



Bringing back the birds

July 20, 2023

Director
Policy Office
201 14th Street SW, Mailstop 1108,
Washington, DC 20250-1124

Dear Friends:

On behalf of American Bird Conservancy which works to conserve birds and their habitats throughout the Americas, thank you for this opportunity to comment. Our remarks are focused on how E.O. 14072 can bolster protection and restoration of mature and old growth federal forests within the range of the Northern Spotted Owl and how this process relates to the Northwest Forest Plan, a landmark conservation achievement benefiting wildlife, water, and climate.

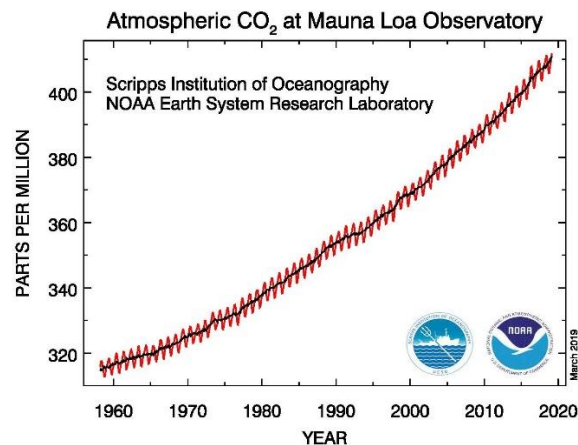
We greatly appreciate that E.O. 14072 calls particular attention to the importance of Mature and Old-Growth (MOG) forests on Federal lands for their role in contributing to nature-based climate solutions by storing large amounts of carbon and increasing biodiversity. Increasing the amount of MOG forests within the range of the Northern Spotted Owl is essential to its recovery, and due to the very high concentrations of carbon found in the region's mature and old growth forests, is also an important strategy needed to ameliorate climate change.

The Northwest Forest Plan marks a rare climate change success story and we urge a rulemaking under EO 14072 to build upon that success. To address the dual biodiversity and climate crises, for Northwest Forests we recommend this rulemaking provide:

1. Protection of all stands 80 years and older. This is the age where forests begin to mature and become suitable Northern Spotted Owl habitat. Given the severe shortage of contiguous old growth in the region, continuing the Northwest Forest Plan restoration strategy and reserve designation are essential to recover the owl and threatened Marbled Murrelet, and at the same time continue and increase climate change benefits.
2. Limitations on post-fire logging within the late-successional reserves. Other than maintaining public safety, post-fire logging in the reserves should be prohibited.

Where our proposed recommendation 1. above would have the most effect is on the matrix, which currently is seeing commercial timber sales in owl critical habitat up to 150 years. The owl critical habitat designated in the matrix in 2012 could have and still should be shifted to and managed the same as the reserves. This would improve the NW Forest Plan and benefit the climate by restricting logging of mature federal forests 80-150 years old.

Our comments are informed by a growing body of analysis indicating that much stronger conservation measures are needed to address the dual biodiversity and climate crisis. Enclosed with our comment are the Three Billion Bird Loss report finding that since 1970 the total number of birds has greatly declined, our Endangered Species Act 50th Anniversary update, and associated recovery chart detailing the progress listed bird populations are making towards recovery, and a 2019 Climate and Energy Solutions report highlighting the need to protect old growth forests as a climate strategy.



Steve Holmer, American Bird Conservancy's vice president policy, has over thirty years of experience on the issue and involved in implementation of the Northwest Forest Plan and related issues such as the Salvage Logging Rider of 1994-95, and the Western Oregon Plan Revision. And, since 2007, while with American Bird Conservancy has actively opposed efforts to weaken ESA protections for both the Northern Spotted Owl and the threatened Marbled Murrelet.

The need for new and added protections for mature and old growth forests within the range of the Northern Spotted Owl became apparent when the US Fish and Wildlife Service issued a rule exempting 3.4 million acres of Northern Spotted Owl critical habitat from protection. Agency scientists alerted us and warned that in their view, if implemented this rule would cause the eventual extinction of the Northern Spotted Owl.

