DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD20

Endangered and Threatened Wildlife and Plants; Proposed Special Rule for the Conservation of the Northern Spotted Owl on Non-Federal Lands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed Special Rule.

SUMMARY: The implementing regulations for threatened wildlife generally incorporate the prohibitions of Section 9 of the Endangered Species Act (Act) of 1973, as amended, for endangered wildlife, except when a ''special rule'' promulgated pursuant to Section 4(d) of the Act has been issued with respect to a particular threatened species. At the time the northern spotted owl, *Strix occidentalis caurina,* (spotted owl) was listed as a threatened species in 1990, the Fish and Wildlife Service (Service) did not promulgate a special section 4(d) rule and, therefore, all of the section 9 prohibitions, including the ''take'' prohibitions, became applicable to the species. Subsequent to the listing of the spotted owl, a Federal Late-Successional and Old-growth (LSOG) forest management strategy (Plan) was developed and then formally adopted on April 13, 1994, in a Record of Decision (ROD) that amended land management plans for Federal forests in northern California, Oregon, and Washington. Although this proposed rule refers to the Federal LSOG forest strategy as the ''Forest Plan'', it is noted that the strategy is not a stand-alone management Plan but rather effected a series of amendments to Forest Service and the Bureau of Land Management planning documents. In recognition of the significant contribution the Plan does make toward spotted owl conservation and management, the Service now proposes a special rule, pursuant to section 4(d) of the Act, to replace the blanket prohibition against incidental take of spotted owls with a narrower, more tailor-made set of standards that reduce prohibitions applicable to timber harvest and related activities on specified non-Federal forest lands in Washington and California.

DATES: Comments from all interested parties must be received by May 18, 1995.

The Service seeks comments from the interested public, agencies, and interest groups on this proposed special rule and the potential environmental effects of its implementation. A Draft Environmental Impact Statement (DEIS) is being developed to accompany this proposed rule and will be published soon after the proposed rule. The end of the comment period on this proposed rule will be extended to coincide with the end of the public comment period on the DEIS.

ADDRESSES: Comments and materials concerning this proposed rule should be sent to Mr. Michael J. Spear, Regional Director, Region 1, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181. The complete file for this proposed rule will be available for public inspection, by appointment during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Curt Smitch, Assistant Regional Director, North Pacific Coast Ecosystem, 3704 Griffin Lane SE, Suite 102, Olympia, Washington 98501 (206/534–9330); or Mr. Gerry Jackson, Deputy Assistant Regional Director, North Pacific Coast Ecosystem, 911 N.E. 11th Avenue, Portland Oregon 97232–4181, (503/231–6159).

SUPPLEMENTARY INFORMATION:

Abstract

The implementing regulations for threatened wildlife generally incorporate the prohibitions of section 9 of the Endangered Species Act (Act) of 1973, as amended, for endangered wildlife, except when a ''special rule'' promulgated pursuant to Section 4(d) of the Act has been issued with respect to a particular threatened species. When the northern spotted owl, *Strix occidentalis caurina,* (spotted owl) was listed as a threatened species in 1990, the Fish and Wildlife Service (Service) did not promulgate a special 4(d) rule. Therefore, all of the Section 9 prohibitions for endangered species were made applicable to the spotted owl throughout its range, including the prohibitions against ''take'' that apply to endangered species under the Act.

Subsequent to the listing of the spotted owl, a new Federal forest management strategy was developed and proposed by the Forest Ecosystem Management Assessment Team (FEMAT), which was established by President Clinton following the April 2, 1993, Forest Conference in Portland, Oregon. FEMAT was established to develop options for the management of Federal LSOG-forest ecosystems in northern California, Oregon, and Washington within the range of the spotted owl. FEMAT outlined those options in the report, *Forest Ecosystem Management: An Ecological, Economic, and Social Assessment,* which drew heavily upon previous scientific studies conducted on the northern spotted owl. On July 1, 1993, the President identified ''Option 9'' in the FEMAT Report as the preferred alternative for managing Federal LSOG-forests in northern California, Oregon, and Washington. The proposed management scenario under Option 9 of FEMAT established a system of late-successional forest and riparian reserves that would, in conjunction with Administratively withdrawn and Congressionally reserved areas, provide the foundation of protected ''old growth'' habitat that would benefit spotted owls, marbled murrelets, salmon and many other old growth associated species; adaptive management areas (AMAs) and surrounding ''matrix'' lands would constitute the remaining forest management designations on Federal lands in the planning area. Future timber harvesting activities on Federal lands within the range of the northern spotted owl were expected to occur primarily in AMAs and Federal lands determined to constitute the ''matrix.''

A draft Supplemental Environmental Impact Statement was issued in July 1993 to assess the environmental impacts of the alternatives which were set forth in the FEMAT Report. A final SEIS was completed in February 1994, and a Record of Decision was signed on April 13, 1994. This process culminated in the formal administrative adoption of Alternative 9 (a revised version of Option 9 as it had been presented in the FEMAT Report), which has now become known, simply, as the Forest Plan or Plan. This Plan provides a firm foundation for the conservation needs of the spotted owl, especially in light of the net addition of approximately 600,000 acres of Federal forest lands to protected reserve status between its original formulation in the FEMAT Report and the Record of Decision. On December 21, 1994, Federal District Court Judge William L. Dwyer, issued his order upholding the adequacy of the Plan. Judge Dwyer said ''The order now entered,* * *, will mark the first time in several years that the owl-habitat forests will be managed by the responsible agencies under a plan found lawful by the courts. It will also mark the first time that the Forest Service and BLM have worked together to preserve ecosystems common to their jurisdictions.''

Despite enhanced owl protection under the final Forest Plan, however, the Service believes that some supplemental support from non-Federal forest lands remains necessary and

advisable for owl conservation in certain parts of the range of the owl.

Based upon the possibility that the preferred alternative of FEMAT (Option 9) would eventually be adopted, the Service published a Notice of Intent (NOI) in the **Federal Register** (58 FR 69132) on December 29, 1993, and sent out a mailer advising the public of its intention to prepare an Environmental Impact Statement (EIS) for a proposed special rule that would ease restrictions for the spotted owl on certain non-Federal forest lands. In response, the Service received and evaluated more than 8,500 public comments. Taking these comments into consideration, and based upon additional analyses, the Service now proposes a special rule that would reduce the prohibition against incidental take of spotted owls in the course of timber harvest and related activities on specified non-Federal forest lands in Washington and California.

For reasons discussed in more detail later, the Service is not including Oregon, at this time, within the geographic scope of this proposed special rule. The Service is aware of ongoing efforts within Oregon between the Governor's office and large and small landowners to fashion an ''Oregon Alternative'' to the Service's proposed action for the State, as set out in the December 29, 1993, NOI. The Service is supportive of this effort and will maintain the regulatory status quo for spotted owls in Oregon in anticipation that an ''Oregon Alternative'' approach to owl conservation will be developed. Thus, by excluding Oregon altogether from this proposed special rule, the Service retains for Oregon the original level of protection against take for the owl established when the species was listed on June 26, 1990.

In assessing the conservation needs of the northern spotted owl on non-Federal lands, the Service was particularly mindful of—(1) The level of protection to be provided the owl under the Federal reserve and riparian buffer systems established under the Forest Plan, as well as the matrix and adaptive management area prescriptions under the Plan; (2) the range, location, and number of spotted owls on non-Federal and Federal lands; (3) recently developed State programs to regulate forest practices to benefit the spotted owl; and (4) emerging non-Federal landowner habitat management and owl conservation strategies such as Habitat Conservation Plans and agreements to avoid the incidental take of owls.

This special rule proposes to replace the currently applicable blanket prohibition against incidental take on non-Federal lands throughout the owls' range with a more particularized set of prohibitions for Washington and California. For the State of Washington, incidental take restrictions would be relaxed for approximately 5.24 million acres of non-Federal land in conifer forests. While only a considerably smaller acreage figure of non-Federal forest land is presently affected by incidental take prohibitions for the spotted owl, the fear of future owl restrictions is a significant concern of forest landowners throughout the range of the spotted owl. This proposed rule would ease incidental take restrictions on designated non-Federal lands by limiting the incidental take prohibition for timber harvest activities to actions that fail to maintain the 70 acres of suitable owl habitat closest to a site center for a spotted owl. By proposing this action, the Service is not implying that incidental take cannot occur until harvest activities approach and actually invade an owl's activity center. Rather, the Service is proposing that, in certain portions of the owl's range, the incidental take of an owl will no longer be a prohibited activity unless it involves harvest activities within an activity center.

Current incidental take restrictions would be retained for those spotted owls whose site centers are located within six designated zones or ''Special Emphasis Areas'' (SEAs) in the State of Washington. The six SEAs include the western portion of the Olympic Peninsula, the Finney Block area, the I–90 Corridor, the Mineral Block area, the Siouxon Creek area and the Columbia Gorge/White Salmon areas. These areas were generally chosen to fill in gaps in protection under the Forest Plan where the Federal land base alone appears currently to be inadequate to provide for the conservation of the owl.

In addition, the Service proposes to implement a ''Local Option Conservation Planning'' program in Washington to provide an opportunity for additional relief from incidental take prohibitions for non-Federal landowners who own between 80 and 5,000 acres of forest lands within an SEA. The Local Option process is envisioned to be the equivalent of a ''short form'' Habitat Conservation Plan. The local option conservation planning process would not apply to those areas where the Service determines that suitable owl habitat (nesting, roosting or foraging habitat) on non-Federal lands within SEAs can reasonably be expected to provide important demographic support for Federal owl reserves. These ''Local Option'' conservation plans would provide non-Federal landowners with the flexibility to develop alternative prescriptions or restrictions for their lands which could achieve a level of protection comparable to the conservation objectives set forth for the owl in this rule.

For the State of California, this proposed rule would recognize the significant conservation benefits accorded the northern spotted owl under California law by easing the Federal prohibition against incidental take from timber harvest activities in most of the Klamath province of that State. The zone in which this would occur would be called the Klamath Province Relief Area. The incidental take prohibition for timber harvests in this Relief Area would be limited to actions which fail to maintain the 70 acres of suitable owl habitat closest to a site center for a spotted owl. Additional relief could be provided to non-Federal landowners in four potential ''California Conservation Planning Areas'' (CCPAs) referred to as the California Coastal Area, Hardwood Region, Wells Mountain-Bully Choop area, and the California Cascades pursuant to the planning process under the California Natural Communities Conservation Planning (NCCP) Act or through completion of a Habitat Conservation Plan (HCP) under Section 10(a)(1)(B) of the Act (Figure 1 to § 17.41(c)).

Except for acreage actually located within owl activity centers, the Service also proposes that small landowners who own no more than 80 acres of forest lands within a given SEA in Washington or one of the four potential CCPAs in California, as of the publication date of this proposed rule in the **Federal Register**, would be relieved of the general prohibition against incidental take. The only exception to this proposal would be for any small landowner who owns any or all of the 70 acres of forested lands closest to an owl site center. The incidental take restriction would continue to apply within such 70 acres.

The Service also proposes to provide landowners within SEAs in Washington or potential CCPAs in California additional flexibility for avoiding incidental take liability if their lands are intermingled with Federal matrix or Adaptive Management Area (AMA) lands. In such situations, non-Federal landowners would be provided the alternative option at their choosing of adopting the final harvest prescriptions delineated for the surrounding Federal matrix or AMA lands, in lieu of management practices which comply with current incidental take restrictions. The one exception to this policy would

be where the adoption of final matrix or AMA harvest prescriptions could result in the incidental take of an owl whose site center is located within a Forest Plan reserve or Congressionally reserved or Administratively withdrawn areas. In such a case, the incidental take restrictions would continue to apply for at least two more years, pending review of the status of owls in affected reserve or withdrawn areas.

For Tribal forest lands in Washington and California, the Service proposes to lift the Federal prohibition against the incidental take of the spotted owl except for harvest activities within the immediate 70 acres around a site center. Timber harvests conducted in accordance with Tribal resource regulations would not be subjected to any additional Federal prohibitions against incidental take of the owl.

Additionally, the Service proposes to include a ''sunset'' provision that would lift the incidental take restrictions within an SEA or CCPA once the owl conservation goals for that area are achieved. The Service also proposes to provide a ''safe harbor'' of certainty for harvest activities within SEAs or CCPAs where more than 40 percent suitable owl habitat would be retained after harvest within an owl's median annual home range. In those instances where the ''safe harbor'' provision would apply, landowners would not be subject to a take prohibition violation under any circumstances should an incidental take of an owl nevertheless occur despite the landowner's efforts to avoid take. The ''safe harbor'' provision would not apply, however, to any timber harvest activities within the closest 70 acres of suitable owl habitat surrounding an owl site center regardless of the percentage of suitable owl habitat left within an owl's median annual home range.

In addition, the proposal sets out a new approach to provide incentives to non-Federal landowners to restore or enhance degraded spotted owl habitat, or to maintain existing suitable owl habitat, without being penalized if their conservation efforts subsequently attract spotted owls.

Definitions

As used in this proposed rule:

''Activity center'' means the closest 70 acres of suitable habitat around the nest tree of a pair of owls or around the primary roost of a non-nesting pair or territorial single owl (see ''site center'').

''Adaptive management area'' means the ten landscape units that were adopted in the April 13, 1994, Record of Decision for development and testing of technical and social approaches to achieving specific ecological, economic, and other social objectives.

''Administratively withdrawn area'' means lands that are excluded from planned or programmed timber harvest under current agency planning documents or the preferred alternative for draft agency planning documents.

''California Conservation Planning Area (CCPA)'' means areas in which the State of California Resources Agency could conduct planning for spotted owls under the auspices of the California Natural Communities Conservation Planning Act (CNCCPA) of 1991.

''Congressionally reserved area'' means those lands with Congressional designations that preclude timber harvest, as well as other Federal lands not administered by the Forest Service or Bureau of Land Management, including National Parks and Monuments, Wild and Scenic Rivers, National Wildlife Refuges, and military reservations.

''Conservation'' as defined in the Endangered Species Act generally means the use of all methods and procedures that are necessary to bring any endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary.

''Demographic support'' refers to the effects on a population from a combination of births and deaths such that the net result is a stable or increasing population. For the spotted owl this would occur through provision and maintenance of: (1) Both suitable and dispersal habitat to support individual owls; (2) small clusters or larger groups of successfully breeding owls; and (3) the successful interaction and movement between individuals and pairs.

''Dispersal'' refers to movements through all habitat types by: (1) juvenile spotted owls from the time they leave their natal area until they establish their own territory; (2) non-territorial single spotted owls; or (3) displaced adults searching for new territories.

''Dispersal habitat'' means forest stands with adequate tree size, structure, and canopy closure to provide—(1) cover for dispersing owls from avian predators; and (2) foraging opportunities during dispersal events.

