



# Society for Conservation Biology

The North America Section of a global community of conservation professionals

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August 10, 2007

Kemper McMaster, Field Supervisor  
U.S. Fish and Wildlife Service  
Oregon Fish and Wildlife Office  
2600 SE 98<sup>th</sup> Ave.  
Suite 100  
Portland, OR 97266

**Re: Society for Conservation Biology (SCB) North American Section comments on proposed critical habitat exemptions for the northern spotted owl**

Dear Mr. McMaster,

Please accept the following comments submitted on behalf of the SCB North American Section on the U.S. Fish and Wildlife Service's (FWS) proposed revision of northern spotted owl critical habitat (Federal Register at 72 Fed. Reg. 32450, June 12, 2007).

The SCB is an international professional organization dedicated to promoting the scientific study of the phenomena that affect the maintenance, loss, and restoration of biological diversity. The Society's membership comprises a wide range of experts interested in the conservation and study of biological diversity: resource managers, educators, government and private conservation workers, and students make up the more than 10,000 members world-wide. SCB's mission is to advance the science and practice of conserving the Earth's biological diversity.

Notably, SCB and the American Ornithologists' Union (AOU) were part of a FWS commissioned peer review of the related draft spotted owl recovery plan. Peer reviewers were selected jointly by the societies and the full review was submitted to FWS on July 5, 2007. Based on SCB's review of the proposed critical habitat determination, it is apparent that the scientific flaws noted by peer reviewers of the draft recovery plan were carried forward by FWS into the proposed critical habitat exemptions. This is of concern as the proposed critical habitat determination seeks to exempt 1.5 million acres from protections afforded under the Endangered Species Act at time when the owl is in steep decline due to multiple causes (Anthony et al. 2006). We can find no scientific justification for the combined reductions in habitat proposed under both the draft recovery plan and the critical habitat determination relative to the stronger protections afforded the owl under the Northwest Forest Plan (NWFP).

**Therefore, our main recommendation to FWS is to scrap the draft recovery plan, convene a panel of independent scientists and ecologists to redo the recovery plan, and place on hold related forest policy decisions such as the proposed critical habitat determination until a new recovery plan is completed based on the best available science.**

Because the proposed critical habitat determination is tied to the draft owl recovery plan, we summarize the main findings of the independent peer review and request that FWS consider these as well in the final critical habitat determination. We also provide additional comments regarding cumulative reductions in habitat proposed under the draft recovery plan and critical habitat

determinations relative to the stronger protections afforded the owl under the NWFP. At a minimum, both the critical habitat and recovery measures for the owl should treat the NWFP as a “floor” below which habitat must not be reduced in order to avoid the need for future up-listing the owl to endangered.

#### **SUMMARY OF PEER REVIEW CONDUCTED BY SCB-AOU ON THE DRAFT NORTHERN SPOTTED OWL RECOVERY PLAN**

*The Draft Recovery Plan is unacceptable because:*

- *In Options 1 and 2, habitat protections for the owl are lessened from current NWFP protections at a time when they should be strengthened.*
- *The Recovery Team failed to make use of the best available science and, in fact, appears to have selectivity cited from the available science to justify a reduction in habitat protection.*
- *The Recovery Team was apparently unaware of the combined habitat-demography modeling that was done to evaluate various alternatives under the NWFP. As a result, they put too much emphasis on an outdated model.*
- *Based on current information, far too much emphasis is placed on the adverse effects of barred owl range expansion.*
- *The administrative complexity associated with the implementation of Option 2 renders it unworkable.*