This was in 2021, just two years ago. Unfortunately, an effort continues to exempt 200,000 acres of Northern Spotted Owl critical habitat to allow for increased mature forest logging that would be harmful to owl recovery, and contribute carbon to accelerating climate change.

Attacks on the Marbled Murrelet's ESA status have also been particularly intense. This has included proposals for delisting, and as recently as 2013, eliminating all or most of the murrelet's critical habitat designation. American Bird Conservancy and partners successfully litigated against a flawed Northern Spotted Owl critical habitat rule (2008), and the recently withdrawn critical habitat exemptions rule that allowed for the 3.4 million-acre exemption to Northern Spotted Owl critical habitat in 2021.

Overall, our analysis shows the Endangered Species Act is working well to recover listed birds, particularly for mainland and US territorial populations. One notable exception are wide-ranging

species inhabiting federal public lands including the Northern Spotted Owl (endangered status warranted but precluded), California Spotted Owl (proposed for listing), Mexican Spotted Owl, Marbled Murrelet, Gunnison Sage-Grouse (nearing extinction), and Greater Sage-Grouse (in decline but not eligible for listing).

American Bird Conservancy has fought, and will continue to fight, for ESA protections. ABC successfully litigated against a flawed Northern Spotted Owl critical habitat rule (2008), and the recently withdrawn critical habitat exemptions rule that allowed for the 3.4 million-acre exemption to Northern Spotted Owl critical habitat in 2021.

A proposed EO rulemaking as outlined above would provide needed additional protection to at-risk mature forests, and to the reserves whose effectiveness is being diminished by post-fire logging. It is also essential to provide the mature and old growth habitat increases needed to recover the owl and murrelet. Similar standards in the Sierra Nevada range would greatly benefit the California Spotted Owl whose habitat has been heavily logged over the past twenty years since the science-based Sierra Framework was abandoned.

The Northwest Forest Plan: A Landmark Conservation Achievement

The National Forests in the Pacific Northwest and northern California within the range of the Northern Spotted Owl are being managed under the Northwest Forest Plan put in place in 1994. The Plan was prompted by [lawsuits](#), and a federal injunction that had halted timber sales across the region. Due to information provided by Forest Service whistleblowers, Federal judge William Dwyer found out that federal agencies had violated the National Forest Management Act by ignoring wildlife protection and forest conservation standards which had made possible record old growth logging levels during late 80s and early 90s.

The [court record](#) showed how the agencies knew that old growth logging was harming the Northern Spotted Owl, and was not sustainable. In a scathing ruling shutting down the region's multi-million-dollar logging industry dependent on federal lands, Judge Dwyer cited a "a deliberate and systematic refusal to comply with laws protecting wildlife," and specifically a failure of the agency to provide enough suitable habitat for a viable Northern Spotted Owl population. A regional watershed assessment also found extensive watershed damage due to excessive logging road construction.

It should also be noted that Jack Ward Thomas and other Forest Service biologists first announced in 1983 that the Northern Spotted Owl had severely declined and was being endangered by old growth logging. The Reagan administration and Congress responded by precluding ESA protection for the owl, prohibiting judicial review of timber sales within its range, and increasing logging levels.

It was not until seven years later that the listing prohibition was lifted and the owl was added to the list in 1990. But this did not immediately halt the old growth logging called for in the forest plans. It was not until the following year in 1991 that Judge Dwyer issued his decision and injunction. To respond to the regional court injunction, rebuild the ecosystem, and recover threatened birds and salmon, President Bill Clinton initiated the Northwest Forest Plan. This was a scientist-led public planning process which ultimately amended forest plans within the owl's range.

The Plan, designed by preeminent scientists Jack Ward Thomas, Jerry Franklin, Norm Johnson, and Gordon Reeves, primarily divided the landscape into either reserves, where logging would be limited

to forests younger than 80 years with the goal of accelerating old growth conditions, or matrix, where logging as usual could continue. The reserves were about 56% old growth and heavily fragmented. As a result, a substantial amount of growth and infill over time would be needed before they would become fully effective blocks of mature and old growth Spotted Owl habitat.