''Federal reserve'' or ''Forest Plan reserve'' means those Federal lands delineated in the April 13, 1994, Record of Decision in which programmed timber harvest is not allowed and is otherwise severely limited. There are two types of reserves—late-successional reserves, which are designed to produce contiguous blocks of older forest stands, and riparian reserves, which consist of protected strips along the banks of rivers, streams, lakes, and wetlands which act as a buffer between these water bodies and areas where timber harvesting is allowed.

''Habitat Conservation Plan'' (HCP) means an agreement between the U.S. Fish and Wildlife Service and either a private entity, local or county government or State under section 10(a)(1)(B) of the Act that specifies conservation measures that would be implemented in exchange for a permit that would allow the incidental take of a listed species.

''Home range'' means the area a spotted owl uses and traverses in the course of normal activities in fulfilling its biological needs during the course of its life span.

''Incidental Take'' means any taking otherwise prohibited, if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

''Matrix'' means those Federal lands generally available for programmed timber harvest which are outside of the Congressionally reserved and Administratively withdrawn areas, Federal reserves and adaptive management areas as delineated in the Standards and Guidelines adopted in the April 13, 1994, Record of Decision.

''Province'' or ''Physiographic Province'' means one of twelve geographic areas throughout the range of the northern spotted owl which have similar sets of biological and physical characteristics and processes due to effects of climate and geology which result in common patterns of soils and broad-scale vegetative communities.

''Record of Decision'' means the April 13, 1994, *Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl* (USDA/USDI 1994).

''Site Center'' means the actual nest tree of a pair of spotted owls or the primary roost of a non-nesting pair or territorial single owl.

''Special Emphasis Area (SEA)'' means one of six specific areas in the State of Washington where the Service has determined that it would be necessary and advisable to continue to apply broad protection from incidental take to support conservation efforts for the spotted owl.

''Suitable Habitat'' means those areas with the vegetative structure and composition that generally have been found to support successful nesting, roosting, and foraging activities of a territorial single or breeding pair of spotted owls. Suitable habitat is

sometimes referred to as nesting, roosting, and foraging (NRF) habitat.

''Take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct with respect to a spotted owl.

''Threatened Species'' means a plant or wildlife species defined through the Endangered Species Act that is likely to become within the foreseeable future an endangered species throughout all or a significant portion of its range.

''Timber harvest and related activity'' means any activity that would result in the removal or degradation of suitable habitat.

Background

Regulatory History of the Northern Spotted Owl

The Service listed the northern spotted owl as a threatened species on June 26, 1990, because of the past and continued projected loss of suitable habitat throughout its range (55 FR 26114). This habitat loss has been caused primarily by timber harvesting, but has been exacerbated by the effects of catastrophic events such as fire, volcanic eruption, and wind storms.

The inadequacy of regulatory mechanisms existing in 1990 under State and Federal law also contributed to the decision to list the northern spotted owl as a threatened species. During the period immediately prior to listing, when the status of the owl was under review, the annual Federal timber harvest in Oregon and Washington averaged approximately 5 billion board feet per year. Much of that harvest comprised suitable spotted owl habitat. Thus, Federal timber harvest policies at that time contributed significantly to the decline of the owl.

State protection for the owl in 1990 was also inadequate. Since that time, California, Oregon and Washington have all recognized the plight of the owl and have adopted forest management rules designed to protect this threatened species. The degree of protection accorded the northern spotted owl currently varies under State law. The northern spotted owl is listed under Washington law as an endangered species, under Oregon law as threatened, and under California law as a sensitive species.

On January 15, 1992, the Service designated critical habitat for the northern spotted owl (57 FR 1796). The critical habitat designation encompassed 6.9 million acres of Federal land in 190 critical habitat units in the States of California, Oregon, and Washington; non-Federal lands were not included in the critical habitat designation. Of the total acreage that was designated, 20 percent is in California, 47 percent is in Oregon, and 32 percent is in Washington.

Following the April 2, 1993, Forest Conference in Portland, Oregon, President Clinton established a Forest Ecosystem Management Assessment Team (FEMAT) to develop options for the management of Federal LSOG-forest ecosystems to provide habitat that would support stable populations of species associated with late-successional forests, including the northern spotted owl. FEMAT developed ten options for the management of LSOG-forest ecosystems on Federal lands in California, Oregon, and Washington, which are outlined in the Team's report, ''Forest Ecosystem Management: An Ecological, Economic, and Social Assessment'' (USDA et al. 1993). On July 1, 1993, the President identified Option 9 as the preferred alternative for amending the Federal agencies' land management plans with respect to LSOG forest habitat. A modified version of Option 9 was adopted in the April 13, 1994, Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl (ROD). It is based on a system of late-successional reserves, riparian reserves, adaptive management areas, and a matrix of Federal lands interspersed with non-Federal lands. These designations complemented existing Administratively withdrawn and Congressionally reserved lands.

The adoption of the Forest Plan was subsequently upheld in Federal court. On December 21, 1994, Federal District Court Judge William L. Dwyer rejected plaintiffs' challenges and issued an order upholding the President's Forest Plan.

An underlying premise for the President's selection of the Forest Plan was that Federal lands should carry a disproportionately heavier burden for providing for the conservation of the northern spotted owl, enabling an easing of restrictions on incidental take for the owl on large areas of non-Federal lands. President Clinton thus directed the U.S. Fish and Wildlife Service to issue regulations pursuant to section 4(d) of the Act looking to ease, where appropriate, restrictions on the incidental take of spotted owls on non-Federal lands.

On December 29, 1993, the Service published in the **Federal Register** a Notice of Intent (NOI) to prepare an Environmental Impact Statement in support of a 4(d) rule for the spotted owl (58 FR 69132). The NOI spelled out various alternative approaches for a 4(d) rule, including a preferred approach or proposed action. This provided a preliminary opportunity for public input prior to the actual publication of this proposed rule.

Summary of Public Comments on Scoping Notice on 4(d) Rule

The Service received more than 8,500 comments from the public on its scoping notice for a section 4(d) rule EIS for the spotted owl. Most comments received were in response to a January 3, 1994, special mailer sent by the Service to approximately 80,000 recipients. The Service specifically asked for suggestions on issues to be addressed in the 4(d) rule. In general, the comments reinforced issues and concerns identified in previous planning efforts for the spotted owl.

In the scoping notice, the Service sought comments on ten specific issues. The comments received are summarized below, by issue:

(1) Biological, commercial, trade, or other relevant data on the distribution and abundance of the northern spotted owl on non-Federal lands in California, Washington and Oregon.

No new data or information was provided to the Service relative to this issue.

(2) Biological, commercial, trade or other relevant data on the distribution and abundance of the northern spotted owl that identifies the effects of the alternatives for a section 4(d) rule on the northern spotted owl.

No new data or information was provided to the Service relative to this issue.

(3) The scope of the issues that have been identified for the environmental impact statement on a proposed special rule.

In addition to the issues identified in the scoping notice, commenters identified several additional issues for the Service to consider. Several commenters objected to any provision requiring that 40 percent of suitable habitat be retained within the median annual home range circle of an owl located within SEAs, and, because it means that 60 percent of suitable habitat within a home range may be lost, requested an explanation of the biological basis for such a provision. They also requested that the Service consider how habitat modification on non-Federal land will affect owls on adjacent Federal lands.

Comments from non-Federal landowners requested that the Service consider the possible economic benefits of a variety of silvicultural regulations

to protect owl habitat. They also asked that the Service evaluate whether the SEA concept fully takes into account the contributions already provided by State agencies and those already in place on Federal lands, and whether the regulatory burden of the SEAs is disproportionate to the benefits.

(4) The range of alternatives that have been identified for the environmental impact statement on a proposed special rule.

A number of commenters provided suggestions for additional alternatives for Service consideration. These included requests to increase or relieve the prohibitions against incidental take, to consider the development of a program based entirely on voluntary participation by forest land managers, to not use SEAs and use only 70 acre owl circles rangewide, and to provide incidental take protection only to landowners who sell to domestic markets. Some commenters requested that the Service provide an alternative with incentives for growing habitat, or to buy or exchange land instead of promulgating a section 4(d) rule. Another suggestion was to transplant spotted owls rather than use a special rule to provide for connectivity, and depend on Federal lands to provide the land base for connectivity.

Other suggested alternatives included using existing exceptions to prohibitions, such as the HCP process, in combination with a final recovery plan for the owl; protecting previously proposed critical habitat on private lands in addition to, or instead of, the SEAs; and applying the 50–11–40 rule to SEAs in addition to, or instead of, retaining 40 percent of suitable habitat within a home range.

Modifications of the alternatives were also suggested. Some examples include replacing the SEAs in Washington with the areas proposed to the Washington Forest Practices Board in a report by the Spotted Owl Scientific Advisory Group (SAG report), to add an SEA for southwestern Washington, and to reduce or exclude the Olympic Peninsula SEA.

Comments specific to California alternatives included requests to provide a separate 4(d) rule for California; to apply the Washington/Oregon approach with SEAs to California; to repeal existing owl rules and designate specific ''no take'' areas; and to maintain existing prohibitions of take and adopt the California Board of Forestry's new late-successional forest rules.

(5) Input on how suitable habitat for the marbled murrelet should be identified and how it should be protected, and data on marbled murrelet distribution and abundance on non-Federal lands.

Numerous comments were received on the marbled murrelet, with most stating that it is inappropriate to include the murrelet in the regulatory process for the spotted owl because not enough information about murrelets is available at this time to attempt a regulatory definition of incidental take, and that any rule for the murrelet should be done separately. One commenter stated that the Service should consider adopting an interim 4(d) rule for marbled murrelets that can be refined at a later date because they are associated with the same forest ecosystem as the spotted owl, and that all suitable murrelet habitat should be addressed including marine habitat. Another suggested that, in identifying marbled murrelet habitat, the emphasis should be on a definition that recognizes large contiguous areas of habitat capable of supporting large numbers of birds, and not on defining the lowest possible quantity and stand size used.

(6) Input on the use of ''local options'' to allow individuals to propose adjustment to prohibitions against take of northern spotted owls without going through the normal habitat conservation planning process.

The potential use of the local option plan was responded to favorably by many commenters. Most said that a ''local option'' plan should be included as an additional tool to protect owls and to provide landowner flexibility, and that these should provide the same legal protection as HCPs. Others stated that the rule should provide flexibility for applying local options based on the expertise and knowledge of State forestry associations, State governments, and forest landowners.

(7) Consideration of a small landowner exemption for non-commercial forest land of ten acres or less.

Many commenters addressed this issue with the majority recommending that the Service carefully examine and explain the rationale and biological basis for such an exemption, and suggesting that any provision to have less restrictive measures for small landowners would unfairly shift the burden of responsibility to the larger landowners. Others suggested that such an exemption may tend to break large ownerships into smaller ownerships. Some expressed the view that while appealing, it may set up an arbitrary distinction between landowners based on size, and that the 10 acre size specified in the scoping notice was too small to be meaningful.

(8) Boundaries of the SEAs in the proposed action, including the impacts and effects of alternative boundaries.

Few suggestions were received relative to specific boundary changes. Many comments were received regarding the number of SEAs, the designation or lack of designation of specific SEAs, and the general use of the SEA concept. Among the comments specific to the boundaries was the suggestion that the Mineral Block and I–90 Corridor SEAs should extend no farther west than necessary to provide reasonable connectivity between the Federal conservation areas to the north and south.

Regarding the Olympic Peninsula SEA, comments included the assertion that there should be no SEA on the Olympic Peninsula because Federal lands should be relied on for owl conservation in this area. Another suggestion was that the Service move the southern boundary of the proposed Olympic Peninsula SEA northward to run east and west from the southern boundary of the Olympia National Forest. It was further suggested that only the State of Washington's Olympic Experimental Forest be included in the SEA for the Olympic Peninsula, and that this SEA be rescinded following the approval of an HCP for the State Forest.

Many commenters were specifically concerned about the failure to designate the White Salmon landscape as an SEA to provide demographic interchange between owls on the Yakima Indian Reservation and Federal lands in the eastern Washington Cascades. Other commenters noted that there is no demonstrated need for an SEA in the White Salmon or Hood River areas.

Many commenters asked that the Service provide the scientific basis for determining the configurations and boundaries of the SEAs. There were further suggestions that for SEA boundaries, the rule must specify the requirements of ''owl shadows'' (restrictions on adjacent lands near an owl site center) both within and outside of SEA's. Some commenters stated that the Service should eliminate all SEAs as they would provide further harvest restrictions which would be unduly burdensome, and that they go beyond the Act by mandating conservation measures on privately owned land.

(9) Possible mitigation measures, such as multi-species Habitat Conservation Plans or conservation agreements that provide long-term enforceable and protective land management prescriptions for non-Federal lands.

Several commenters referenced the use of the HCP process, requesting that the Service clarify the relationship

between HCPs and the 4(d) rule. Specifically, they asked, in the absence of an SEA designation, what guarantees would there be that habitat will be protected between the time the 4(d) rule goes into effect (and relief is granted) and the time HCPs are completed. There was also concern expressed that there may be a lack of incentives for other landowners to develop HCPs if there is no SEA designated. Others suggested the 4(d) rule state that it will not apply to lands covered by an approved HCP. Specific to California were recommendations that the Service encourage the State to continue to recognize Federally approved HCPs as a valid means of complying with regulations the State adopts as a result of the 4(d) process.

(10) Retention of Federal incidental take restrictions for Indian forest lands included within the boundary of an SEA.

Many comments were received regarding this issue, and most suggested that it may be inappropriate to impose Federal take prohibitions on tribal lands. One commenter stated that in promulgating the special rule, the Service should direct attention to the special status of Indian tribal lands as distinct and separate in treatment from other non-Federal State and private lands; the Service should adopt a special rule that exempts Indian forest lands from the prohibitions against incidental take, including any that may be in SEAs.

Some proponents of owl protection stated that the Service should not lift take prohibitions on tribal lands in the absence of criteria to ensure that the owl is adequately protected by tribal management practices. They noted that progress on the part of the tribes is variable, and this should be evaluated before lifting restrictions within SEAs. Others commented that the special rule should ensure that measures governing incidental take of the owl on Indian forest lands contribute to the conservation of the species.

In addition to the ten issues for which the Service requested input, comments were received on numerous other issues relative to the proposed action. Three general areas of interest were common in the comments from non-industrial landowners—(1) the proposed section 4(d) rule was a disincentive to grow habitat for spotted owls and to practice good silviculture; (2) the proposed rule represented an unconstitutional taking of private property and that private landowners should be compensated; and (3) the proposed 4(d) rule places an unfair burden on non-Federal lands and actually provides little relief to private lands.