#### **KEY FINDINGS OF PEER REVIEWERS**

- Given the findings of the recent USFWS-sponsored status review (USFWS 2004, Courtney et al. 2004), the results of demographic analyses (Anthony et al. 2006), and the expansion of the barred owl, it seems that the only responsible response to achieve recovery of the Northern spotted owl is to maintain, or strengthen, current conservation actions. Since the primary action to date has been the setting aside of late seral forest into a reserve system, it is logical to maintain, and perhaps increase in size, the dedicated reserve areas.
- In contrast to “best available scientific information” and the results of the NWFP monitoring program (Lint 2005), the Draft Recovery Plan for the Northern Spotted Owl (2007) proposes two options, both of which reduce the amount of habitat set aside in reserves to benefit the spotted owl.
- .....the proposed Plan appears to have ignored, or misunderstood, the most recent scientific findings.
- The proposed options are not supported by any reasonable interpretation of the best available scientific information.
- While the writing is generally clear, the topical coverage reasonably comprehensive, and the tone of many sections of the draft plan reasonable, I found that where this plan diverges substantively from previous conservation plans some of these changes are likely to result in reduced conservation efforts for owls and their habitat. For a species where continued evidence of population declines is so strong (and based on what is arguably the best demographic data set ever collected for a wild animal), these changes give me concern.
- ...despite real reductions in logging on federal lands, there is strong evidence that demography of northern spotted owls across their range remains insufficient to maintain stable populations. Further, owl habitat is continuing to decline at the rate of 2.1% per

- year on federal lands (Table 2.1, page 128). In light of these trends, I would argue that conservation efforts should be strengthened not weakened.
- Northern spotted owls are at risk because old growth forests have been logged and are largely gone, therefore any strategy to recover owls has to focus on conservation and recovery of these old growth forests. To me, that means that the amount of old growth forest must be increased either by conserving existing old growth (unlikely) or managing younger forests so that develop quickly into old forests (more likely). I suspect that if the amount of old growth forest were increased throughout the range of the owl, the risk of owls going extinct would very likely be reduced appreciably.
  - ... the role of early- and mid-seral stage forests in spotted owl habitat was overstated throughout the document.
  - In my view, the primary issue threatening the continued persistence of the owl remains the original loss of habitat through logging that prompted the original listing.
  - ...in many key details this plan appears significantly weakened from previous ones, in particular in its lessened emphasis on late-seral forest, and the broad discretion it allows forest managers to conduct such activities as salvage logging within conserved owl areas.

**DRAFT RECOVERY PLAN – WHICH IS THE FOUNDATION FOR THE CRITICAL HABITAT DETERMINATION – MAY HAVE BEEN THE RESULT OF A FUNDAMENTALLY FLAWED OR OBSTRUCTED PROCESS**

In addition to the scientific flaws noted by peer reviews, according to testimony submitted to the House Natural Resources Committee on May 9 and July 31 by the National Center for Conservation Science & Policy, the process by which the draft recovery plan was developed was a process that was highly irregular, in that the work product of the recovery team and the scientific data on which it was based was set aside and replaced at the direction of officials who specifically demanded that the team use an approach that would not require the protection of as much older forest. These allegations raise concerns that the process by which the recovery plan was drafted – along with the critical habitat proposal – was not based on the best available science and in fact had no substantial evidence to support its conclusions. The Director of the Fish and Wildlife Service, the Inspector General of the Interior Department, and the Government Accountability Office are reviewing a number of controversial decisions that have been affected by over-zealous appointed officials and we suggest that this proposed designation and the proposed recovery plan on which it is based be specifically included in those reviews in order to determine, among other things, whether there is evidence that facts material to a government decision were intentionally excluded from the normal decision-making process, whether the data cited in support of the determinations included data knowingly misapplied or conclusions misrepresented, and whether that normal process was obstructed for any reason, and whether these proposals should therefore be revised as the Director has promised to revise any decisions he finds have been substantively changed by virtue of any such irregular procedures.

**PROPOSED CRITICAL HABITAT AND DRAFT RECOVERY PLAN REPRESENT A CUMULATIVE LOSS TO SPOTTED OWL HABITAT**

According to Taylor et al. (2005), species with appropriate critical habitat determinations are less likely to be declining and over twice as likely to be recovering than those without critical habitat. Thus, protecting adequate levels of critical habitat is key to recovery of threatened species like the northern spotted owl. The proposed reduction in critical habitat by over 1.5 million acres is especially risky as, in combination with other reductions proposed under the draft spotted owl recovery plan, it is likely that the owl will continue to decline thereby requiring future up-listing

to endangered. Because critical habitat is tied to the draft owl recovery plan, FWS need to determine the cumulative effects of habitat reductions under both proposals in addition to other related conservation rollbacks underway in the Pacific Northwest, such as the BLM Western Oregon Plan Revisions and the changes to the Survey and Manage species protections that also benefit the owl. In each of these cases, reductions in protections of old-growth forests will negatively impact spotted owl persistence and recovery. Protection of habitat is particularly important for the owl's survival (Anthony et al. 2006), which is primarily threatened by loss of the mature and old-growth forests it relies on for nesting, roosting, and foraging.

