

Board of Forestry and Fire Protection

INITIAL STATEMENT OF REASONS

Spotted Owl Resource Plan Amendment, 2022

**Board of Forestry and Fire Protection
Title 14 of the California Code of Regulations
Division 1.5, Chapter 4,
Subchapter 1**

INTRODUCTION INCLUDING PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS (pursuant to GC § 11346.2(b)(1)) ...NECESSITY (pursuant to GC § 11346.2(b)(1) and 11349(a))....BENEFITS (pursuant to GC § 11346.2(b)(1))

Pursuant to the Z'berg-Nejedly Forest Practice Act of 1973, PRC § 4511, *et seq.* (FPA) the State Board of Forestry and Fire Protection (Board) is authorized to construct a system of forest practice regulations applicable to timber management on state and private timberlands.

PRC § 4551 requires the Board to "...adopt district forest practice rules... to ensure the continuous growing and harvesting of commercial forest tree species and to protect the soil, air, fish, wildlife, and water resources..." of the state and PRC § 4553 requires the Board to continuously review the rules in consultation with other interests and make appropriate revisions.

The Northern Spotted Owl was listed as Threatened pursuant to the Endangered Species Act (ESA) in 1990, prohibiting "take", defined as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct" (the Endangered Species Act §3(18)). In 2017, the California Fish and Game Commission (FGC) listed the species as Endangered pursuant to the California Endangered Species Act (CESA) which also prohibits "take" defined as "to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill" (Fish and Game Code, §86).

Various regulatory mechanisms were developed at the state and federal level to avoid take of this species, or to provide for some form of "incidental take" for otherwise lawful activities. As a result, regulated forest landscapes are now subject to multiple mechanisms for take avoidance, largely through extensive surveys and the protection of appropriate habitat for foraging, nesting, and roosting within a specific radius of known nest sites. One of these mechanisms is the Spotted Owl Resource Plan, a streamlined process to avoid take across multiple ownerships.

A Spotted Owl Resource Plan is a take avoidance strategy that demonstrates an approach to preventing a taking of the Northern Spotted Owl while conducting timber harvest operations. This process is managed by the California Department of Forestry and Fire Protection (CAL FIRE) in collaboration with the California Department of Fish and Wildlife (CDFW) and the U.S. Fish and Wildlife Service (USFWS). Spotted Owl Resource Plans advance the conservation of NSO through a consistent protocol for monitoring and reporting on a geographic scale, describe and define protection measures for NSO given various situations in timber harvesting plans located in the SORP and provide for data and information exchange to ensure that USFWS, CDFW, CAL FIRE, and SORP enrollees have the most current information on Northern Spotted Owl populations and access to data across ownerships. This process is managed by the California Department of Forestry and Fire Protection (CAL FIRE) in collaboration with the California Department of Fish and Wildlife (CDFW), U.S. Fish and Wildlife Service (USFWS).

A Spotted Owl Resource Plan necessarily involves coordination of multiple timber harvesting plan areas. As currently defined in the Forest Practice Rules (§895.1), Spotted Owl Resource Plans do not specifically include Nonindustrial Timber Management Plans (NTMPs) and Working Forest Management Plans (WFMPs); regulatory pathways for managing nonindustrial timberlands to create and maintain uneven aged timber stand conditions and sustained yield of timber. These plans may include multiple landowners and are limited in size. These nonindustrial timberland owners would benefit significantly from the opportunities for multi-owner cooperative survey efforts, the ability to describe and define protection measures given specific management and site circumstances, and the provisions for data sharing and information exchange with other SORP enrollees and relevant agencies.

The **problem** is that the current regulatory description of a Spotted Owl Resource Plan does not include reference to Nonindustrial Timber Management Plans or Working Forest Management Plans, giving the incorrect impression that those methods for forest management are excluded from this pathway to meet regulatory requirements for avoiding take of Northern Spotted Owls.

The **purpose** of the proposed action is to clarify that nonindustrial timberland owners can use Spotted Owl Resource Plans to meet the regulatory requirements for surveys and take avoidance of Northern Spotted Owls.

The **effect** of the proposed action is wider usage by nonindustrial timberland owners of a landscape-level protection from take for Northern Spotted Owls.

The **benefit** of the proposed action is a mechanism for wider usage of landscape-level protections for the Northern Spotted Owl, a federally listed threatened and state listed endangered species. The proposed action also provides clarity on the usage of a regulatory mechanism.

SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT OR REPEAL (pursuant to GOV § 11346.2(b)(1)) AND THE RATIONALE FOR THE AGENCY'S DETERMINATION THAT EACH ADOPTION, AMENDMENT OR REPEAL IS REASONABLY NECESSARY TO CARRY OUT THE PURPOSE(S) OF THE STATUTE(S) OR OTHER PROVISIONS OF LAW THAT THE ACTION IS IMPLEMENTING, INTERPRETING OR MAKING SPECIFIC AND TO ADDRESS THE PROBLEM FOR WHICH IT IS PROPOSED (pursuant to GOV §§ 11346.2(b)(1) and 11349(a) and 1 CCR § 10(b)). *Note: For each adoption, amendment, or repeal provide the problem, purpose, and necessity.*

The Board is proposing action to amend 14 CCR § 895.1

Amend §§ 895.1

The proposed action clarifies that Spotted Owl Resource Plans, a regulatory pathway for the avoidance of take of the Northern Spotted Owl, is applicable to timberland landowners with Nonindustrial Timber Management Plans and Working Forest Management Plans.

ECONOMIC IMPACT ANALYSIS (pursuant to GOV § 11346.3(b)(1)(A) -(D) and provided pursuant to 11346.3(a)(3)

The **effect** of the proposed action is to clarify that Spotted Owl Resource Plans, a regulatory pathway for the avoidance of take of the Northern Spotted Owl, is applicable to timberland landowners with Non-Industrial Timber Management Plans and Working Forest Management Plans.

The proposed action represents a continuation of existing rules for the protection of threatened and endangered species as defined under the Forest Practice Rules. There is no economic impact associated with the proposed action.

Creation or Elimination of Jobs within the State of California

The proposed action does not mandate any action on behalf of the regulated public and represents a continuation of existing forest practice regulations. It is anticipated that any firms or jobs which exist to engage in this work will not be affected. No creation or elimination of jobs will occur.

Creation of New or Elimination of Businesses within the State of California

The regulatory amendments as proposed represent a continuation of existing forest practice regulations and are intended to clarify in their application. Given that the businesses which would be affected by these regulations are already extant, it is expected that proposed regulation will neither create new businesses nor eliminate existing businesses in the State of California.

Expansion of Businesses Currently Doing Business within the State of California

The regulatory amendments as proposed represent a continuation of existing forest practice regulations and are intended to clarify their application. The proposed regulation will not result in the expansion of businesses currently doing business within the State.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State’s Environment

The action will result in a wider usage of landscape-level take avoidance and habitat protections for Northern Spotted Owl, a species that is federally listed as “Threatened” and State listed as “Endangered”. The action will also allow nonindustrial timberland landowners to avoid impacts to the owls in these landscapes from repeated disturbance from lack of survey coordination between multiple landowners. The proposed action also provides clarity on the usage of Spotted Owl Resource Plans by nonindustrial timberland landowners, resulting in increased clarity and efficacy of the Forest Practice Rules.

Business Reporting Requirement (pursuant to GOV § 11346.5(a)(11) and GOV § 11346.3(d))

The proposed regulation does not require a business reporting requirement.

STATEMENTS OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT (EIA)

The results of the economic impact assessment are provided below pursuant to **GOV § 11346.5(a)(10)** and prepared pursuant to **GOV § 11346.3(b)(1)(A)-(D)**. The proposed action:

- Will not create jobs within California (GOV § 11346.3(b)(1)(A)).
- Will not eliminate jobs within California (GOV § 11346.3(b)(1)(A)).
- Will not create new businesses (GOV § 11346.3(b)(1)(B)).
- Will not eliminate existing businesses within California (GOV § 11346.3(b)(1)(B)).
- Will not affect the expansion or contraction of businesses currently doing business within California (GOV § 11346.3(b)(1)(C)).
- Will yield nonmonetary benefits (GOV § 11346.3(b)(1)(D)). The proposed action would result in increased clarity and efficacy in the Forest Practice Rules, and as a result, promote more efficient implementation and enforcement of the regulations. The proposed action will not affect the health and welfare of California residents or worker safety.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORT, OR SIMILAR DOCUMENT RELIED UPON (pursuant to GOV SECTION 11346.2(b)(3))

The Board of Forestry and Fire Protection relied on the following list of technical, theoretical, and/or empirical studies, reports, or similar documents to develop the proposed action:

1. CAL FIRE and California Department of Fish and Wildlife (2021). Eastside Spotted Owl Resource Plan. California Natural Resources Agency.
2. Dugger, K. M., Forsman, E. D., Franklin, A. B., Davis, R. J., White, G. C., Schwarz, C. J., ... & Sovern, S. G. (2016). The effects of habitat, climate, and Barred Owls on long-term demography of Northern Spotted Owls. *The Condor: Ornithological Applications*, 118(1), 57-116.