Comments from industrial landowners included a request for ''safe harbor'' from prosecution if the requirements of the 4(d) rule were met and more that 40 percent suitable habitat was left within an owl circle after harvest; and the suggestion that the 4(d) rule assist in addressing the issue of access across Federal lands to non-Federal lands. Concern also was expressed about potential conflict with anti-trust laws when implementing, among several landowners, the requirement that 40 percent suitable habitat be left within a home range circle, and some asked that an anti-trust exemption be provided for multiple landowners who have to deal with landscape issues. One commenter also asserted that the creation of SEAs is a *de facto* designation of critical habitat that must comply with the requirements of § 4(B)(2). Several commenters stated that there is no legal basis under the Act for burdening private lands with recovery of a threatened species, and that the 4(d) rule was essentially a recovery mechanism being forced on private lands.

Proponents of spotted owl protection alleged that the scientific basis for the proposed action is unclear, and it is particularly unclear in how it relates to the recovery standards and objectives for the owl. They suggested that any special rule for the spotted owl must be part of a coordinated recovery approach among all Federal agencies with responsibility for the owl. There were numerous references to the SAG report, and that the special rule should provide the level of protection as proposed in the SAG report.

Several commenters asked that the rule provide clearer definitions for ''take'' and ''suitable habitat.'' There were requests for information on the land ownership within SEAs, the number of owls present, and the anticipated level of incidental take. Others also requested information regarding the specific acreage of State and private lands off limits to harvest under the proposed action. There also were questions about how the rule would describe and determine the 70 acres to be protected around active spotted owl nests outside of SEAs.

After reviewing these public comments, as well as other owl management strategies and analyses, the Service now proposes this special rule in response to the President's directive to review the blanket set of incidental take prohibitions for the northern spotted owl that has been in effect since the listing. In particular, this proposed rule would relax incidental take restrictions for the owl for timber harvests for certain non-Federal lands in Washington and northern California. This proposed special rule excludes Oregon, however, and does not propose any changes in the regulatory prohibitions to protect the owl which are currently applicable within that State. In March and December 1994, the Service received letters from the Oregon Congressional Delegation requesting that further work on a 4(d) rule for Oregon be suspended to provide an opportunity for consensus to emerge among State officials and private landowners on a strategy for the conservation of the spotted owl. Recognizing the benefits that such a consensus approach offers, the Service agreed in May 1994, to suspend further work on a federally developed 4(d) special rule proposal for Oregon in order to encourage the development of a ''stakeholder'' based ''Oregon Alternative''.

The Governor's office in Oregon has taken the lead in working cooperatively with non-Federal landowners through the Oregon Forest Industries Council, Oregon Small Woodlands Association, Northwest Forestry Association, Douglas County, and others to develop an alternative owl conservation strategy. The Service is supportive of this approach and is willing to review and consider any State conservation proposal which results from this process.

Under the existing regulatory structure implementing section 4(d) of the Endangered Species Act, each section 4(d) ''special rule'' for a threatened species must contain all of the applicable prohibitions and exceptions for that species throughout its range (50 CFR 17.31(c)). Thus, in the past, Oregon would have been included in this proposed 4(d) rule, even if only to preserve the current regulatory status quo protecting the spotted owl in Oregon.

In reviewing the request for exclusion from Oregon, the Service has assessed whether it would be advantageous to adopt a new approach for dealing with special rule situations in the future by authorizing the revision of a listing of a threatened species through the subsequent publication of a special rule that covers only part of, but not all of, the range of the species. Under this approach, the general prohibitions and exceptions applicable to threatened species not covered by special rules would continue to apply in that part of the range of the species not included under the provisions of a subsequent special rule. After consideration of the

relevant factors on this matter, the Service has decided to adopt this new approach for special rules and is simultaneously proposing additional technical amendments to 50 CFR 17.11 and 50 CFR 1731(c) to accomplish this change.

In the specific case of the northern spotted owl, the owl was originally listed as threatened without a special rule, and is subject to the same general prohibitions and exceptions which are applicable to endangered species pursuant to the current provisions of 50 CFR 17.31(a). These general prohibitions include a rangewide prohibition against the incidental take or harm of an owl. These prohibitions apply throughout the owl's range, including the State of Oregon. The Service now proposes a section 4(d) special rule for the owl that applies only to the States of Washington and California. Because the proposal for a special rule only encompasses Washington and California, under its current formulation owls in Oregon would remain fully protected against incidental take or harm under the prohibitions established for the owl when it was originally listed. As previously noted, the Service is presently proposing the requisite technical changes to 50 CFR 17.11 and 50 CFR 17.31(c), as discussed above, to allow for the issuance of a special rule that applies to only part of the range of a threatened species like the spotted owl, while retaining the original protective prohibitions for the remainder of the species' range in Oregon.

If a new ''Oregon Alternative'' proposal for the owl is subsequently developed which is found to be consistent with the requirements of the Act, the Service will initiate an analysis of the new proposal under the National Environmental Policy Act and initiate appropriate regulatory proceedings at that time.

Section 4(d) of the Endangered Species Act

The scope and authority for this proposed rule stems from section 4(d) of the Act, which grants the Secretary of the Interior broad administrative discretion to promulgate regulations that he deems to be necessary and advisable to meet the conservation objectives for a threatened species. The section also confers authority to the Secretary to apply to a threatened species any or all of the prohibitions against take that the Act makes expressly applicable to endangered species. The pertinent parts of section 4(d) provide:

* * * Whenever any species is listed as a threatened species pursuant to subsection (C) of this section, the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of such species. The Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1) . . . with respect to endangered species.* * *

As applied, this provision empowers the Service to promulgate a special rule which adopts species-specific protective regulations upon listing a species as threatened. Such a special rule may include imposition of the section 9(a) prohibition against ''take,'' in some or all of its particular manifestations, and in all or a portion of the species' range, as well as other protective measures. While Congress expressly mandated certain protections for endangered species by statute (the section 9(a)(1) prohibitions), it intended to provide the Service with flexibility in determining what protections are necessary and advisable for threatened species. Section 4(d) is that grant of rulemaking authority, and it provides the Secretary with broad discretion to adopt regulations for the conservation of threatened species.

In many circumstances the Service declines to issue a special rule for a threatened species at the time it is listed, often because the Service does not have sufficiently specific knowledge or the resources necessary to develop a tailor-made rule. In this event, the general threatened species regulations at 50 CFR 17.31 come into effect, which provide for automatic application to threatened species of the prohibitions the Act itself makes applicable to endangered species. These ''blanket'' prohibitions act as a ''safety net'' for threatened species until such time as the Service determines that it is appropriate to issue a special rule for the species.

This latter course has been followed with respect to the northern spotted owl. When the species was listed as threatened in June of 1990, the Service did not promulgate a species-specific special take rule under Rule 4(d), and thus the blanket prohibitions were triggered into effect. The Service now has determined that it is appropriate to issue a special rule tailor-made for this species, based on the Service's more particularized knowledge about the respective conservation needs of the owl across the various portions of its range, and the change in LSOG-forest management occasioned by adoption of the Forest Plan. Because this proposed rule does not involve regulated take, *e.g.*, authorization of private predator control or sport seasons, the provisions of section 3(3) regarding examination of population pressures are not invoked.

The adoption of the Forest Plan—a comprehensive, interagency strategy for management of Federal-LSOG forests in the owl's range designating nearly 7.5 million acres as late-successional reserves—is the major predicate for the Service's proposal of this special rule for the owl. Upon issuing the Biological Opinion on the Forest Plan, the Service stated that the plan ''will accomplish or exceed the standards expected for the Federal contribution to recovery of the northern spotted owl and assurance of adequate habitat for its reproduction and dispersal.'' Thus, the Forest Plan is the primary foundation block for owl recovery. This proposed rule would complement the Forest Plan and provide for the conservation of the owl by retaining taking prohibitions on non-Federal lands in a manner designed to build on the protections the Forest Plan has provided. Further, the Service has concluded that the owl take prohibitions that would no longer apply under this proposed rule are no longer either necessary or advisable to provide for the conservation of the owl, especially in light of the Forest Plan's adoption.

In addition, as has been the case in other section 4(d) regulations, the proposed rule ultimately would promote overall owl recovery efforts in other ways. For example, with respect to a 4(d) rule issued for the threatened population of gray wolves (*Canis lupus*) in Minnesota, the Service determined that a government-implemented depredation control program that includes the possibility of lethal control measures would alleviate a source of public hostility to the wolf and would, therefore, be protective of the species (see 50 CFR 17.40(d)). For the Louisiana black bear (*Ursus americanus luteolus*), the Service promulgated a regulation under section 4(d) that authorized the unintentional take of bear incidental to normal forest practices so long as suitable habitat diversity for the bear was maintained (see 50 CFR 17.40(i); 56 FR 588, 593). As another instance, the Service has proposed to authorize the take of the threatened coastal California gnatcatcher (*Polioptila californica californica*) incidental to land use activities conducted in accordance with a State of California-sponsored Natural Community Conservation Plan (58 FR 16758). In the case of the northern spotted owl, the Service is coordinating applicability of the take prohibition with the comprehensive management strategy in the Forest Plan and the

initiation of a comprehensive campaign to encourage Habitat Conservation Planning in key portions of the owl's range.

Generally, incidental take could involve either the harm or harassment of a spotted owl. The harassment of the northern spotted owl would occur through disturbance of active nesting pairs or territorial single owls within an activity center; harm would result from significant owl habitat removal around and beyond spotted owl site centers.

Incidental Take of Spotted Owls: ''Harassment''

Timber harvest and related activities that disturb the breeding and nesting functions of spotted owls within activity centers during the breeding season can be considered incidental harassment of individual spotted owls. Incidental harassment may include activities that could result in disturbance of nesting spotted owls or the abandonment of eggs, nestlings, or fledgling spotted owls. More specifically, incidental harassment of spotted owls generally can include harvest activities that occur within the closest 70 acres of suitable habitat surrounding a site center during the owl's reproductive period. (The reproductive period generally is between March 1 and September 30 of each year. These dates may be modified where credible scientific information establishes a different time period for a given area.) Actions with the potential to disturb nesting spotted owls include, but are not limited to, harvest related activities such as felling, bucking, and yarding; road construction; and blasting.

A study by Miller (1989) examined the area used by fledgling spotted owl juveniles in Oregon. Radio-telemetry data showed that the average amount of nesting, roosting, and foraging habitat used by fledgling spotted owls prior to dispersal was approximately 70 acres in size. Under existing conditions in many areas, these activity centers are seldom evenly distributed around a nest tree. Mortality rates for juvenile spotted owls are significantly higher than for adults (Forsman *et al.* 1984, Gutierrez *et al.* 1985, Miller 1989). Studies of juvenile dispersal in Oregon and California indicated that few of the juvenile spotted owls survived to reproduce (Miller 1989, Gutierrez *et al.* 1985). These research studies all reported very high mortality during pre-dispersal.

Based on this and other information, the Service believes that the maintenance of the closest 70 acres of existing suitable (nesting, roosting, and foraging) habitat surrounding the nest tree will contribute to a secure core area and is crucial to maximize fledgling success and to provide a partial buffer against disturbance around the site center. To avoid harassment, resident spotted owls are considered to be nesting unless surveys conducted during the breeding season indicate that not to be the case.

Incidental Take of Spotted Owls: ''Harm''

To successfully reproduce and maintain populations, studies have suggested spotted owls require substantial quantities of suitable (nesting, roosting, and foraging) habitat arrayed around their site centers.

A number of radio-telemetry studies have described the quantity and characteristics of habitat used by spotted owls. Studies by Hayes *et al.* (1989) found a strong positive relationship between the abundance of spotted owls and the percentage of older forests in the study area. A similar analysis was performed on data collected by Bart and Forsman (1992). The results showed that the number of spotted owls per square mile, pairs of owls per square mile, young per square mile, and young per pair increased with increasing amounts of older forest within the study area. Productivity (number of young fledged per pair) increased significantly with increasing amounts of older forest. Productivity in areas with greater than 60 percent older forest was approximately three times higher than productivity in areas with less than 20 percent older forest.

Documentation in the 1990 Status Review of the Northern Spotted Owl (USDI 1990a) indicates that productivity per pair is lowest in areas with small amounts of older forest. This strongly suggests that, even if some spotted owls persist in such areas, there is reason to believe they are not reproducing and surviving at replacement levels.

The above research findings have supported the determination in the past that reduced quantities of suitable habitat are likely to result in lower spotted owl abundance and productivity rates. It has also been suggested that a significant reduction of nesting, roosting, and foraging habitat within the median annual home range of a spotted owl pair or resident single creates a much higher risk of adverse effects that actually kill or injure owls by significantly impairing essential behavioral patterns, including breeding, feeding, and/or sheltering. These are the primary elements of effects that ultimately can cause harm to, and the incidental take of, spotted owls.

Recognizing the need to assist the public in avoiding the incidental take of listed species, the Fish and Wildlife Service and the National Marine Fisheries Service (NMFS) issued a joint policy statement on July 1, 1994, committing the agencies to provide as much guidance and assistance to the general public as possible so as to avoid liability under the ESA for incidental takings (59 FR 34272, 1994). The policy statement also committed the agencies to designate in future listing packages a key contact person within either the Service or NMFS, as appropriate, to answer incidental take questions from the general public.

In the particular case of the spotted owl, the Service has encouraged the public to conduct owl surveys of property proposed for harvest or development, as a primary means of avoiding harassment or harm to an owl. The Service has recommended that such surveys be conducted according to a March 17, 1992, Service-endorsed survey protocol (USFWS 1992), available upon request from the FWS Ecological Services State Offices listed below:

Sacramento Field Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite E–1803, Sacramento, California 95825, 916–978–4866, Attn: Field Supervisor

Oregon State Office, U.S. Fish and Wildlife Service, 2600 S.E. 98th Avenue, Suite 100, Portland, Oregon 97266, 503–231–6179, Attn: Field Supervisor

Washington State Office, U.S. Fish and Wildlife Service, 3704 Griffin Lane S.E., Suite 102, Olympia, Washington 98501–2192, 206–753–9440, Attn: Field Supervisor

Biology of the Northern Spotted Owl

The spotted owl is a long-lived bird that has a high degree of nest-site fidelity within an established territory. This proposed rule incorporates, by reference, recent documents addressing the biology and ecology of the spotted owl, its habitat, and associated management strategies in Washington, Oregon, and California, including: the final rules listing the spotted owl as threatened and designating its critical habitat; the Interagency Scientific Committee (ISC) report (Thomas *et al.* 1990); the Scientific Analysis Team report (Thomas *et al.* 1993); the final draft Recovery Plan for the Northern Spotted Owl (USDI 1992); the Forest Ecosystem Management Assessment Team (FEMAT) report (USDA *et al.* 1993); the supporting documents for the Forest Plan (USDA/USDI 1994 a and b); and the Contribution of Federal and Non-Federal Habitat to Persistence of the Northern Spotted Owl on the Olympic Peninsula, Washington

(Holthausen *et al.* 1994). The proposed rule also considered the Washington Spotted Owl Scientific Advisory Group reports (Hanson *et al.* 1993 and Buchanan *et al.* 1994).

