

Society for Conservation Biology

Questions Frequently Asked

About the

Northern Spotted Owl Recovery Plan

August 4, 2008

Q: What does the term “floating habitat scheme” used in The Wildlife Society’s report mean?

A: The 2008 Final Recovery Plan for the Northern Spotted Owl entirely eliminates habitat reserves in the arid regions of Washington state, Oregon, and California in favor of an untested thinning approach based on assumed widespread fire and insect losses to owl habitat that need to be dampened by active management by federal managers. This untested approach is what the TWS refers to as the risky floating habitat scheme because: (1) Owls are known to return to burned forests – even severely burned areas – shortly after natural disturbances and therefore habitat losses may be temporary<sup>1</sup>; (2) in studies by federal researchers, owl populations are doing better in areas with fixed habitat reserves than in areas outside those where logging is permitted; (3) Owls tend to select closed canopy forests while thinning could open up the forest canopy by removing over-story trees; (4) There are uncertainties regarding whether thinning would impact owl prey, trigger nest abandonment, and increase competition with Barred Owls; (5) The lack of a fixed reserve system reintroduces regulatory uncertainty as land managers may eliminate reserves during forest planning in favor of thinning approaches with little oversight from the FWS; and (6) Analysis of recent fires by TWS indicate the extent of fire effects on dry older forests is considerably less than assumed in the recovery plan, allowing ample time for federal agencies to test different approaches before widespread implementation<sup>2</sup>.

Q: What’s the difference between the science used in the recovery plan, and the “best available science”?

A: The 2008 Recovery Plan<sup>3</sup> states that “[W]hile the 1992 draft Recovery Plan was never finalized, the plan remains the most recent spotted owl-specific analysis of habitat

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<sup>1</sup> Bond, M.L., R.J. Gutierrez, A.B. Franklin, W.S. LaHaye, C.A. May, and M.E. Seamans. 2002. Short-term effects of wildfires on spotted owl survival, site fidelity, mate fidelity, and reproductive success. *Wildlife Society Bulletin* 30:1022-1028.

<sup>2</sup> DellaSala, D.A., J.R. Strittholt, R.F. Noss, and D.M. Olson. 1996. A critical role for core reserves in managing Inland Northwest landscapes for natural resources and biodiversity. *Wildlife Society Bulletin* 24: 209-221.

<sup>3</sup> U.S. Fish and Wildlife Service. 2008. Recovery Plan for the Northern Spotted Owl (*Strix occidentalis caurina*). U.S. Fish and Wildlife Service: 5.

needed to provide for a sustainable population of spotted owls across the species' range.”<sup>4</sup> That statement establishes the presumption that the plan is based primarily on scientific data and methods in existence in 1992. Yet that statement is also incorrect. There is important new scientific data and analysis that supports a greater degree of caution in modifying current or potential owl habitat. For example, there is the 1994 study by Raphael et al., which suggested that shifting to a reserve strategy similar to the MOCA network proposed by the final recovery plan would greatly decrease owl distribution and viability<sup>5</sup>. Since 1992, technological advances have introduced superior means of measuring viability on more realistic landscapes, and spatial modeling can now be used to compare different conservation strategies. The recent modeling work of Carroll and Johnson (2008) found that the “proposed changes to the network of owl habitat reserves would reduce the proportion of the population protected by up to one third, and the proposed guidelines for forest management within reserves underestimate the proportion of older forest associated with maximum owl abundance and inappropriately generalize threshold relationships among subregions on spotted owls.”<sup>6</sup> These 1994 and 2008 findings are not acknowledged or incorporated or disputed by the Final Plan. If the 1994 and 2008 findings are correct, as their peer reviewers believed them to be, then these key elements are among the “best available science” for the conservation of the northern spotted owl and should be reflected in the 2008 Recovery Plan.

Question: Why do the estimates of potential loss of protected owl habitat given by The Society for Conservation Biology and The Wildlife Society appear to differ so much, with SCB saying there will be as much as a 25% reduction and TWS estimating a 56% reduction?

Answer: The differences are attributable mainly to the baseline used in the comparisons of existing reserves with the final recovery plan's Managed Owl Conservation Areas (MOCAs). TWS considered both Late Successional Reserves (LSRs) and Adaptive Management Areas (AMAs) in the Northwest Forest Plan as the baseline for existing reserves to which the forest reserved by the recovery plan was compared. The percentages cited by SCB, however, compare only the LSR areas (and not the AMAs) to the MOCAs. The protected habitat on the west side of the continental divide provided by the new MOCAs, on which the SCB number is based, is between twenty and thirty percent less than the west side area protected in LSRs in the 1994 Northwest Forest Plan. Because there are no protected (MOCA) areas at all in the current plan on the east side,

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<sup>4</sup> U.S. Fish and Wildlife Service. 2008. Recovery Plan for the Northern Spotted Owl (*Strix occidentalis caurina*). U.S. Fish and Wildlife Service: 70.

