



Bringing back the birds

March 31, 2021

Northern Spotted Owl Critical Habitat Rule Comment

<https://www.regulations.gov/docket/FWS-R1-ES-2020-0050/document>

Dear Friends:

On behalf of American Bird Conservancy, which works to conserve birds and their habitats throughout the Americas, please reverse the decision by the former Administration to rescind critical habitat protection for 3.5 million acres of forests within the range of the Northern Spotted Owl.

We were shocked by the January 15, 2021, Final Rule's exclusion, which came with no notice of any kind to the public and therefore foreclosed any opportunity for interested parties to present contrary facts and arguments. The conclusions and analyses in the Final Rule were inconsistent with the law and reflected a grave abuse of discretion under section 4(b)(2) of the ESA.

We strongly urge that the Rule never be allowed to go into effect, that instead it be immediately rescinded, and that that the Service consider and offer for public comment additional critical habitat designations based on the best-available science. This should include consideration of studies demonstrating the climate change benefits of conserving mature and old-growth forests.

Excluding the 3.5 million acres from critical habitat protection likely will result in the extinction of the subspecies. FWS recently determined that uplisting the Northern Spotted Owl to "endangered" is warranted but precluded by higher priority listing decisions.

Moreover, FWS concluded that suitable habitat for the species remains essential to its recovery, as populations across the range continue to decline and the subspecies is functionally extinct in Canada. The agency also concluded that past habitat loss, and current stressors such as barred owls, wildfire, and climate change, continue to exacerbate the owl's precarious situation.

Specific Comments to Please Consider:

1. The rulemaking process was procedurally flawed. The 17-fold increase in the acreage of habitat proposed for exclusion was not a logical outgrowth of the original proposal, and the public had no opportunity to comment on this vastly increased acreage.
2. The Secretary's conclusions and analyses were inconsistent with requirements of the ESA because the Secretary failed to consider the adverse socioeconomic costs of exclusion. In particular, the Secretary failed to consider research and facts on the ground indicating that the exclusion and resulting increase in logging will:

- a. Amplify rather than reduce community instability and perpetuate a custom and culture that has helped breed far right extremism;
 - b. Degrade rather than help maintain the local tax and economic base;
 - c. Damage economic resources local communities need to diversify and grow, and
 - d. Increase carbon emissions, climate damages, and climate vulnerability.
3. The Secretary's conclusions and analyses were inconsistent with requirements of the ESA because the Secretary failed to consider the socioeconomic benefits of maintaining critical habitat protection. In particular:
- a. The vast majority of Americans and residents of the Pacific Northwest place high existence values on preservation of the owl and its habitat;
 - b. Protecting owl habitat has positive impacts on local economic stability and on community custom and culture, and
 - c. Protecting owl habitat protects the nation's most productive terrestrial carbon sink with an economic value at least ten times greater than logging.
4. Because the socioeconomic costs of exclusion far outweigh any benefits to the timber industry, the Secretary should rescind the January 15th rule.

Needed Additional Conservation Measures

5. We further recommend that the Service prioritize protection of all current suitable habitat in the harvest land base before relying exclusively on the old forest reserves, because the reserves are not functioning yet. The forest reserves are still suffering from severe fragmentation that occurred before the spotted owl was added to the endangered species list. Until the reserves have recovered from past logging, conservation of the suitable Spotted Owl habitat in the Harvest Land Base remains critically important.
6. The presence of Barred Owls makes the protection of old-growth forest habitat even more important. There are hundreds of thousands of acres of suitable habitat that was assumed to be available to the Spotted Owl, but it's not available, because that habitat is occupied and defended by highly territorial Barred Owls. Every acre of owl habitat removed by logging under this proposal reduces the chances of co-existence and increases the chances of competitive exclusion.
7. The 184,000 acres of Bureau of Land Management lands originally proposed for exclusion are extremely important for the survival of the spotted owl for two main reasons:
 - a. There exists very little suitable habitat on non-federal lands. In fact, about 85 percent of remaining suitable spotted owl habitat can be found on federal lands.