The range of the spotted owl has been divided into 12 physiographic provinces (USDA/USDI 1994a): the Eastern and Western Cascades, Western Lowlands, and Olympic Peninsula Provinces in Washington; the Eastern and Western Cascades, Coast Range, Willamette Valley, and Klamath Provinces in Oregon; and the Klamath, Coast, and Cascades Provinces in California. The Klamath province was divided into two subprovinces by State—the Oregon Klamath Province and the California Klamath Province—even though the two provinces are part of the same geographic area (Figure 4 to § 17.41(c)).

Habitat Characteristics

Northern spotted owls generally have large home ranges and use large tracts of land containing significant acreage of older forest to meet their biological needs. The median annual home range size of a northern spotted owl, which varies in size from province to province, is approximated by a circle centered on an owl site center. Estimated median annual home range sizes represent the area used by half of the spotted owl pairs or resident singles studied to date within each province to meet their annual life history needs.

Home range sizes were estimated by analyzing radio-telemetry home range data from studies conducted on the annual movements of spotted owl pairs, referenced in the 1990 Status Review (1990a) and the Interagency Scientific Committee report (Thomas *et al.* 1990).

Based on studies of owl habitat preferences, including habitat structure and use and prey preference throughout the range of the owl, spotted owl habitat consists of four components: (1) Nesting, (2) roosting, (3) foraging, and (4) dispersal. Although this habitat is variable over the range of the spotted owl, some general attributes are common to the owl's life-history requirements throughout its range. The age of a forest is not as important for determining habitat suitability for the northern spotted owl as the structure and composition of the forest. Northern interior forests typically may require 150 to 200 years to attain the attributes of nesting and roosting habitat; however, characteristics of nesting and roosting habitat are sometimes found in younger forests, usually those with significant remnant trees from earlier late-successional stands.

The attributes of superior nesting and roosting habitat typically include a moderate to high canopy closure (60 to 80 percent closure); a multi-layered, multi-species canopy with large overstory trees; a high incidence of large trees with various deformities (e.g., large cavities, broken tops, mistletoe infections, and debris accumulations); large accumulations of fallen trees and other debris; and sufficient open space below the canopy for owls to fly (Thomas, *et al.* 1990).

Spotted owls use a wider array of forest types for foraging, including more open and fragmented habitat. Habitat that meets the spotted owl's need for nesting and roosting also provides foraging habitat. However, some habitat that supports foraging may be inadequate for nesting and roosting. In much of the species' northern range, large, dense forests are also chosen as foraging habitat, probably because they provide relatively high densities of favored prey, the northern flying squirrel (*Glaucomys sabrinus*), as well as cover from predators. Because much of the flying squirrel's diet is fungal material, old decadent forests provide superior foraging habitat for owls. In southern, lower-elevation portions of the owl's range, the species often forages along the edges of dense forests and in more open forests, preying on the dusky-footed woodrat (*Neotoma fuscipes*).

In general terms, suitable habitat means those areas with the vegetative structure and composition necessary to provide for successful nesting, roosting and foraging activities sufficient to support a territorial single or breeding pair of spotted owls. Suitable habitat is sometime referred to as nesting, roosting and foraging (NRF) habitat.

Although habitat that allows spotted owls to disperse may be unsuitable for nesting, roosting, or foraging, it provides an important linkage among blocks of nesting habitat both locally and over the range of the northern spotted owl. This linkage is essential to the conservation of the spotted owl. Dispersal habitat, at a minimum, consists of forest stands with adequate tree size and canopy closure to provide some degree of protection to spotted owls from avian predators and to allow the owls to forage at least occasionally.

Suitable and dispersal habitat vary by province and are described separately under the discussion of each province in the following section.

Discussion of Spotted Owl Provinces by State

As previously noted, the range of the northern spotted owl has been subdivided into 12 separate provinces (Figure 4 to § 17.41(c)). For purposes of this rule, the Klamath province has been divided into two provinces by State—the California Klamath province and the Oregon Klamath province—even though the two provinces are part of the same geographic area. In California, the three provinces are the California Cascades, California Klamath, and California Coast. The Oregon Coast Ranges, Willamette Valley, Oregon Klamath, Western Oregon Cascades, and Eastern Oregon Cascades constitute the five provinces of Oregon. The four Washington provinces are the Eastern Washington Cascades, Western Washington Cascades, Western Washington Lowlands, and the Olympic Peninsula. Only the seven provinces in Washington and California are the subject of incidental take prohibition modifications under this proposed rule and will therefore be discussed in more detail below.

Washington

1. Washington Olympic Peninsula Province

The Washington Olympic Peninsula province is bordered by the Pacific Ocean on the west, the Straits of Juan de Fuca on the north, Hood Canal on the east, and State Highway 12 to the south (Figure 4 to § 17.41(c)). Of the three million acres in the province, approximately 51 percent are in Federal ownership. The central portion of the province is high, mountainous terrain, surrounded by lower elevation forest that provides habitat for the spotted owl. Almost all Federal lands on the Peninsula have either been designated as a late successional or riparian reserves under the Forest Plan or have been Congressionally withdrawn from timber harvest; only 8,400 acres of Federal forest land on the Peninsula are available for programmed timber harvest. In general, the province is demographically isolated from other parts of the owl's range. Natural catastrophic events such as windstorms and wildfires are threats that have the capability of destroying thousands of acres of habitat.

The recent report by Holthausen *et al.* concluded that ''* * * it is likely, but not assured, that a stable population of owls would be maintained * * *'' on Federal lands in the Olympic Peninsula Province. However, the report also notes it would be ''unlikely'' that owls would persist on ''* * * the western coastal strip of the National Park, * * *'' if non-Federal habitat on the western side of the Peninsula were excluded from current Federal protection for owls. The report went on to explain that ''the retention of non-Federal habitat in the

western portion of the peninsula was particularly significant and provided for a larger area of core habitat on Federal land in model analyses. In addition, the retention of this habitat would likely increase the chances of maintaining a population on the coastal strip of the Olympic National Park.'' When comparing the relative value of an SEA on the western side of the Peninsula with a possible SEA on the northern side of the Peninsula, the report noted that the western SEA ''made a much greater contribution to owl numbers and occupancy rates than did the northern SEA * * *. Mean numbers of pairs over the 100-year simulation was as large with the western SEA alone as with both SEAs.'' Thus, non-Federal lands on the northern portion of the Peninsula were not viewed as having any appreciable capability of making a significant contribution to the long-term conservation of the spotted owl on the Olympic Peninsula.

Finally, the report stated that attempts to maintain a ''habitat connection across southwestern Washington * * * would have little effect on the status of the owl population on the Peninsula if that population was stable or nearly stable.'' In other words, recent analysis suggests that the likelihood of addressing past concerns about the need to connect the Olympic Peninsula owl population to southwestern Washington owls in order to maintain a viable population is very low, given current conditions, especially when relying on the application of incidental take prohibitions. According to Holthausen, et. al, ''* * * the populations of owls on the Peninsula is sufficiently large to avoid any short to mid-term loss of genetic variation, * * *'' Except for the western portion of the Peninsula where non-Federal lands are still important, the major problem for owls on the Peninsula is the past loss of suitable habitat on Federal lands.

a. *NRF Habitat.* NRF habitat on the Olympic Peninsula consists, as a general matter, of coniferous or mixed coniferous/hardwood forest with multiple canopy layers; multiple large overstory conifers greater than 20 inches in diameter at breast height (dbh); and total canopy closure among dominant, co-dominant and understory trees of greater than 60 percent.

b. *Dispersal Habitat.* Dispersal habitat on the Olympic Peninsula consists, as a general matter, of coniferous or mixed coniferous/hardwood forest with smaller dominant trees or lower canopy closure than NRF habitat; multiple canopy layers of multiple large overstory conifers greater than 10 inches dbh; and a total canopy closure among dominant, co-dominant and understory trees of greater than 60 percent.

2. Western Washington Lowlands Province

This province consists of the lowlands outside of the Olympic Province that extend east from the Pacific Ocean to the western foothills of the Washington Cascades (Figure 4 to § 17.41(c)). The Canadian border forms the northern boundary and the Columbia River the southern boundary of the province. Forest lands in the north and central portions of the province along Puget Sound have been converted to agricultural, industrial and urban areas. The southwestern portion is dominated by commercial tree farming. Of the 6.5 million acres within this province, only one percent is under Federal management.

a. *NRF Habitat.* NRF habitat in the Western Washington Lowlands consists, as a general matter, of coniferous or mixed coniferous/hardwood forest with multiple canopy layers; multiple large overstory conifers greater than 20 inches dbh; and total canopy closure among dominant, co-dominant and understory trees of greater than 60 percent.

b. *Dispersal Habitat.* Dispersal habitat in the Western Washington Lowlands consists, as a general matter, of coniferous or mixed coniferous/hardwood forest with smaller dominant trees or lower canopy closure than NRF habitat; multiple canopy layers of multiple large overstory conifers greater than 10 inches dbh; and a total canopy closure among dominant, co-dominant and understory trees of greater than 60 percent.

Spotted owls in this province have extremely low population levels due to isolation of populations within the province and limited nesting, roosting, and foraging habitat. The limited amount of habitat in this province also contributes to the demographic isolation of the Olympic Peninsula Province. As noted previously in the discussion on the Olympic Peninsula, however, the recent study by Holthausen *et al.* suggested that even substantial conservation efforts in Southwest Washington would be unlikely to make any meaningful contribution to maintaining a stable, long-term population of owls on the Olympic Peninsula. Thus, while Southwest Washington is important as part of the historic range of the owl, the continued application of blanket incidental take prohibitions to the exceptionally limited suitable habitat that still exists there makes any contribution to owls on the Olympic Peninsula minimal at best.

Currently, the Service is attempting to address these conservation opportunity limitations through a creative new approach which targets the development of comprehensive multi-species Habitat Conservation Plans with several of the large landowners in this province. The Service has premised this cooperative approach, as opposed to designating this area as a Special Emphasis Area, on the positive commitments it has received from major landowners in this region to negotiate comprehensive HCPs. In addition, one of the landowners has entered into a ''take avoidance'' agreement while working on their HCP. The take avoidance agreement insures that no owls will be lost as the result of timber harvest during the period in which the HCP is being developed.

3. Western Washington Cascades Province

The Western Washington Cascades province occupies the land west of the Cascades crest, from the Columbia River north to the Canadian Border and west to the Western Washington Lowland province (Figure 4 to § 17.41(c)). This province contains about 6.1 million acres of land, of which approximately 61 percent is in Federal ownership. Most of the non-federal lands occur along the western edge of the province and along the major mountain passes in checkerboard ownership with Federal lands.

a. *NRF Habitat.* NRF habitat in the Western Washington Cascades Province consists, as a general matter, of coniferous or mixed coniferous/hardwood forest with multiple canopy layers; multiple large overstory conifers greater than 20 inches dbh; and total canopy closure among dominant, co-dominant and understory trees of greater than 60 percent.

b. *Dispersal Habitat.* Dispersal habitat in the Western Washington Cascades Province consists, as a general matter, of coniferous or mixed coniferous/hardwood forest with smaller dominant trees or lower canopy closure than NRF habitat; multiple canopy layers of multiple large overstory conifers greater than 10 inches dbh; and a total canopy closure among dominant, co-dominant and understory trees of greater than 60 percent.

A Habitat Conservation Plan (HCP) was recently approved by the Fish and Wildlife Service to cover Murray Pacific Corporation lands in Lewis County in this Province. The permit for this 100-year Habitat Conservation Plan for the northern spotted owl was signed on September 24, 1993, for the Murray Pacific Corporation, a Tacoma,

Washington, based timber company. The plan provides for the development and maintenance of dispersal habitat for the spotted owl that is well distributed over the 54,610 acres of the company's land, while allowing limited taking of spotted owls that is incidental to the company's timber harvest activities.

The Murray Pacific planning area is situated between the Mineral Block (an isolated block of Forest Service land) and the main portion of the Gifford Pinchot National Forest, that is located immediately south of Mt. Rainier National Park. The Mineral Block has been designated as a late-successional Federal reserve under the Forest Plan. The management of Murray Pacific property will promote the opportunity for the dispersal of spotted owls to and from this isolated reserve, providing a link with the Cascade Mountains population. The Mineral Block also hosts the most westerly extension of spotted owls in the Cascade Mountains.

General threats to the spotted owl in this province include low population levels, limited habitat in the northern portion of the province, declining habitat, and dispersal problems in areas of limited Federal ownership.

4. Eastern Washington Cascades Province

This province lies east of the crest of the Cascades Mountains from the Columbia River north to the Canadian Border (Figure 4 to § 17.41(c)). The province extends east to where suitable spotted owl habitat naturally diminishes and drier pine forests become prevalent. Approximately 62 percent of the province's 5.7 million acres is in Federal ownership.

a. *NRF Habitat.* NRF habitat in the Eastern Washington Cascades Province consists, as a general matter, of coniferous forest with stands that contain greater than 20 percent fir (Douglas fir, grand fir) and/or hemlock trees; multiple canopy layers of multiple large overstory conifers greater than 12 inches dbh; and a canopy closure among dominant, co-dominant and understory trees of greater than 50 percent.

b. *Dispersal Habitat.* Dispersal habitat in the Eastern Washington Cascades Province consists, as a general matter, of coniferous forest with stands that contain greater than 20 percent fir trees with smaller dominant trees or lower canopy closure than NRF habitat multiple canopy layers of multiple large overstory conifers of greater than 11 inches dbh; and total canopy closure among dominant, co-dominant and understory trees of greater than 50 percent.

Threats to the spotted owl in this province include natural fragmentation of spotted owl habitat by geological features; loss of spotted owl habitat from wildfires; loss of habitat from timber harvest activities; and low spotted owl populations in some areas of the province.

California

1. California Coastal Province

Extending from the Oregon border south to San Francisco Bay, this province lies west of the Six Rivers and Mendocino National Forests (Figure 4 to § 17.41(c)). It consists of approximately 5.6 million acres, of which about 87 percent is in non-Federal ownership. Timber management is the primary land use on about 2 million acres, and is concentrated in the heavily-forested redwood zone located within 20 miles of the Pacific Ocean coastline. In the more inland and southerly portions of the province, owl habitat is largely confined to the lower portions of drainages and is naturally fragmented by grasslands, hardwoods, and chaparral, as well as by agricultural and urban areas.

a. *NRF Habitat.* NRF habitat in the California Coastal Province consists, as a general matter, of coniferous or mixed coniferous/hardwood forests with multiple canopy layers; multiple overstory conifers greater than 16 inches dbh; and total canopy closure among dominant, co-dominant, and understory trees of greater than 60 percent. Some nest sites may occur in stands of smaller trees or with a lower canopy closure; however, such sites are not typical.

b. *Dispersal Habitat.* Dispersal habitat in the California Coastal Province consists, as a general matter, of coniferous or mixed coniferous/hardwood forests, with smaller dominant trees or lower canopy closure than in NRF habitat; multiple canopy layers, with multiple large overstory conifers greater than 10 inches dbh; a total canopy closure among dominant, co-dominant; and understory trees of greater than 40 percent.