<sup>5</sup> Raphael, M.G., J.A. Young, K. McKelvey, B.M. Galleher, and K.C. Peeler. 1994. A simulation analysis of population dynamics of the Northern Spotted Owl in relation to forest management alternatives. Final environmental impact statement on management of habitat for late-successional and old-growth forest related species within the range of the Northern Spotted Owl. Volume II, appendix J-3. USDA, Forest Service, Portland, OR.

<sup>6</sup> Carroll, Carlos, and D.S. Johnson. 2008. The Importance of Being Spatial (and Reserved): Assessing Northern Spotted Owl Habitat Relationships with Hierarchical Bayesian Models. *Conservation Biology* 22: 1026.

when TWS looked at all of the previously protected habitat compared to the losses on both the east and west sides in the new plan, the combination resulted in their estimate of even greater habitat loss overall.

Question: What does the law require?

Answer: Under the Endangered Species Act, the Secretary of the Interior must “incorporate in each [recovery] plan-

(i) a description of such site-specific management actions as may be necessary to achieve the plan’s goal for the conservation [defined by the Act as including recovery] and survival of the species;

(ii) objective, measurable criteria which, when met, would result in a determination, ..., that the species be removed from the list; and

(iii) estimates of the time needed and the cost to carry out those measures needed to achieve the plan’s goal and to achieve the intermediate steps toward that goal. (Section 4(f)).

In response to the Reagan Administration avoiding more advanced scientific findings that would have protected more habitat and species, the Congress in 1982 amended the Act to require that removing species from the list and decisions to permit incidental taking or harm to the owl or its habitat as in permitting timber harvests require the use of the best available scientific and commercial data. In 1988 to ensure more detailed and objective recovery plans Congress added the requirements for site-specific management actions, objective measurable recovery criteria, and time and cost estimates in recovery plans. Fish and Wildlife Service guidelines also require recovery plans to be based on the best available science.

Given the annual decline of owl populations by about 4%, to the extent that the new recovery plan defers protection of known owl habitat to decisions to be made later by the land management agencies using untested criteria, and fails to include “site specific management actions” for protecting the vital habitat needed by owls outside MOCAs and disbursal and other areas that will be needed for recovery, it may well fall short of the requirements of the Act.

The National Forest Management Act requires the protection in the National Forests of vertebrate wildlife species and the National Environmental Policy Act requires public impact assessments of proposed actions and alternatives to them as well. The Northwest Forest Plan provided a combined path forward through the requirements of these three laws. Abandoning the ESA leg of that three-legged stool (NWFP, ESA, NFMA), through reduced ESA protections for the owl may upset the plan that had provided stability for the region. In particular, Judge Dwyer ruled in 1993 that the NWFP was the bare minimum needed to maintain viable populations of the owl and other late-successional dependent species. The final recovery plan seems to go below that bare minimum of the NWFP by recommending less protection in the MOCAs.

The natural resources laws do not stand alone. Other laws, both civil and criminal, forbid the Secretary or any other person from using or agreeing to try to use, misleading or incomplete information, or attempting to withhold requested information, from an agency process or from Congress, if it is important for their decisions, or to obstruct the proper operation of the government, or divert from the federal government valuable assets, such as timber, that would be protected by the use of information that is known to be more accurate. (e.g., 18 U.S.C. 1001, 371, and 1505; the Administrative Procedures Act; and the codes of conduct for Federal employees). For example, Chairwoman Barbara Boxer and three other Senators on July 29th wrote to ask the U.S. Attorney General to review statements of the EPA Administrator in interagency planning and to Congress concerning climate change and pollution to determine whether he or the Administration had misled Congress or violated other fundamental laws protecting the integrity of science. Similar questions could arise if the Administration intentionally avoided using the best available owl conservation science in order to make more of the federal timber resource available for harvest.

Q: What does this controversy mean for other agencies, timber companies and their investors?

A: Under Paragraph 4(f)(5) of the Act, each action agency, from the Forest Service to the Bureau of Land Management, must themselves consider prior to implementation of a new recovery plan, all information presented during the public comment period on the proposed plan. This is because each agency has its own duty to help recovery and to avoid any harm to listed species that is not properly permitted or that will significantly diminish the likelihood of recovery and may not rely only on assurances from the Secretary that both are covered from liability by the Secretary's new plan.

Private companies and their investors are also on notice that until such time as all court challenges are exhausted, a plan that is the subject of such uniform criticism, on two occasions almost a year apart and issued by three of most expert of scientific sources, might not be given by those courts the presumption of legitimacy that would normally flow from an agency determination and that new permits to harvest formerly protected habitat may not necessarily protect those holding them from injunctions or other consequences of harming listed species or their habitat in violation of the law.

Q: Does this mean that all forest management comes to a halt for an undetermined period?

A: No, but site-specific management proposals to alter habitat in areas currently protected under the Northwest Forest Plan that lose their protection due to the owl recovery plan should be subjected to strict scrutiny to avoid risks to the owl or other protected species before they are allowed to go forward until a recovery plan that more clearly meets the scientific and other requirements of the law is in place.