3. Dunk, J. R., Woodbridge, B., Schumaker, N., Glenn, E. M., White, B., LaPlante, D. W., & Thrailkill, J. (2019). Conservation planning for species recovery under the Endangered Species Act: A case study with the Northern Spotted Owl. *PLoS one*, 14(1), e0210643.
4. Franklin, A. B., Anderson, D. R., Gutiérrez, R. J., & Burnham, K. P. (2000). Climate, habitat quality, and fitness in northern spotted owl populations in northwestern California. *Ecological Monographs*, 70(4), 539-590.
5. Franklin, A. B., Dugger, K. M., Lesmeister, D. B., Davis, R. J., Wiens, J. D., White, G. C., ... & Wise, H. (2021). Range-wide declines of northern spotted owl populations in the Pacific Northwest: A meta-analysis. *Biological Conservation*, 259, 109168.
6. US Fish and Wildlife Service. (2011). Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls. US Department of Interior, Portland, Oregon, USA.
7. US Fish and Wildlife Service. (2012). Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls. US Department of Interior, Portland, Oregon, USA.
8. US Fish and Wildlife Service. (2019). Northern Spotted Owl Take Avoidance Analysis and Guidance for Private lands in California, Attachment A: Take Avoidance Analysis- Coast Redwood Region. US Department of Interior, Portland, Oregon, USA.
9. US Fish and Wildlife Service. (2019). Northern Spotted Owl Take Avoidance Analysis and Guidance for Private lands in California, Attachment B: Take Avoidance Analysis-Interior. US Department of Interior, Portland, Oregon, USA.

REASONABLE ALTERNATIVES TO THE PROPOSED ACTION CONSIDERED BY THE BOARD, IF ANY, INCLUDING THE FOLLOWING AND THE BOARD'S REASONS FOR REJECTING THOSE ALTERNATIVES (pursuant to GOV § 11346.2(b)(4)(A) and (B)):

- **ALTERNATIVES THAT WOULD LESSEN ANY ADVERSE IMPACTS ON SMALL BUSINESS AND/OR**
- **ALTERNATIVES THAT ARE LESS BURDENSOME AND EQUALLY EFFECTIVE IN ACHIEVING THE PURPOSES OF THE REGULATION IN A MANNER THAT ENSURES FULL COMPLIANCE WITH THE AUTHORIZING STATUTE OR OTHER LAW BEING IMPLEMENTED OR MADE SPECIFIC BY THE PROPOSED REGULATION**

Pursuant to **GOV § 11346.2(b)(4)**, the Board must determine that no reasonable alternative it considers, or that has otherwise been identified and brought to the

attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Alternative 1: No Action Alternative

The Board considered taking no action, but this alternative was rejected because it would not address the problem.

Alternative #2: Make regulation less prescriptive

This action would replace the prescriptive standards in the definition of Spotted Owl Resource Plans with performance-based regulations. This alternative may reduce clarity and consistency with other portions of the rules which rely upon the existence of the current operational limitations in order to ensure that forest resources are preserved.

Alternative #3: Proposed Action

Alternatives 1 and 2 would not be more effective or equally effective while being less burdensome or impact fewer small businesses than the proposed action. Specifically, alternatives 1 and 2 would not be less burdensome and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the authorizing statute or other law being implemented or made specific by the proposed regulation.

Additionally, alternatives 1 and 2 would not be more effective in carrying out the purpose for which the action is proposed and would not be as effective and less burdensome to affected private persons than the proposed action or would not be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action. Further, none of the alternatives would have any adverse impact on small businesses.