This province is unique in that it supports several hundred pairs of spotted owls (over ⅓ of the State's population) within managed second-growth timber stands. Factors that appear to contribute to the suitability of these second-growth stands include the rapid growth of trees in the coastal environment, the prevalence of hardwood understories, and the widespread occurrence of a favored prey species, the dusky-footed woodrat. The primary threat to the spotted owl in this region is habitat alteration, but, due to the spotted owl's widespread distribution, the predominance of selection harvest methods, the rapid regrowth of habitat, and effective and comprehensive State wildlife conservation and forest practice regulations, threats are considered low to moderate in this portion of the spotted owl's range.

Because Federal lands in this province are limited, they play a small role in spotted owl conservation in this province. Significant non-Federal contributions to conservation are in place or under development in this area. In addition to efforts by the state, described in more detail later, several large timber companies in the coastal province have made substantial investments in information-gathering and planning for spotted owl conservation. The Simpson Timber Company has completed a Habitat Conservation Plan and received a section 10(a) permit for the incidental take of a limited number of spotted owls on its 380,000-acre property. Pursuant to this plan, Simpson Timber has set aside 40,000 acres of suitable owl habitat for at least ten years, is conducting research on habitat characteristics, and has banded over 600 spotted owls.

2. California Klamath Province

This province lies to the east of the California Coastal province, and is contiguous with the Oregon Klamath province (Figure 4 to § 17.41(c)). The California Klamath province consists of approximately 6.2 million acres, of which about 76 percent is in Federal ownership. The U.S. Forest Service is the primary land manager. About 25 percent of the Forest Service lands in the province are believed to be currently suitable for nesting, roosting, and foraging by the spotted owl.

a. *NRF Habitat.* NRF habitat in the California Klamath Province consists, as a general matter, of coniferous or mixed coniferous/hardwood forests with multiple canopy layers; multiple overstory conifers greater than 16 inches dbh; and total canopy closure among dominant, co-dominant, and understory trees of greater than 60 percent. Some nest sites may occur in stands of smaller trees or with a lower canopy closure; however, such sites are not typical.

b. *Dispersal Habitat.* Dispersal habitat in the California Klamath Province consists, as a general matter, of coniferous or mixed coniferous/hardwood forests, with smaller dominant trees or lower canopy closure than in NRF habitat; multiple canopy layers, with multiple large overstory conifers greater than 10 inches dbh; a

total canopy closure among dominant, co-dominant; and understory trees of greater than 40 percent.

In many areas of the province, spotted owl habitat is naturally fragmented by chaparral, stands of deciduous hardwoods, and low-elevation vegetation types. In portions of the area, suppression of fire over the last century may have encouraged development of mixed-conifer habitat suitable for spotted owls. However, during the same period, timber harvest has removed substantial amounts of suitable habitat. Owl populations throughout the province were believed to be declining due to habitat loss at the time of listing, and data suggest that populations may well be continuing to decline in the province's only demographic study area (Franklin *et al.* 1992). In the southern portion of the province, especially on the Mendocino National Forest, spotted owls and nesting, roosting, and foraging habitat are more scattered than in northern areas due to both natural conditions and recent harvest. However, despite extensive habitat fragmentation in some areas during the last two decades, spotted owl populations appear to remain distributed throughout most parts of the province.

Until the listing of the spotted owl, continued habitat alteration due to clear-cutting was a primary threat to the species in this province. The most important threat to habitat at the present time is wildfire. In the past six years, large fires have destroyed or degraded substantial quantities of owl habitat on the Klamath, Shasta-Trinity, and Mendocino National Forests.

The Hoopa Valley Indian Reservation occupies about 88,000 acres along the western margin of this province. The Hoopa Tribe has conducted forestry operations under section 7 consultation conducted between the Bureau of Indian Affairs and the Service, and is preparing a comprehensive integrated resource management plan for forestry and wildlife on their lands. The Tribe is also developing a Geographic Information System (GIS) data base to integrate spotted owl conservation into its timber management program. The maintenance of adequate dispersal condition in this area would improve the intra-provincial connectivity and dispersal between Federal reserves.

3. California Cascades Province

This province lies east of the California Klamath province. It consists of approximately 2.5 million acres, of which about 46 percent is in Federal ownership (Figure 3 to § 17.41(c)). Checkerboard Federal and non-Federal ownership patterns predominate. Due to the relatively dry climate and the history of recurrent wildfires in this province, spotted owl habitat is naturally fragmented by chaparral and stands of deciduous hardwoods. As is the case in the California Klamath Province, the suppression of wildfire over the last century may have encouraged development of mixed-conifer habitat suitable for spotted owls. However, timber harvest has removed substantial amounts of suitable habitat. Existing spotted owl sites are widely scattered, and the potential for dispersal across the province appears to be limited. This province provides the demographic and genetic linkage between the northern spotted owl and the California spotted owl of the Sierra Nevada range.

a. *NRF Habitat.* NRF habitat in the California Cascades Province consists, as a general matter, of coniferous or mixed coniferous/hardwood forests with multiple canopy layers; multiple overstory conifers greater than 16 inches dbh; and total canopy closure among dominant, co-dominant, and understory trees of greater than 60 percent. Some nest sites may occur in stands of smaller trees or with a lower canopy closure; however, such sites are not typical.

b. *Dispersal Habitat.* Dispersal habitat in the California Cascades Province consists, as a general matter, of coniferous or mixed coniferous/hardwood forests, with smaller dominant trees or lower canopy closure than in NRF habitat; multiple canopy layers, with multiple large overstory conifers greater than 10 inches dbh; a total canopy closure among dominant, co-dominant; and understory trees of greater than 40 percent.

Currently, threats in this province include low population numbers, difficulty in providing for interacting population clusters, and fragmented dispersal habitat. Catastrophic wildfire is also an important threat to habitat. In 1992, a 70,000-acre fire in Shasta County substantially reduced the likelihood of contact between the northern spotted owl and the California spotted owl for the next several decades.

Northern Spotted Owl Populations on Non-Federal Lands

Due primarily to historic timber harvest patterns, approximately 75 percent of the known rangewide population of spotted owls is centered on Federal lands. Owl site centers on non-Federal lands are usually found in remnant stands of older forest, or in younger forests that have had time to regenerate following harvest. In addition, adjacent forested non-Federal lands can provide foraging and dispersal habitat for owls whose site centers are on Federal lands.

As of July 1, 1994, there were 5,431 known locations, or site centers, of northern spotted owl pairs or resident single owls in Washington, Oregon, and California (located between 1989 and 1993)—851 sites (16 percent) in Washington, 2,893 (53 percent) in Oregon, and 1,687 (31 percent) in California. In Washington and Oregon, owl site centers on non-Federal lands are typically widely scattered. Currently, 1,319 or 24 percent of known owl site centers are located on non-Federal lands—140 in Washington, 342 in Oregon, and 837 in California. Of those in California, 631 or 75 percent of the site centers located on non-Federal lands are located in the California Coast Province, where owls are relatively common in second-growth timber stands. Site centers in the interior provinces of California are typically scattered. In addition to the site centers located on non-Federal lands in Washington, Oregon, and California, preliminary analyses indicate that there are 151 site centers in Washington, 810 centers in Oregon, and 204 centers in California, located on Federal lands that are dependent upon some percentage of suitable owl habitat on adjacent non-Federal lands to support the owls.

Non-Federal lands in certain portions of the owl's range are still necessary to support and supplement the Federal lands-based owl conservation strategy. While the type of support needed varies depending on local conditions, the three general types of conservation support needed within specially designated areas are:

(1) Habitat on non-Federal lands near Federal reserves where existing owl populations are low to provide demographic support for owl populations. Areas that are needed to provide demographic support for Federal reserves include, in Washington: the western portion of the Olympic Peninsula Province and portions of the Eastern and Western Cascade provinces; and in California: the Cascades Province and the southern portion of the Klamath Province;

(2) Dispersal habitat between Federal reserves, where Federal lands may not be distributed to prevent isolation of populations, or between non-Federal ownerships where the distance between reserves is not great. Where distances are large, scattered breeding sites may be important to improve connection between populations. Areas that can provide valuable dispersal habitat on non-Federal lands include, in Washington—the western portion of the Olympic Peninsula Province and

portions of the Eastern and Western Cascade Provinces; and in California—the Coast and Cascades Provinces and small portions of the Klamath Province; and

(3) Suitable habitat for breeding populations in areas where Federal ownership is limited. In these areas, functioning spotted owl populations are desired to maintain a widely distributed population of owls. Areas where non-Federal owl populations are believed to play an important role in this regard include, in Washington—the western portion of the Olympic Peninsula Province; and, in California—the Coast and Cascades Provinces.

Recent Conservation Programs and Strategies for the Northern Spotted Owl

Non-Federal Management Efforts

To varying degrees, the laws, regulations, and policies of California, Oregon, and Washington provide protection and contribute to the conservation of the spotted owl. Each of the three states is a cooperator with the Secretary of the Interior under section 6 of the Act and each State has cooperative agreements with the Service to carry out conservation activities for listed and candidate species of plants and animals. Under these agreements, the States work cooperatively with the Service on endangered and threatened species conservation projects and are eligible for cost-share grant money from the Service to carry out State-directed species research and conservation activities. Since the spotted owl was Federally listed, Washington, Oregon, and California have recognized the Federal status of the spotted owl and have adopted forest management rules offering various levels of protection for the species. In addition, numerous changes have been made to State forest practices rules in the last few years in response to the needs of declining species like the spotted owl, the marbled murrelet, and various runs of salmon. Relevant authorities and programs existing in the States of Washington and California are also briefly described below.

California

California has adopted the most protective forest management regulations for the spotted owl in the Pacific Northwest. The State has also been in the forefront of efforts to approach forest management from an ecosystem perspective.

Pursuant to the California Forest Practice Act, the California Board of Forestry establishes regulations under Title 14 of the California Code of Regulations governing timber harvest on private and State lands (14 CFR § 895, 898, 919, 939). Registered Professional Foresters licensed by the Board must submit Timber Harvest Plans (THP) to the California Department of Forestry and Fire Protection for review and approval. The California Department of Fish and Game is also responsible for reviewing THPs. THPs may be denied on a number of grounds, including potential take of Federally or State listed threatened or endangered species.

Following the Federal listing of the northern spotted owl, the Board of Forestry implemented no-take rules using standards based on biological advice from the Service. These standards include maintenance of over 1,300 acres of suitable owl habitat within 1.3 miles of every spotted owl site center and 500 acres within 0.7 miles. The rules instituted a special review process for all proposed private timber harvest to ensure that incidental take would not occur. The process encouraged surveys for spotted owls in THP areas according to a Service-endorsed protocol (USFWS 1992). The Board's no-take rules have maintained options for future management by providing protection for habitat around every known spotted owl site center, and have resulted in greatly increased knowledge of the species' numbers and distribution. Other Forest Practice Rules, including riparian buffers and limitations on clear-cut size, may provide additional contributions to the maintenance of spotted owl habitat in northern California. These include the 40-acre limitation on clear-cut size, limits on adjacency of clear-cuts, and protection of riparian buffers.

The Board of Forestry (Board) also recently adopted rules establishing regulatory incentives for large-acreage landowners who develop sustained yield plans (SYPs). The SYP rules may provide considerable benefit to spotted owls, because ownerships operating under these rules must maintain specified portions of each watershed in timber stands of large size classes for several decades, thus providing spotted owl habitat components throughout the landscape.

The Department of Fish and Game and Department of Forestry and Fire Protection jointly maintain an interagency data base of Federal and non-Federal spotted owl locations. The Forest Practice Rules require that all information on spotted owl sites that is generated during timber harvest planning be submitted to this data base, and relevant data are made available to all parties planning timber harvest or other activities. Thus, the data base is a functional tool in protection of the species.

Following the listing of the northern spotted owl, the California Board of Forestry directed the Department of Forestry and Fire Protection to prepare a Habitat Conservation Plan (HCP) and section 10(a)(1)(B) incidental take permit application to address all private timber harvest regulated by the Board. Following a three-year planning effort by that Department and a number of cooperators from agencies, industry, and environmental groups, the Board tabled consideration of the draft Habitat Conservation Plan because significant issues remained unresolved, most notably the funding mechanism. The draft plan nevertheless represented a significant cooperative commitment to resolve conservation issues by the State and other concerned parties and many of the biological elements of the draft HCP may have future application.

Washington

The spotted owl is listed under Washington law as an endangered species. The Washington Department of Natural Resources has the responsibility for regulating timber harvest activities on non-Federal lands under the authority of the Washington State Forest Practices Act (76.09 RCW) and its implementing regulations (WAC 222.08–222.50). These regulations are promulgated by the Forest Practices Board.

Recent regulations (WAC 222.16.080(1)(h) have required forest practices on the 500 acres of suitable habitat surrounding the site center of known spotted owls to be reviewed under the State Environmental Policy Act, WAC 222.16.080(1)(h). In practice, this rule has led landowners to avoid applying for permits for forest practices within the 500-acre area. This regulation expired on February 9, 1994, and has been extended pending approval of a final rule. The Forest Practices Board has established a Scientific Advisory Group to recommend the scientific basis for a new rule to replace the current rule. No other forest practices regulation expressly addresses the protection of spotted owl habitat from timber harvest activities. However, the Department notifies individual landowners when a proposed forest practice occurs within the median annual home range of a known spotted owl pair or resident single, and advises the landowner to contact the Service. In addition, several other regulations contribute habitat benefitting spotted owls, including regulations requiring riparian zone protection, wetlands protection, and retention of wildlife reserve trees.

Riparian management zone regulations require the minimum retention of 25-foot wide buffers along the sides of fish-bearing streams with a varying ratio of trees to be retained per 1,000 feet of stream within the buffers, based on stream location, width and bottom composition.

Wetland management regulations require the establishment of a zone surrounding non-forested wetlands which varies in width from a minimum of 25 to 50 feet depending on the size and category of the wetland. The regulations also require the retention of a minimum number of trees (75) per acre and that a percentage of those trees meet minimum size classifications (six inches dbh) depending on the type of wetland. Of this total, 25 trees are to be more than 12 inches dbh, and five of them are to be more than 20 inches dbh, where they exist.