The matrix designation contained 42% of the remaining old growth, and the Plan envisioned a ramp down of old growth logging to provide for 800 million board feet of timber annually. This part of the Plan, and the associated timber volumes were never realistic. This is primarily due to overwhelming public opposition to continued old growth clearcutting. In addition, when the Forest Service and BLM did try to proceed, the heavily-impacted condition of the landscape, the degree of watershed degradation and poor water quality in streams, or listed endangered species, would typically render these proposed old growth logging projects unwise or illegal, and few were ever logged.

During the Obama administration, a new Northern Spotted Owl critical habitat rule was developed and put into place in 2012. It was in response to court rulings, and the Barred Owl invasion of the Pacific Northwest which is having negative impacts to the Northern Spotted Owl. The rule designated 9.6 million critical habitat acres, a substantial increase, in part to allow for coexistence with the Barred Owl. This was a contentious rulemaking that did not follow best available science indicating that all remaining Northern Spotted Owl habitat should have been included in the critical habitat designation. Instead, only high-quality owl habitat received this protection. Moreover, the Northwest Forest Plan was never updated to reflect these changes which should have resulted in areas being moved from the matrix to the reserves, and a significantly lower probable sale quantity.

Similarly, the probably sale quantity has not been lowered to account for the climate benefits of not cutting older forests, or allowing mature forests to become old growth. We recommend that as part of any EO rulemaking or Northwest Forest Plan revision that forests older than 80 years with the range of the Northern Spotted Owl be protected from logging, and that the Plan's probably sale quantity be lowered to reflect this change.

The 2012 Northern Spotted Owl critical habitat rulemaking also included controversial elements promoting logging in Northern Spotted Owl habitat to reduce fire risks. To date, these projects have not been shown to benefit the recovery of the Northern Spotted Owl. The owl is relatively well-adapted to fires, but can be forced to move from an area if the percentage of canopy cover drops too low. Stand replacing fires can cause this degree of habitat loss, as can salvage logging which very frequently is being conducted after low, mixed, and high severity fires. We are concerned that negative impacts being attributed to wildland fire by federal agencies, are in fact, the result of aggressive post-fire logging.

Post-fire logging is a threat to the Northern Spotted Owl by removing features needed for survival such as large snags and downed woody debris that take a long time to form on the landscape. The Northern Spotted Owl recovery action 12 recognizes this issue, but overly aggressive post-fire logging is continuing to degrade Northern and California Spotted Owl habitat. We recommend that the EO provide for added protection for burned mature and old growth forests to ensure that their benefits to wildlife, and the substantial carbon stores that are typically salvage logged today, will not completely lost.

There is a lack of consistent empirical data on the effectiveness of fuel reduction projects on the National Forests which have now been taking place for about the past 30 years. The handful of

studies that did take a look back at what happened to the treated acres found that fires rarely intersected with the project area during the treatment's 10 to 20-year period of effectiveness. In response to the EO, we recommend that an empirical analysis be conducted of all of the federal acres treated for the past 30 years to help better target future fire-risk reduction efforts.

Despite their importance, mature and old-growth forests are still subject to logging on public forests across the country. Right now, in Oregon, Roseburg BLM is proposing to log 5,280 acres, including clearcutting and commercial thinning on 1,728 acres, and building logging roads in the 42 Divide project in the Oregon Coast Range. This logging project plans to cut trees up to 200 years old.

We recommend any Northwest Forest Plan revision, and conservation rule stemming from the EO to include all public lands under the Bureau of Land Management's jurisdiction in the Pacific Northwest including the Public Domain and O & C Lands. These areas are particularly important for Northern Spotted Owl and Marbled Murrelet recovery. The proposed 3.4 million-acre Northern Spotted Owl critical habitat exemption proposed by the US Fish and Wildlife Service in 2021 included this important portion of the owl's range. Scientists assessing the rule concluded loss of critical habitat in this area would jeopardize the continued existence of Northern Spotted Owl population.