Prescriptive Standards versus Performance Based Standards (pursuant to GOV §§11340.1(a), 11346.2(b)(1) and 11346.2(b)(4)(A)):

Pursuant to **GOV §11340.1(a)**, agencies shall actively seek to reduce the unnecessary regulatory burden on private individuals and entities by substituting performance standards for prescriptive standards wherever performance standards can be reasonably expected to be as effective and less burdensome, and that this substitution shall be considered during the agency rulemaking process.

The proposed action is as prescriptive as necessary to address the problem and contains a mix of performance-based and prescriptive requirements. Current forest practice rules surrounding Northern Spotted Owl take avoidance during timber operations are based in a mix of performance based, and prescriptive minimum, requirements for the protection of the state's forest resources, which are necessary in order to accommodate for the various levels of individual project review which occurs for

various permitting vehicles for timber operations. The regulations proposed in this action do not impose any new prescriptive regulations than already exist.

Pursuant to **GOV § 11346.2(b)(1)**, the proposed action does not mandate the use of specific technologies or equipment.

Pursuant to **GOV § 11346.2(b)(4)(A)**, the abovementioned alternatives were considered and ultimately rejected by the Board in favor of the proposed action. The proposed action does not mandate the use of specific technologies or equipment, but does prescribe specific actions.

FACTS, EVIDENCE, DOCUMENTS, TESTIMONY, OR OTHER EVIDENCE RELIED UPON TO SUPPORT INITIAL DETERMINATION IN THE NOTICE THAT THE PROPOSED ACTION WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS (pursuant to GOV § 11346.2(b)(5))

The fiscal and economic impact analysis for these amendments relies upon contemplation, by the Board, of the economic impact of the provisions of the proposed action through the lens of the decades of experience practicing forestry in California that the Board brings to bear on regulatory development.

The regulatory method for defining Spotted Owl Resource Plans is currently extant within the rules. Clarifying that this definition applies to nonindustrial timberland landowners expands an additional regulatory pathway for the avoidance of take of an endangered species. In addition, this pathway expands access to data-driven, landscape-level coordination of survey efforts for small timberland owners, allowing efficient deployment of surveyors. There is no economic impact associated with the proposed action.

The proposed action will not have a statewide adverse economic impact directly affecting businesses as it does not impose any requirements on businesses.

DESCRIPTION OF EFFORTS TO AVOID UNNECESSARY DUPLICATION OR CONFLICT WITH THE CODE OF FEDERAL REGULATION (pursuant to GOV § 11346.2(b)(6))

The Code of Federal Regulations has been reviewed and based on this review, the Board found that the proposed action neither conflicts with, nor duplicates Federal regulations. There are no comparable Federal regulations related to conducting Timber Operations on private, state, or municipal forest lands.

POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS CEQA

CEQA requires review, evaluation, and environmental documentation of potential significant environmental impacts from a qualified Project. Pursuant to case law, the review and processing of Plans has been found to be a Project under CEQA.

Additionally, the Board's rulemaking process is a certified regulatory program having been certified by the Secretary of Resources as meeting the requirements of PRC § 21080.5.

While certified regulatory programs are excused from certain procedural requirements of CEQA, they must nevertheless follow CEQA's substantive requirements, including PRC § 21081. Under PRC § 21081, a decision-making agency is prohibited from approving a Project for which significant environmental effects have been identified unless it makes specific findings about alternatives and mitigation measures

Further, pursuant to PRC § 21080.5(d)(2)(B), guidelines for the orderly evaluation of proposed activities and the preparation of the Plan or other written documentation in a manner consistent with the environmental protection purposes of the regulatory program are required by the proposed action and existing rules.

The proposed action is an element of the state's existing comprehensive Forest Practice Program under which all commercial timber harvest activities are regulated. The Rules which have been developed to address potential impacts to forest resources, including both individual and cumulative impacts, project specific mitigations along with the Department oversight (of rule compliance) function expressly to prevent the potential for significant adverse environmental effects. The proposed action does not represent any change to the levels of environmental protection provided by the Rules, it merely clarifies that an additional regulatory mechanism to avoid take of the Northern Spotted Owl is available to nonindustrial timberland owners, consistent with the goals and purposes of the Act and Rules.

In summary, the proposed action amends or supplements standards to an existing regulatory scheme and is not a mitigation as defined by CEQA. The Board concludes that the proposed action will not result in any significant or potentially significant adverse environmental effects and therefore no alternative or mitigation measures are proposed to avoid or reduce any significant effects on the environment (14 CCR § 15252(a)(2)(B)).