the review of private timber company Habitat Conservation Plans, Spotted Owl Management Plans, and Spotted Owl Resource Plans. In 1994, Department staff received direction to make Northern Spotted Owl consultations the highest priority and to set aside a minimum number of days per week to address a consultation backlog. In this same year, CAL FIRE staff received direction to suspend processing of consultations.

In 1995 the Department established a process for certifying “Private Consulting Biologists” to fully conduct Northern Spotted Owl consultations, which included approval of a consultation package, and discontinued the need for additional approval from a Department designated biologist. However, Department staff continued to process consultations not prepared or reviewed by Private Consulting Biologists.

Beginning in 1999, Department staff stopped processing Northern Spotted Owl THP consultations and no longer reviewed the work of private consultant biologists. Reasons for the suspension of processing included:

- Other emerging and compelling forestry sector conservation issues required Department staff’s attention (e.g., the impending listings of Coho Salmon under ESA and CESA, HCP-related workload).
- The Department’s “Timber Harvest Assessment Program” (later to become the “Timberland Conservation Planning Program”) budget did not include funding specifically for consultations.
- Staffing of USFWS offices with wildlife biologists had increased.
- The Department assessed CAL FIRE and USFWS staff capable of review, approval, and assessment of THPs and Nonindustrial Timber Management Plans (NTMP).
- The Private Consulting Biologist mechanism for processing Northern Spotted Owl consultations appeared successful.
- The scope, quality and conformance of owl-related information with Forest Practice Rules requirements appeared to have stabilized after approximately six years of implementation.

Regardless of the suspension in consultation involvement, the Department continued to evaluate THPs with regard to potential significant impacts to Northern Spotted Owl from timber operations, and as appropriate reminded THP proponents to comply with Section 3503.5 of the Fish and Game Code. In addition, the Department continued monitoring compliance with Northern Spotted Owl-related Habitat Conservation Plan’s conservation measures.

At the time that the Department suspended processing of THP and NTMP consultations (1999), the USFWS technical assistance program began (utilizing subsection (e) to comply with the Forest Practice

Rules). In providing technical assistance to plan proponents between 1999 and 2008, the USFWS used new information on Northern Spotted Owl biology to modify habitat retention requirements that were necessary for take avoidance. As new information became available, the USFWS implemented quantitative and qualitative changes relative to the habitat retention guidelines included in the Forest Practice Rules (USFWS 2009).

Following nine years of processing technical assistance requests from applicants, the USFWS notified CAL FIRE in 2008 that technical assistance requests would have to come directly from CAL FIRE rather than the applicant. CAL FIRE subsequently notified plan proponents that the only options that would be available to comply with take avoidance under the Forest Practice Rules sections 919.9 [939.9] were subsections (d), (e), and (g) due to insufficient availability of staff to implement other subsections (CAL FIRE 2008). Detailed written guidance and information associated with the analysis process was provided to CAL FIRE by the USFWS, along with scheduled workshops, to assist in the transition from the USFWS to CAL FIRE (USFWS 2008b). The guidance deviated somewhat from the Forest Practice Rules and included information needed for Northern Spotted Owl technical assistance, descriptions and appropriate uses for the 1- and 2-year owl survey protocols, owl take avoidance scenarios, and the take avoidance analysis process, habitat retention criteria within Northern Spotted Owl home range and core use areas (i.e., 0.5, 0.7 and 1.3 mile radii from the activity center), and a description of habitat parameters (i.e., nesting, roosting and foraging habitat) for both the interior and coastal regions. Since this time, CAL FIRE has been responsible for reviewing the majority of Spotted Owl-affected THPs, and has assisted applicants and USFWS by assessing technical assistance requests, if forwarded to USFWS.

In 2009, the USFWS developed a white paper, *Regulatory and Scientific Basis for the U.S. Fish and Wildlife Service Guidance for Evaluation of Take for Northern Spotted Owls on Private Timberlands in California's Northern Interior Region*, to scientifically justify why the 2008 guidance deviated from the Forest Practice Rules (USFWS 2009). In the guidance, the USFWS indicated that use of the definitions of functional habitat contained in the Forest Practice Rules section 895.1 may not provide sufficient protection of the Northern Spotted Owl to guarantee take avoidance (USFWS 2009). The white paper also deviated from previous guidance by recommending use of a circular 0.5 mile radius area around activity centers as the core use area for habitat assessment and management purposes in the interior portion of the Northern Spotted Owl Range. Specific criteria within the USFWS guidelines, and how they differ from the Forest Practice Rules, are discussed in the Timber Harvest threat section of this report.

The Department Timber Harvest Assessment Program was eliminated in late 2010. From a high of 33 staff members state-wide in 2007, fewer than eight remained engaged in forestry environmental review and permitting in 2011. The remaining positions were assigned to other programs in the Department, and in some cases were still involved in a range of forestry-sector work (e.g., lake or streambed alteration agreements, natural community conservation plans, sustained yield plans and limited THP environmental review).

In 2013, a new Department "Timberland Conservation Planning Program" was established through a stable funding source and authorities mandated pursuant to Assembly Bill 1492 (2012), to ultimately

increase staff to 41 in Department Headquarters and in four Department Regions. Today, Timberland Conservation Planning Program staff members participate in THP review, process lake or streambed alteration agreements, complete species consultations (including “pre-consultations”) for “sensitive species” and those that are listed or candidates for listing pursuant to CESA, review forest habitat restoration grant proposals, among other duties. In addition, as required by Assembly Bill 1492, Timberland Conservation Planning Program staff are mandated to and will soon embark on inspections of approved and completed THPs and compliance and effectiveness monitoring. Department staff members selectively review Northern Spotted Owl-related information disclosed in THPs as part of routine THP environmental review; however, with the broad suite of other mandated THP review-related responsibilities, the Timberland Conservation Planning Program allocated staffing and resources are not adequate to allow staff to engage in Northern Spotted Owl consultations at the level and in ways they did in the 1990s.