Northwest Forest Plan: A Rare Climate Change Success Story

Monitoring reports conducted on the Northwest Forest Plan indicate that it is working as intended to grow back blocks of mature and old growth forests, and is improving water quality across the entire region. EPA studies indicate that the plan is also helping to fight climate change.

Since protections were put in place for Spotted Owls and salmon under the Northwest Forest Plan, the region's forests have gone from a source of polluting emissions into a carbon sink according to [EPA annual emissions data](#). This is a rare climate change success story that needs to be maintained and built upon. Attached is a letter from scientists on the importance of conserving large trees to address both climate and biodiversity.

The Plan's 20-year monitoring report offers a clear picture of progress within expected parameters:

The maps showed net changes in amount of older forests on federal lands managed under the NWFP have been small (a 2.8 to 2.9 percent net decrease). This occurred despite gross losses from wildfire (4.2 to 5.4 percent), timber harvest (1.2 to 1.3 percent), and from insects or other causes (0.7 to 0.9 percent), suggesting that processes of forest succession have compensated for some of the losses resulting from disturbance. The Plan anticipated a continued decline in older forests for the first few decades until the rate of forest succession exceeds the rate of gross losses. Decadal gross losses of about 5 percent per decade as a result of timber harvesting and wildfire were expected. Observed losses from wildfire were about what was expected, but losses from timber harvesting were about one quarter of what was anticipated. Results were consistent with expectations for older forest abundance, diversity, and connectivity outcomes for this period of time. Nothing in the findings suggests that attainment of desired outcomes over the next few decades is not feasible; however, we noted some portions of the NWFP federal landscape that had been set back from those outcomes, particularly resulting from large wildfires in the fire-prone portions of the NWFP area.

The Plan assumed a certain amount of loss to fire, and incorporated a redundant reserve design to help ensure connectivity for owl dispersal. However, the potential for an increase in climate-induced large-scale fires is a concern. To reduce potential recovery habitat loss and take of Northern Spotted Owl and Marbled Murrelet, we recommend fire risk reduction activities be limited to stands younger than 80 years.

Scientific studies support the connection between mature and old growth protection, and reduced carbon emissions, and the need for added forest protections. For a recent example see [*Mature and old-growth forests contribute to large-scale conservation targets in the conterminous United States*](#) which found:

MOG on national forest lands supported the highest concentration of conservation values. However, national forests and BLM lands did not meet lower bound (30%) targets with only 24% of MOG in GAP1,2 (5.9 M ha) protection status. The vast majority (76%, 20.8 M ha) of MOG on federal lands that store 10.64 Gt CO₂ (e) are vulnerable to logging (GAP3). If federal MOG are logged over a decade, and half their carbon stock emitted, there would be an estimated 0.5 ppm increase in atmospheric CO₂ by 2030, which is equivalent to 9% of United States total annual emissions.

We appreciate the Bureau of Land Management included a mitigation policy in the proposed national conservation rule which provides for a clear compensation mechanism, and through conservation leasing, there is an added means to implement the needed work. To bolster the proposed mitigation rule, we recommended that additional provisions be added to require that an avoidance alternative be developed and analyzed as part of all plans and projects. An effective avoidance alternative should include comparative analysis and consideration of the replacement cost of public values and benefits that would need to be mitigated for. If mitigation costs are going to be extremely high, an avoidance alternative may be the best choice.

We recommend any Northwest Forest Plan revision be preceded by completion of both an EO rulemaking and a final Forest Service mitigation regulation similar to what BLM is proposing to help ensure full consideration of endangered wildlife, climate benefits and clean water, and the potential replacement cost of those ecosystem benefits that mature and old growth forests provide in abundance. It is essential that carbon and climate mitigation benefits be fully considered in any management change to the Northwest Forest Plan.

Thank you for considering these comments.

Sincerely,



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