Clear-cut size and green-up regulations limit the maximum size of clear-cut harvest units to 120 acres, unless a State environmental Policy Act review is undertaken that could boost the potential size of the harvest to 240 acres. The perimeter of harvest units must meet minimum stand qualifications to maintain age class diversity adjacent to the harvest unit before harvest may proceed.

Wildlife reserve tree regulations require the retention of three snags (minimum of 12 inches dbh), two green recruitment trees (minimum 10 inches dbh), and two down logs (minimum 12 inches diameter at the small end).

Besides regulating forest practices in Washington, the Department of Natural Resources (WDNR) administers approximately five million acres of State lands, 2.1 million acres of which are forested and managed in trust for various beneficiaries. The WDNR has avoided the take of spotted owls on its lands and has begun preparation of an HCP under section 10(a)(1)(B) of the Act for all State lands in the range of the owl. The WDNR is also developing a conservation strategy for the spotted owl that would be applied to the Congressionally mandated 264,000-acre State Experimental Forest on the Olympic Peninsula.

Apart from these efforts by State government, various private efforts are underway to conserve spotted owls, including the development of, or commitment to, HCPs and ''no take'' agreements by several major landowners in the State. In addition, the Yakima Indian Nation is developing a conservation strategy for the spotted owl while continuing to follow its previous interim spotted owl strategy and selective timber harvest regime.

Past Federal Management Strategies

Prior to its listing as a threatened species, many different approaches to northern spotted owl management and research were undertaken by Federal and State resource agencies, for example, designation of ''spotted owl habitat areas'' or ''SOHAs.'' Each of these approaches fulfilled different conservation objectives for the northern spotted owl. The conservation objective of the earliest attempts at spotted owl management, which began in the mid-1970s, was to temporarily protect sites that supported individual pairs of spotted owls. In the 1980s, management strategies were based on conservation objectives that tried to avoid land use conflicts while managing spotted owls and late-successional forest habitat; these management strategies were generally inadequate. A complete discussion of the history and chronology of past spotted owl management attempts can be found in Thomas *et al.* (1990).

Recent (post-listing) Federal northern spotted owl management strategies have been based on the establishment of a system of large, dispersed Federal land reserves, with conservation objectives somewhat different from earlier strategies. These management strategies were designed to meet the following conservation objectives—(1) provide habitat to sustain approximately 20 or more breeding pairs of spotted owls on each Federal reserve; (2) decrease the chance of catastrophic loss of populations in reserves; (3) lower the risk of losing spotted owls from a reserve due to a single catastrophic event; and (4) ensure that adequate habitat existed between the reserves for dispersal of owls throughout its range. To fulfill these objectives, these management strategies proposed establishing a reserve network of Federal lands based on blocks of late-successional habitat of sufficient size and proximity to each other to maintain viable populations of the spotted owl throughout its range. Assessments of these strategies have generally recognized that, in certain areas of the northern spotted owl's range, Federal lands are not, by themselves, adequate to support the full recovery of the owl although they could provide a major contribution toward the owl's conservation in other parts of its range (USDI 1992).

To meet their conservation objectives, these management strategies generally established Federal reserves designed to sustain at least 20 pairs of spotted owls where conditions allowed. These strategies assumed that any smaller late-successional Federal reserves should be placed closer together to increase the probability of successful spotted owl dispersal between the reserves. In addition, plans provided dispersal habitat sufficient to support movements between blocks. For this reserve design, successful dispersal would accomplish two objectives—it would help prevent genetic isolation in individual owl populations and it would allow spotted owls to naturally recolonize important areas that have few or no spotted owls present. By allowing spotted owls to disperse between a series of discrete reserves, this reserve design could maintain a spotted owl population over a large area even if a single reserve was lost to catastrophe.

By way of example, the Interagency Scientific Committee (ISC) developed a conservation strategy based on managing large, well-distributed Federal blocks of suitable spotted owl habitat that were sufficiently connected to maintain a stable and well-distributed population of spotted owls throughout their range (Thomas *et al.* 1990). The ISC did not integrate non-Federal lands into its conservation strategy. To provide dispersal habitat between these reserves, the ISC recommended a ''50–11–40 rule'' where 50 percent of Federal forest habitat (based on quarter-townships) would be managed to retain dominant or co-dominant trees with an average of 11 inches dbh and provide a minimum 40 percent canopy closure. Canopy closure refers to the degree to which the crowns (tops) of trees obscure the sky when viewed from below. The ''50–11–40'' rule was set forth as one method of providing for dispersal habitat on Federal forest lands; other prescriptions have been and can be developed which provide comparable dispersal conditions, e.g., Murray Pacific HCP dispersal prescription.

The Federal Forest Plan

The range of the spotted owl includes approximately 24,518,000 acres of Federal lands of which 20,577,000 acres are forested. The Forest Plan represents a management strategy for Federal LSOG-forests in the coastal western states of California, Oregon, and Washington that provides habitat to support the persistence of well distributed populations of species that are associated with late-successional forests, including the northern spotted owl.

The Forest Plan established a network of reserves totalling over 11.5 million acres of Federal land in northern California, Oregon, and Washington. That total includes 7.43 million acres of late-successional reserves, 2.63 million

acres of riparian reserves, and 1.48 million acres of administratively withdrawn areas. This acreage is in addition to 7.32 million acres of Congressionally reserved lands.

The late-successional reserves currently provide 3.2 million acres of suitable habitat for the spotted owl. The interim riparian reserve provide an additional 0.74 million acres of suitable habitat and the administratively withdrawn areas provide an additional 0.31 million acres of this habitat.

Late-successional reserves are expected to provide the primary contribution to the recovery of the spotted owl by maintaining large clusters of spotted owls and spotted owl habitat throughout a significant portion of the range of the species. The reserves are expected to increase in value for spotted owl recovery as young forested stands grow into suitable habitat and increase their capacity to support additional numbers of stable spotted owl pairs.

Programmed timber harvest operations are not allowed in late-successional reserves under the Forest Plan. However, carefully controlled thinning activities are allowed in any stand of one of these reserves less than 80 years of age. Salvage operations also would be allowed on these reserves in areas where catastrophic loss exceeded ten acres. In both cases, harvest proposals must be reviewed by an interagency oversight group to ensure sound ecosystem management.

No programmed timber harvest is allowed in riparian reserves under the Forest Plan and Federal agencies are required to minimize the effects of roads, cattle grazing, and mining activities in these areas. These riparian reserves are eventually expected to provide a considerable amount of late-successional forest, because they currently represent approximately 31 percent of the lands that would otherwise be designated as Matrix. Based on current information (USDA *et al.* 1993), approximately .74 million acres (28 percent) of the 2.63 million acres in riparian reserves currently provide suitable nesting, roosting, and foraging habitat for spotted owls and 1.42 million (54 percent) of the riparian reserves provide suitable dispersal habitat for spotted owls.

The Forest Plan places 1.5 million acres of Federal land in 10 special ''Adaptive Management Areas (AMAs).'' Management activities in these AMAs would emphasize innovative forestry techniques with the goal of speeding attainment of late-successional characteristics and on restoring watersheds. These activities are expected to benefit northern spotted owl management in the long-term, but would not be expected to contribute substantially to owl conservation needs in the short-term. Suitable habitat for the northern spotted owl represents approximately 0.37 million acres of the lands that have been designated as AMAs.

Programmed timber harvests also are allowed on approximately four million acres of Federal forests designated as the Matrix under the Forest Plan. The Plan differs from previously proposed strategies in that the 50–11–40 rule does not apply to Matrix areas between late-successional and other Federal forest reserves. The Plan concluded that the need for spotted owl dispersal habitat could be met with the combination of reserves as proposed, plus additional Matrix prescriptions.

In Washington and Oregon, the Plan requires leaving 15 percent of the trees (''green tree retention'') in all harvest units on AMAs and matrix areas outside of the Coast Ranges and Bureau of Land Management lands in southern Oregon. The Plan encourages these trees to be left in small clumps with the expectation that they, along with the riparian reserves, would contribute to the creation of dispersal habitat. The Forest Plan adopted this prescription to improve the future condition of these forests. These prescriptions could ultimately be adjusted as a result of watershed analysis and other planning activities related to the implementation of the Forest Plan.

In California, the Forest Plan incorporates the Matrix prescriptions contained in the draft National Forest land management plans. These prescriptions are designed to maintain dispersal habitat in a variety of timber types.

The FEMAT report (p. IV–43 and p. IV–153) stated that implementation of Option 9 (which served as the basis for the Forest Plan) would result in a projected future likelihood of 83 percent that spotted owl ''habitat is of sufficient quality, distribution, and abundance to allow the species population to stabilize in well distributed areas of Federal lands,'' and a projected future likelihood of only 18 percent that ''habitat is of sufficient quality, distribution, and abundance to allow the species population to stabilize, but with some significant gaps in the historic species distribution on Federal land. These gaps cause some limitation in interactions among local populations.'' Moreover, implementation of Option 9 was rated by FEMAT as resulting in a zero likelihood that ''habitat only allows continued species existence in refugia, with strong limitations on interactions among local populations'', and a similar zero likelihood that implementation of the option would result in ''species extirpation from Federal lands''.

These probability judgments reflect the contributions to conservation expected to be provided by the implementation of the Forest Plan on Federal lands. They indicate a high likelihood that, over the long-term, the Forest Plan will provide conditions on Federal lands that would contribute significantly to the conservation and recovery needs of the spotted owl. This assessment is consistent with the Federal policy to provide the predominant protection for spotted owls on Federal lands and it is within this context that the Service proposes to modify the incidental take prohibitions for certain non-Federal lands.

General Approach Used to Develop This Special Rule

The goal of this proposed rule was to identify non-Federal lands that are no longer either necessary or advisable to the conservation of the spotted owl given the contributions of the Forest Plan the likely possibility of numerous large scale, multi-species Habitat Conservation Plans, and other measures and practices in effect. In reviewing the alternatives identified in the NOI, the Service evaluated the contributions to the conservation of the owl provided by the Forest Plan, past Federal owl conservation strategies, existing State forest practices regulations, tribal conservation and private timber management plans, as well as public comments provided in response to the NOI.

The Service considered various factors in identifying areas of non-Federal land where relief could be provided and other areas where incidental take restrictions should be maintained at this time. The Service first considered the conservation benefits that the Federal Forest Plan provided the owl for a given area. These benefits were then compared and contrasted with the conservation goals for the area originally established under the Final Draft Recovery Plan for the northern spotted owl. The Service focused particularly on Forest Plan impacts affecting the conservation of owl habitat and owl numbers, as well as the size and location of Federal reserves. It then identified certain areas of non-Federal land which were still important for owl conservation and what the conservation goals should be for such areas. The Service gave particular care and attention to the non-Federal lands

which were noted as important in the Report of the Forest Ecosystem Management Assessment Team (FEMAT), IV 150–151. In identifying boundaries for such areas, the Service considered, among other things, current owl population status on non-Federal lands, the need for owl population support within adjacent Federal reserves, and the need for connectivity between such reserves. The Service also attempted to exclude wherever possible large areas of non-Federal land with little or no owl habitat.

The Forest Plan is a habitat based conservation strategy that would anchor and secure millions of acres of Federal land across the range of the spotted owl, an unprecedented commitment of Federal resources towards the conservation of the owl. Given that commitment to a habitat based strategy and the scope of the Forest Plan, the Service no longer believes that it is essential to the conservation of the spotted owl to continue to prohibit the incidental take of the owl on all non-Federal land located within the range of the owl. The Service also believes that the combination of Federal and non-Federal habitat based strategies for the spotted owl contained in this proposed rule, the Forest Plan and multi-species Habitat Conservation Plans will, over time, further the conservation of the species and its recovery.

When developing objectives for regulatory relief for non-Federal lands which were consistent with the Forest Plan, the Service evaluated past biological information and has concluded that it is still important to retain the closest 70 acres of suitable owl habitat surrounding site center regardless of whether the center is in an area of proposed relief or not. The Service also believes that the substantial loss of suitable habitat within the estimated median annual home range of an owl is likely to result in inadequate nesting, juvenile development, and adult dispersal and survival, and will significantly increase the likelihood of actual harm to, and incidental take of, an owl.

As the riparian reserve, matrix, adaptive management areas, and late-successional reserve management criteria of the Forest Plan are implemented, along with the requirements of underlying State law and other provisions proposed in this rule for owl protection, dispersal and connectivity conditions for the species' survival should improve over time throughout its range. For this reason, the Service has chosen not to include in this proposed rule mandatory dispersal prescriptions such as the 50–11–40 rule which was designed originally to generate dispersal habitat conditions for Federal lands only.

For those areas where satisfactory dispersal conditions likely are not present, the Service believes that such conditions can be achieved over time through other means such as full protection against incidental take, large scale Habitat Conservation Planning (HCPs), Local Option Conservation Plans, or voluntary conservation contributions by non-Federal landowners. Recognizing the limitations on Federal authority to mandate the development of dispersal habitat in these areas, this proposed rule would encourage non-Federal landowners to manage their lands in ways that are more consistent with the conservation of the spotted owl. In some areas it would remove the disincentives associated with maintaining suitable spotted owl habitat, and, would bring more certainty to future planning for timber management as well as for owl conservation activities.

Upon consideration of all of the above factors, the following summarizes the provisions of this 4(d) rule:

Regulatory Provisions Common to Both Washington and California

Some protective measures for the owl would be identical for both the State of Washington and California. The prohibition on killing or injuring of spotted owls would not be relieved in any part of the owl's range by this proposed rule. Similarly, timber harvesting of the closest 70 acres of suitable owl habitat surrounding a site center would remain prohibited throughout Washington and California, unless the site has been determined to be abandoned.

In addition, the Service would retain for an additional two years, the prohibition against incidental take as applied to owls which are dependent upon non-Federal lands and whose site centers are located within Federal Forest Plan Reserves or Congressionally reserved or Administratively withdrawn areas which are outside of Special Emphasis Areas or are on the western portion of the Olympic Peninsula in Washington, or are located on Federal Forest Plan reserves or Congressionally reserved or Administratively withdrawn areas within the Klamath Province in California. At the end of this period, the Service will review any new information or data involving the status of such owls and their habitats in the affected areas, including the results of any completed watershed analysis and other planning efforts under the Federal Forest Plan. In particular, the Service would assess on a local area-by-area basis whether the continuation of the incidental take prohibition on affected, adjacent non-Federal lands was still necessary and advisable for achieving the conservation goals of the Forest Plan for that area. The Service would then lift the incidental take restrictions where warranted and require the protection of only the closest 70 acres of suitable habitat surrounding an affected site center.