Further, the process by which this proposal was developed appears to be further flawed in terms of the limited basis for it and the elements required to be considered. According to an analysis of the proposed critical habitat determination by Earth Justice Legal Defense Fund, the proposed critical habitat revisions appear to violate the Endangered Species Act in at least six ways. (1) FWS relied on the flawed 2007 Draft Recovery Plan for the Northern Spotted Owl, which itself does not use the best scientific evidence as noted above; (2) FWS ignored the role of recovery in determining the scope of critical habitat; (3) FWS failed to consider the ESA's precautionary principle; (4) FWS failed to consider the impacts of global warming on the owl and its critical habitat; and (5) FWS failed to consider and designate non-federal lands as critical habitat. While there is discretion in the ESA to not designate critical habitat due to economic costs, there is no discretion to fail to consider all appropriate habitat wherever it may be, and to fail to determine whether the lack of such habitat will result in the eventual extinction of the species. Given the difficulty of providing appropriate owl habitat once it is altered for example, by substantial harvesting of older trees, given the continuing decline of the northern spotted owl, the Secretary should now revisit the decision in light of the EJLDF procedural points and those we raise above. Given these factors and the many ecosystem services that such conserved habitat provides, he should also apply the required best available scientific and commercial data in addressing the two other fundamental statutory questions of whether excluding the habitat he now proposes to exclude will, in the long term, result in the extinction of the species and the issue of whether excluding these biologically valuable areas will in fact provide a greater benefit to the species and to the public than including them. SCB requests that FWS and the Secretary examine each point noted above and in the other sections of this comment in reconsidering the proposed critical habitat designation.

### **PROPOSED CRITICAL HABITAT WOULD REDUCE SPOTTED OWL HABITAT BY 20% RELATIVE TO THE CURRENT DESIGNATION AND TO THE NWFP**

The proposed critical habitat exemptions of 1.5 million acres represent a 20% reduction in current critical habitat of the owl, with losses most significant in southwest Oregon. We note that this is the same region where the BLM is revising its forest plans (WOPR) proposing to eliminate protections for late-successional reserves and riparian buffers. These reductions would cumulatively reduce owl habitat below the floor established by the NWFP.

The NWFP was adopted in April 1994 to provide for the viability of the northern spotted owl and hundreds of late-successional associated species (see Thomas et al. 2006). Independent reviews of the NWFP (Courtney et al. 2004, Lint 2005, DellaSala and Williams 2006) have reaffirmed its importance in protecting the old-growth ecosystem upon which spotted owls and a broader suite of late-seral associated species depend. Extensive portions of the NWFP area are currently designated as critical habitat for the northern spotted owl and many would lose this designation.

We note that the National Center for Conservation Science & Policy and the Audubon Society (Washington) jointly submitted comments on the draft owl recovery plan pertaining to the NWFP that are relevant to the critical habitat exemptions. Specifically, these groups provide a detailed analysis of the NWFP arguing that at best, the NWFP “*is a floor or starting point for constructing a scientifically adequate recovery plan and related critical habitat determination.*” SCB supports their analysis and agrees that any reductions in habitat below the NWFP, such as those proposed by both the draft recovery plan and critical habitat, are unacceptable.

## **CLOSING REMARKS**

In closing, we reiterate our concerns that the proposed critical habitat determination appears to violate the provisions of the ESA as it was not based on the best available science, and reduces owl critical habitat by 20% at a time when the species is in steep decline and is experiencing related proposed reductions in habitat (e.g., WORP, draft recovery plan, Survey and Manage). These decisions unfortunately are likely to trigger the need for future up-listing of the owl to endangered. In addition, if this proposal is implemented, it is likely to trigger a violation of the National Forest Management Act as the owl’s viability will be in jeopardy next on national forest lands. We urge FWS to redo the draft recovery plan upon which the critical habitat determination was based and placed these decisions on hold until a plan is adopted that is based on the best available science.

Sincerely,



Reed Noss, Ph. D.  
President  
North America Section  
Society for Conservation Biology

*(John Fitzgerald)*  
John Fitzgerald, J.D.  
Policy Director  
Society for Conservation Biology

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