- b. BLM lands provide essential habitat connectivity for owl populations moving between the Coast Range, Cascades, and Klamath/Siskiyou Mountains. Without this connectivity, it is highly likely to reduce the chances of spotted owls moving among these provinces, and preventing genetic isolation and degradation of the owl population.
8. The economic value of healthy, intact public forests for clean water, climate stability, fish and wildlife habitat, recreation, fire resilience, and quality of life far exceeds the private value of logging and wood products.

Further Policy Considerations and Requests to Conserve the Northern Spotted Owl

9. Restore the Presidential Memorandum, “Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment,” and complete development of agency mitigation policies.
10. Revise the 2016 BLM Western Oregon Plan Revisions to restore wildlife, and riparian, and other protections lost from 1995 plans, and update strengthen the Northwest Forest Plan to recover the threatened Marbled Murrelet and Northern Spotted Owl
11. Revoke the Presidential Memorandum, “[Proposed Revised Habitat for the Spotted Owl: Minimizing Regulatory Burdens](#),” as a step to recover the threatened Marbled Murrelet and Northern Spotted Owl.

2012 Critical Habitat Rule and Presidential Memorandum

The 2012 Northern Spotted Owl Critical Habitat Rule and accompanying Presidential Memorandum continue to raise concern because of active management in owl critical habitat that is not supported by the best available science. Three major scientific societies advised the Obama administration to conduct more research on the effects of active management on owl populations before treatments were to be applied more broadly. We agreed with the scientists’ call for caution then, and based on available evidence since 2012, urge that this approach be abandoned.

These provisions to protect only high quality owl habitat, create early-seral habitats, and weaken the adverse modification standard allow for an increase in timber harvest in the region thereby lengthening of the time it will take to restore late-successional conditions. This language, which was also included in the BLM’s Western Oregon Plan Revision, has the potential to allow excessive logging to the detriment of Northern Spotted Owl and Marbled Murrelet populations and may foreclose owl recovery by not providing adequate late-successional forest necessary to ensure high quality owl habitat in the future. We therefore urge that the Presidential Memorandum be withdrawn, and the 2012 critical habitat rule be improved upon to provide a stronger level of protection.

Contribution to the Presidential Goal of 30 x 30

The establishment of areas permanently “dedicated to the preservation of biological diversity” (US Geological Survey. February 2, 2021. GAP Analysis Project: [PAD-US Data Manual](#) (web page) such as designated critical habitat for the Northern Spotted Owl and Marbled Murrelet, and late-successional

and riparian reserves could significantly contribute to President' Biden's goal of conserving 30% of the nation's lands and waters by 2030.

To fully protect the Northwest Forest Plan reserves and designated critical habitat of the Northern Spotted Owl and Marbled Murrelet, new management direction is urgently needed to avoid post-fire salvage logging, fragmentation, and cutting of mature forests in those areas.

Renewable Energy and Wildlife Protection

Given the current and anticipated rapid expansion of renewable energy development within the range of the Northern Spotted Owl, we recommend the following:

1. Require that wildlife impacts be considered and avoided to the extent possible in wind energy facility development planning; this is best accomplished through site-specific analyses, complemented by regional or programmatic planning.
2. Require minimization and mandatory mitigation measures to ensure that wind energy development results in a net benefit to wildlife populations and diversity.
3. Require that the U.S. Fish and Wildlife Service's Land-Based Wind Energy Guidelines be mandatory, and develop a system for verifying compliance.
4. Ensure that new energy grid infrastructure (e.g., transmission lines) are sited and constructed in a way that minimizes impacts to Northern Spotted Owl and their habitat.
5. Establish a fund to minimize and offset wildlife impacts of wind energy and other renewables.
6. Promote energy efficiency measures and distributed solar energy development, which have the least impacts to birds compared to other energy options that mitigate climate change. Also, promote programs to enable homeowners, businesses, and public facilities to install solar panels.

Thank you for considering these comments on behalf of American Bird Conservancy. Please let us know if we can be of assistance.

Sincerely,



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