Relief From Current Incidental Take Provisions in Washington

A total of approximately 10.6 million acres of non-Federal land in the range of the spotted owl in Washington (the Washington Lowlands Province, portions of the Western and Eastern Cascades Provinces and portions of the Olympic Peninsula Province) would be excluded from the boundaries of proposed Special Emphasis Areas (SEAs) and be exempted from the future application of current incidental take restrictions for the northern spotted owl. Of this land base outside SEAs, 8.3 million acres have some sort of forest cover of which 5.24 million acres are in conifer cover. Actually, only a small percentage of these lands are currently affected by present incidental take prohibitions for owls. Absent this proposed rule, however, much of this remaining land could potentially be affected should a spotted owl relocate to any adjacent suitable owl habitat at some point in the future. Approximately 1.7 million acres of non-Federal lands would be left inside of SEAs. Of this acreage figure, 1.3 million acres of non-Federal land is in conifer forest and would remain subject to the incidental take prohibitions for any owl found present in this area. In fact, only a portion of this acreage inside SEAs is currently affected by the presence of owls. Of the approximately 510,000 acres of non-Federal forestland which are today under incidental take restrictions for known owl sites, no less than 325,000 acres or almost 60 percent would be relieved from such restrictions as a result of this rule.

Of the 140 spotted owl site centers on non-Federal lands in Washington, 84 are in the six proposed SEAs and would retain current incidental take protection. Fifty-six spotted owl site centers are outside SEAs on non-Federal lands and would be released from current incidental take prohibitions. There are an additional 121 site centers on Federal lands within the proposed SEA's, of which 68 may be dependent on non-Federal lands. There are also 83 site centers on Federal lands outside the SEAs that may be dependent on non-

Federal lands. Of the 83 site centers outside of SEAs, 71 site centers are located within either a Federal Forest Plan Reserve or a Congressionally reserved or Administratively withdrawn area. The Olympic Peninsula contains 41 of these sites with the remaining 30 sites located outside of SEAs in the rest of the State.

Activities Outside of Designated SEAs

The Service proposes to reduce the current prohibition against the incidental taking of owls for those non-Federal lands which are located outside of SEAs proposed in Washington. In areas outside of SEAs, a non-Federal landowner would only be required to retain the closest 70 acres of suitable owl habitat surrounding an owl site center. Legal and administrative boundaries were used wherever possible to assist in refining identified SEA boundaries. As noted above, the Service estimates that approximately 10.6 million acres of non-Federal land in Washington lie outside of SEAs, of which 5.24 million acres are forested with conifers. These would be the primary areas receiving relief under this rule for Washington. In these areas, the incidental take of owls would not be prohibited as long as timber harvest activities did not take place within the closest 70 acres of suitable owl habitat immediately surrounding an owl site center.

As noted previously, the above reduction to 70-acres would not be applicable for non-Federal lands affected by any owl site center which is located within a Forest Plan reserve or Congressionally reserved or Administratively withdrawn area which is outside of an SEA. The Service intends to reassess the importance of these sites within the next two years as additional data and planning information is developed under the Forest Plan. The one region in Washington where this two-year retention of prohibitions would not be applied outside of an SEA would be on portions of the Olympic Peninsula. On the northern, eastern, and southern parts of the Peninsula, non-Federal landowners would only be required to preserve the closest 70 acres of suitable habitat surrounding a site center regardless of whether the site center is located within a Federal reserve or withdrawn area. The Service believes that the recent Reanalysis Team Report for the Olympic Peninsula (Holthausen, *et al.*, 1994) addresses the issue of the contribution that such non-Federal areas provide toward achieving the goal of recovery of the owls on the Peninsula. Under these circumstances, the Service does not believe that it is essential that existing incidental take restrictions be retained for an additional two years for these three areas on the Peninsula.

Designation of Special Emphasis Areas

The six areas discussed below (Figure 5 to § 17.41(c)) would be designated as SEAs within Washington:

(a) Columbia River Gorge/White Salmon (Figure 6 to § 17.41(c)).

The Columbia River Gorge portion of this SEA is in the southern portion of the Washington Cascades province, north of the Columbia River and west of the Cascade crest. Non-Federal lands link owls and owl habitat between Federal reserves in the Washington Cascades and Oregon Cascades along the Columbia River Gorge, thereby contributing to the objectives of the Forest Plan.

The White Salmon portion of this SEA is bordered by the Yakima Indian Reservation to the northeast, Federal lands and the Cascade crest to the west and the Columbia River to the south. The White Salmon area was not included within the ''Proposed Action'' for the December 29, 1993, NOI (58 FR 69132), but was included within ''Alternative C'' of that NOI. As a result of public comments received in response to the NOI, however, and recent analysis of spotted owl habitat in Washington (Hanson, *et al.* 1993), the Service has concluded that the inclusion of the White Salmon area as part of this SEA is warranted. These non-Federal lands are an important link to the owl population found on the Yakima Indian Reservation to owl populations in Federal reserves to the southwest. This portion of the SEA would provide a route around high-elevation terrain on Federal lands, through lower-elevation forests on non-Federal lands to provide that needed link. It also widens the zone of protection for the Cascades along the Columbia River.

This combined SEA contains 37,000 acres of Federal land and 262,000 acres of non-Federal lands. Sixteen owl site centers are on non-Federal lands and 3 site centers are on Federal land within this SEA, with one site activity center on Federal lands which relies to some degree upon adjacent non-Federal lands. The conservation goals for this combined SEA are to maintain connections between provinces and the owl population on the Yakima Indian Reservation, and to provide demographic support to the owl population in the Federal reserves.

(b) Siouxon Creek (Figure 7 to § 17.41(c)).

This SEA is located along Swift Creek Reservoir and the Upper Lewis River, south of the Mt. St. Helens National Monument. As with the White Salmon SEA, this area was not included within the ''Proposed Action'' for the December 29, 1993, NOI (58 FR 69132), but was included within ''Alternative C'' of the NOI. Because of the public comments received in response to the NOI and further analysis of spotted owl habitat in Washington (Hanson, *et al.* 1993), the Service has determined that the inclusion of the Siouxon Creek SEA in the 4(d) Rule is warranted. This SEA contains seven owl site centers, five on non-Federal land and two on Federal land, and includes approximately 44,000 acres of non-Federal land and 1,000 acres of Federal land. Owls on these non-Federal lands are needed to supply demographic support to owl populations on adjacent Federal reserves and dispersal habitat is needed to provide connectivity through the Lewis River Valley between the reserves.

(c) Mineral Block (Figure 8 to § 17.41(c)).

This SEA surrounds a block of Federal land (Mineral Block) that has been designated as a Federal reserve under the Forest Plan. The Mineral Block is about 12 miles west of the main part of the Gifford Pinchot National Forest. It is too small to support a population of 20 owl pairs. Owl site centers on adjacent non-Federal lands would support this population and to provide a link to the Gifford Pinchot National Forest.

This SEA contains 39,000 acres of Federal land and 259,000 acres of non-Federal lands. Twelve owl site centers are on non-Federal lands in the SEA; 17 centers are located on Federal lands of which five rely to some degree upon adjacent non-Federal lands. The conservation goals for this SEA are to provide demographic support for the owl population in the Federal reserve.

(d) I–90 Corridor (Figure 9 to § 17.41(c)).

This SEA is north and south of Interstate-90 (I–90) between North Bend and Ellensburg, Washington. This area is in checkerboard, intermingled Federal and non-Federal ownership, a portion of which is included in the Snoqualmie Pass AMA under the Forest Plan. This general area has been repeatedly identified as being important to the conservation of the owl to maintain a connectivity link between the northern and southern portions of the Washington Cascades (Thomas *et al.*, 1990 and Hanson *et al.* 1993). Existing habitat for spotted owls is locally sparse and highly fragmented.

Non-Federal lands in this SEA would support the efforts of the Forest Plan by providing dispersal habitat (and some nesting, roosting and foraging habitat) for owl populations that are on the north and south sides of I–90, and between Federal reserves and the AMA. Owls that are on non-Federal land would provide valuable demographic support of owl populations in adjacent Federal reserves that are low in numbers. Federal reserves that are in checkerboard ownership are also in need of demographic support for owls because of their fragmented ownership pattern and degraded habitat conditions.

This SEA contains 383,000 acres of Federal land and 400,000 acres of non-Federal lands. Twenty-nine owl site centers are on non-Federal lands in this SEA; 78 site centers are located on Federal lands of which 53 rely to some degree upon adjacent non-Federal lands. Conservation goals for this SEA include demographic support for adjacent late-successional reserves and connectivity between reserves. Changes to the eastern boundaries of this SEA from the NOI in this proposal were made to better promote dispersal success of owls located within the eastern portion of this SEA.

(e) Finney Block (Figure 10 to § 17.41(c)).

This SEA includes the non-Federal lands that surround the Finney Block AMA on the Mt. Baker-Snoqualmie National Forest. This SEA would link owl populations in Federal reserves with the owl population in the AMA. Owls located on non-Federal lands in this SEA also would bolster the owl populations in the Federal reserves and the AMA. These actions would supplement the Federal efforts under the Forest Plan by contributing to the stabilization of owl populations within this portion of the species range.

This SEA contains 196,000 acres of Federal land and 266,000 acres of non-Federal lands. Two owl site centers are on non-Federal land in this SEA; 21 centers are located on Federal lands of which seven rely to some degree upon adjacent non-Federal lands. Conservation goals for this SEA include demographic support for the AMA and Federal reserves and connectivity between Federal reserves.

(f) Hoh/Clearwater (Olympic Peninsula) (Figure 11 to § 17.41(c)).

Upon consideration of a recent reanalysis of owl persistence on the Olympic Peninsula (Holthausen *et al.* 1994) and other data and information, the Service has decided to alter its approach to the Olympic Peninsula from that set out in the NOI in December of 1993. The Service now proposes to significantly scale back the size of the SEA for the Peninsula and to relieve incidental take restrictions for spotted owls for the remainder of the Peninsula. Of the Federal lands on the Olympic Peninsula, only 8,400 acres of suitable owl habitat are available for timber harvest under the Federal Forest Plan.

There has been long standing concern about the viability and persistence of spotted owls on the Olympic Peninsula. A recent reanalysis of the contribution of Federal and non-Federal habitat to persistence of the northern spotted owl on the Olympic Peninsula (Holthausen *et al.* 1994) concluded that there were 155 known owl pairs on the Olympic Peninsula and estimated a total population of between 282 and 321 pairs. These estimates are substantially higher than earlier reported estimates.

The Hoh/Clearwater SEA encompassing the western portion of the Peninsula contains about 1,000 acres of Federal lands and 471,000 acres of non-Federal lands. Twenty owl site centers are located on non-Federal lands in this SEA. Conservation goals for this SEA are to maintain demographic support for Federal reserves, maintain a well-distributed population, and provide connectivity within the province and between late-successional reserves. Changes in this SEA from the NOI were made to support the Federal effort in this province by drawing upon the resources of the remaining non-Federal concentration of owls and owl habitat on the western side of the Peninsula. The reanalysis report assessed the relative value of the Hoh/Clearwater SEA boundaries as proposed by the Service and did not compare or contrast alternative SEA boundary configurations for the western side of the Peninsula.

Although recommendations were included in recent reports (USDI 1992, Hanson *et al.* 1993, Buchanan *et al.* 1994) to retain incidental take restrictions on non-Federal lands in southwestern Washington, the Service believes that current non-Federal conservation planning activities (e.g., multi-species HCPs and no-take plans), new analyses (Holthausen *et al.* 1994), and other relevant factors support the decision not to propose southwestern Washington as an SEA. The Service reached this conclusion on Southwest Washington for a variety of reasons. First, while Southwest Washington constitutes an important part of the historic range of the spotted owl, there presently are only a small number of isolated owl pairs or resident singles across a vast expanse of marginal owl habitat. The inclusion of this area in an SEA would briefly protect home range areas for the few owls in the area, but once those owls die or move away, the protection for their home range areas would fade away as well, resulting in the eventual harvest of the areas. Moreover, while Southwest Washington previously had been assigned an important conservation function for providing connectivity with the isolated population of owls on the Olympic Peninsula in the Final Draft Spotted Owl Recovery Plan, recent reanalysis by Holthausen *et al.* indicates that the feasibility of the area ever serving this connectivity function, especially through application of incidental take prohibitions, is very low.

Apart from considerations involving the Olympic Peninsula, the limited number of owls in southwest Washington and lack of present suitable habitat provide further support to the Service's decision to take an innovative approach to owl conservation in this area. While the Service might be able to prevent someone from destroying certain areas of existing suitable owl habitat where an owl is present, the Act cannot be used to force people to restore or enhance owl habitat that has already been destroyed or degraded. Thus, most landowners in Southwest Washington have little to no incentive at present to develop habitat that is attractive to owls.

The acquisition of sufficient non-Federal land in Southwest Washington to establish a network of owl conservation reserves is not a feasible alternative either. The Final Draft Recovery Plan for the Spotted Owl estimated that the cost of such a reserve network could range from $200 million to $2 billion. Thus, neither land acquisition nor traditional enforcement policies are feasible catalysts for owl conservation in an area such as this which has limited suitable owl habitat.

Recognizing the historic role that Southwest Washington played within the range of the owl, the Service is attempting to address these problems by aggressively moving forward with the development of multi-species Habitat Conservation Plans with several of the large landowners in this province. In addition, one of the landowners has entered into a ''take avoidance'' agreement covering 100,000 acres while working on their HCP. The agreement ensures that no owls will be taken as the result of timber harvest during the period in which the HCP is being developed. Thus, innovative approaches towards conservation provide the only realistic hope for facilitating long-term owl use and dispersal within Southwestern Washington.

Retention of Incidental Take Restrictions for Activities Inside of SEAs

Subject to certain specified exceptions, the Service generally would retain existing incidental take protection for owls located within SEAs. The Service also would retain full incidental take protection for any owl whose site center is located within and along the boundary of an SEA and is dependent upon adjacent non-Federal lands located outside of the SEA to avoid harm. Thus, there are two categories of non-Federal lands which could remain subject to existing incidental take restrictions for an owl whose site center is located within the boundary of an SEA—those adjacent non-Federal lands located inside an SEA and those adjacent lands located outside of an SEA boundary but which are still necessary to provide sufficient suitable owl habitat so as to avoid the incidental take of an owl.

One modification that the Service proposes to make to existing incidental take restrictions within SEAs would involve non-Federal lands surrounded by or located in matrix and AMA areas designated under the Federal Forest Plan. The Service proposes to authorize such affected non-Federal landowners involved in harvest activities to apply either the final management prescriptions delineated for the surrounding Federal Matrix/AMA land, as determined through the watershed analysis or AMA planning processes, as appropriate, or such management practices which comply with the current incidental take restrictions.

Application of either management strategy would absolve the affected non-Federal landowner from any liability for incidental take of an owl under the Act. This would result in the application of more uniform owl conservation standards within a matrix or AMA area regardless of land ownership.

The one exception to this policy would be where the adoption of matrix or AMA prescriptions could result in the incidental take of an owl whose site center is located within a Forest Plan reserve or Congressionally reserved or Administratively withdrawn area. As would be the case for similar site centers outside of SEAs, the incidental take restrictions would continue to apply for at least two more years for site centers within reserve or withdrawn areas. At the end of this period, the Service will review any new data or information involving the status of such owls and their habitats in the affected areas, including the results of any completed watershed analysis and other planning efforts under the Forest Plan. As noted previously in a discussion of this review process, the Service would assess on an area-by-area basis whether the continuation of the incidental take prohibition on affected non-Federal lands was still necessary and advisable for achieving the conservation goals of the Forest Plan. The Service would lift the incidental take restrictions where warranted and authorize the adoption of the final matrix or AMA prescriptions, at the discretion of the affected non-Federal landowner, as a means of avoiding an unauthorized incidental take of an owl.

One limited exception that the Service proposes to make to current incidental take restrictions within SEAs would involve small landowners. Except for the closest 70 acres of suitable habitat around owl site centers themselves, the Service proposes to relieve incidental take restrictions for small landowners who own, as of the date of this proposed rulemaking, no more than 80 acres of forestlands in a given SEA in Washington. The Service would also extend this proposal to small landowners who are outside of, but adjacent to, an SEA and whose lands are affected by the incidental take restrictions for an owl whose site center is located within the SEA. For these landowners, the maximum ownership figure of 80 acres would be calculated based upon the amount of land they owned inside an SEA and the amount of land outside the boundary of an SEA which was affected by current incidental take restrictions for an owl inside an SEA.

The 80-acre figure for small landowners was selected after an analysis of land ownership patterns and an accounting for the size and location of lands covered by the Forest Plan, State forestlands, industrial forestlands, and known large ownerships of non-industrial forestlands. The Service also considered the fact that past Forest Service studies have shown that only a very small fraction of small landowners own forested lands for the exclusive purpose of economic return from commercial harvest. In addition, most small landowners utilize selective harvest techniques or small clear cuts which would generate only very minor and incremental effects on any particular owl. Despite their normal practices, however, the small landowners of the Northwest have resorted to ''panic cutting'' over their fear of Federal restrictions to protect owls. It is this category of landowner, in particular, who needs to be provided sufficient assurances of relief so they revert back to their past practices of low impact forestry.

Based on this analysis, the Service concluded that relief from the incidental take prohibition for owls for landowners with less than 80 acres of forestland within, or adjacent to, SEAs would have a *deminimis* impact upon owl conservation across the State. Moreover, given various technology limitations and the potential causation and burden of proof problems associated with proving incidental take to an owl from small scale land use activities of any one particular small landowner, the Service believes that there is a better allocation of its limited law enforcement resources than to attempt to enforce incidental take restrictions on someone owning 80 acres or less of forest land.

The Service also proposes a ''Local Option Conservation Plan'' or Local Option approach to provide small and mid-sized landowners with additional flexibility in dealing with incidental take restrictions.

The prohibition against incidental take in SEAs indirectly assists in maintaining pockets of suitable and dispersal habitat through the continued protection of suitable owl habitat around site centers. This prohibition also helps provide future stocks of juvenile spotted owls who would be more likely to migrate between key reserves. Since a primary need in many of these connectors is the development and maintenance of spotted owl dispersal habitat, the Service acknowledges that alternative means may be developed for achieving that objective. The use of the general incidental take prohibition in SEAs in Washington is valuable when dealing with a wide-ranging species like the northern spotted owl. Nevertheless, the Service recognizes the value in providing flexibility in a section 4(d) rule to allow for the modification of such prohibitions to better reflect local ecological conditions for a given area. Furthermore, in focusing on a single species objective in Special Emphasis Areas, broader landscape, watershed, or ecosystem conservation possibilities may be foreclosed. One of the key lessons the Service has learned in dealing with northern spotted owl issues over the years is that the variability of habitats and silvicultural practices is such that there might be more than one approach for providing conservation benefits to the owl. For that reason, this rule proposes to establish a Local Conservation Planning Option.

The ''Local Option'' process would be limited to non-Federal landowners who own, as of the date of this proposed rulemaking, between 80 and 5,000 acres of forestlands in an SEA in Washington.

This process could result in the authorization for the incidental take of an owl in exchange for an agreement to grow or maintain dispersal habitat. The local option conservation planning process would not apply, however, to those particular areas within a given SEA where the continued maintenance of suitable owl habitat on non-Federal lands is determined to be necessary and advisable in order to provide demographic support for adjacent Federal owl reserves.

There is no official acreage designation defining a large acreage landowner that is common to the three States of Washington, Oregon and California. Definitions of small, medium and large land ownerships vary and more often differentiate between non-industrial or non-commercial private landowners. For purposes of various State regulatory analyses, taxation or economic policies, and Association memberships, e.g. Washington Farm Forestry Association, acreages ranging from 2,000 to 10,000 acres have been used to differentiate between industrial and non-industrial landowners. For example, 5,000 acres is generally the for adjacent Federal owl reserves.

There is no official acreage designation defining a large acreage landowner that is common to the three States of Washington, Oregon and California. Definitions of small, medium and large land ownerships vary and more often differentiate between non-industrial or non-commercial private landowners. For purposes of various State regulatory analyses, taxation or economic policies, and Association memberships, e.g. Washington Farm Forestry Association, acreages ranging from 2,000 to 10,000 acres have been used to differentiate between industrial and non-industrial landowners. For example, 5,000 acres is generally the maximum acreage break-off point in Oregon to distinguish a non-industrial forestland owner from an industrial one. Contracts with a mill will also qualify landowners as industrial. Given the range of acreage figures that has been utilized among the three States, the Service believes that a 5,000 acre break point is reasonable for purposes of this 4(d) rule. Accordingly, landowners with less than 80 acres of forestland within an SEA have been treated as small landowners within this rule and have been provided specific relief up front. Landowners with overall forestland holdings greater than 80 acres and not more than 5,000 acres within an SEA are considered to be medium sized landowners and may pursue the ''Local Option'' process to seek greater flexibility in addressing prohibitions an incidental take. Finally, non-Federal landowners who have 5,000 or more acres of forestlands within an SEA in Washington would only receive relief from incidental take prohibitions for the spotted owl by completing an HCP and obtaining a permit under Section 10(a)(1)(B) of the Act.

The landowner-initiated Local Option process must still provide for the primary spotted owl conservation objective specified for the Special Emphasis Area where the property is located. The Service encourages individual and adjacent multiple landowners to take advantage of this option cooperatively to achieve broader ecosystem conservation objectives which could have these benefits:

—multiple landowners could collaborate to provide greater management flexibility, more effective conservation benefits, and to minimize administrative costs;
—multiple species and habitats could be considered, potentially reducing the need to list declining species or anticipating requirements of future listings;
—land management treatments could become more consistent from Federal to non-Federal lands, particularly in checkerboard areas; and
—landowners could exercise additional flexibility to plan their forestry operations so as to best reflect localized environmental conditions within a Special Emphasis Area.

This proposed rule would provide non-Federal landowners in Washington, in cooperation with the appropriate State agencies, the option of developing cooperative local conservation plans for timber harvests in areas of up to 5,000 acres within SEAs where the incidental take prohibition for the northern spotted owl would not be relieved by this proposed rule. These cooperative plans could provide non-Federal landowners with the opportunity to develop alternative management strategies or prescriptions for addressing the conservation needs of the owl.

The Local Option Conservation Planning process is designed to encourage creative approaches to the conservation of the spotted owl by building flexibility into the regulatory process. Such efforts encourage coordinated management of listed species, like the northern spotted owl and the marbled murrelet. If a Local Option Plan is approved by the Service in consultation with the appropriate State wildlife agency, the prohibition against take of northern spotted owls incidental to timber harvests may be modified, to some degree, as specified in the Plan. The Service will review each proposed Local Option Plan cooperatively with the affected State wildlife agency to ensure that the conservation objectives for the owl in the affected area will not be precluded and that the proposal is complementary to the Federal Forest Plan.

Under the local option process of this proposed rule, the primary focus would be on the spotted owl, although there might be opportunities for conserving other associated plant and animal species. Approval of a local option conservation plan would be an expedited process (compared to the HCP permit mechanism) through incorporation of specific conservation criteria and guidance provided by this proposed rule.

A non-Federal landowner or local or State government may submit an application to the Service for approval of a proposed local option plan. If requested, the Service would provide further guidance for the development of a local option plan for a particular area. However, the applicant is responsible ultimately for the preparation of a local option plan proposal. The Service will be responsible for ensuring the plan's compliance with the National Environmental Policy Act. Appropriate State of Washington agencies may elect to participate with the Service in the review of local option plan proposals for areas within the State. In addition, if the State's regulations are consistent with this rule, a local option plan proposal could be certified through a State review process.

In determining the criteria for approval of a local option plan, the Service has considered the information and approval requirements set forth at 50 CFR 17.32(b) for a section 10 HCP permit. Those requirements have been further streamlined for local option planning and have been tailored to meet the specific conservation needs of the spotted owl.

Service approval of a local option conservation plan will be based on consideration of the information required to be submitted with an application for approval of a plan. Applications for approval of a local option conservation plan must be submitted to the Field Supervisor of the Fish and Wildlife Service office in Olympia, Washington.

One additional proposed provision affecting timber harvest activities within an SEA involves the recognition and establishment of a ''safe harbor'' from owl incidental take liability where more than 40 percent suitable habitat remains, post-harvest, within an owl's median annual home range. Although

some studies have suggested that rates of owl reproduction and survival may be affected to some degree at a percent of suitable habitat above 40 percent, the benefits of timber management certainty and the problem of enforcement difficulties tied to issues of causation nevertheless warrant a ''safe harbor'' approach. Thus, in those instances where more than 40 percent suitable owl habitat remains within an owl's median annual home range after harvest, a landowner would not be liable for prosecution should the incidental take of an owl nevertheless occur despite their best efforts to avoid take.

Relief From Current Incidental Take Provisions in California

This proposed rule contains a shift in approach for California which has evolved since the publication of the NOI in December of 1993. The December 29, 1993, NOI did not specify any particular area in California where incidental take prohibitions would be relaxed, but instead stated the Service's intent to defer to California law to provide for the conservation of the spotted owl. In anticipation of that possibility, the California Board of Forestry considered a May 1994 proposal from the California Resources Agency that would have required maintenance of suitable owl habitat as a portion of every watershed. The timber industry regarded the proposal as too restrictive, and regulatory agencies believed it would be too expensive to administer, so, the Board of Forestry tabled the proposal.

To provide a possible resolution of this impasse, the Service proposes a new structure in this proposed rule as it applies to California which is consistent with the Service's original underlying biological assumptions for the owl in that State, as set forth in the December 29, 1993, NOI. The Service proposes to provide some immediate relief from incidental take in most of the California Klamath Province and for small landowners in the remainder of northern California within the range of the northern spotted owl. To encourage additional comprehensive conservation planning for the spotted owl and other species which is available under the California Natural Communities Conservation Planning program (NCCP), additional relief for four other areas of northern California (the California Cascades, Coastal, Hardwood, and Wells Mountain-Bully Choop Regions) (Figure 1 to § 17.41(c)) would be available contingent upon the successful completion of a NCCP initiative for spotted owls which is complementary to, or not consistent with the owl conservation goals of the Federal Forest Plan as applied in that State. The actual scope and extent of relief for these four areas would be one of the primary issues to be addressed through the NCCP process. These four areas are called potential ''California Conservation Planning Areas'' (CCPAs) for purposes of this proposed rule.

Relief From Current Incidental Take Restrictions Inside The Klamath Province Relief Area

The proposed rule would result in a reduction of the prohibition against incidental taking of owls for non-Federal lands within most of the Klamath Province in a zone called the Klamath Province Relief Area (Figure 1 to § 17.41(c)). There are 105 spotted owl site centers located on non-Federal land within the Klamath Province Relief Center. An additional 117 site centers are on Federal land within the Relief Area which are dependent to some degree upon adjacent non-Federal lands. Within the area of relief, a landowner would only be required to retain the closest 70 acres of suitable owl habitat surrounding a site center. Thus, the incidental take of the spotted owl would not be prohibited for timber harvest activities outside those 70 acres. Such relief would not be provided throughout the entire Klamath Province however. In particular, it would not be provided in those areas that overlap with the boundaries of potential CCPAs, including the Wells Mountain-Bully Choop and the Hardwood Region Areas of the Klamath Province (Figure 1 to § 17.41(c)). Relief would also not be provided for those owls in the Klamath Province Relief Area whose site centers are located on Federal Forest Plan reserves or Congressionally reserved or Administratively withdrawn areas and are dependent upon adjacent non-Federal lands. As noted previously in a discussion of similar site centers in the State of Washington, the Service will reassess the need for such continued protection over the next two years and will provide additional relief where warranted at the end of this assessment.

The California Cascades, Coastal, Hardwood Region and Wells Mountain-Bully Choop CCPAs

California's NCCP program (California Fish and Game Code 2800 *et seq.*) was initiated in 1991 to develop plans that would preserve biological diversity and reconcile development and wildlife needs on a local and regional level. It is designed to encourage public/private sector cooperation, maintain local control over land use decisions, and meet the objectives of State and Federal laws by preserving species and ecosystems before they are on the verge of extinction. Planning criteria and conservation strategies for certain species and communities are developed by scientific review panels.

The California Resources Agency has indicated a willingness to consider initiating an NCCP process for portions of the range of the spotted owl. The Service would encourage the California Resources Agency to convene key stakeholders and regulatory agencies in an NCCP process for the California Cascades, Coastal, Hardwood and Wells Mountain-Bully Choop areas of the State (Figures 2 and 3 to § 17.41(c)). The Service recognizes that the actual designation of any CCPA is a discretionary administrative matter controlled by the California Resources Agency. Accordingly, this proposed rule would recognize these four regions as potential CCPA areas, serving as a ''place holder'' in the 4(d) rule until such time as an NCCP planning process is undertaken and completed. One goal of such a planning effort would be to facilitate and encourage the development of ownership-wide or Region-wide management plans and criteria which adequately provide for the conservation needs of the owl and which complement the owl conservation goals of the Federal Forest Plan. The actual content and scope of such plans would be developed through the NCCP process itself. Ultimately, the planning process must address, to the satisfaction of the State regulatory agencies and the Service, an appropriate balance between providing some measure of regulatory relief while achieving or maintaining the conservation goals for the spotted owl for a particular region.

Under the NCCP approach, the incidental take of the spotted owl would not be prohibited under the Act if take were the result of activities conducted according to an approved CCPA plan. This would require the Service to first determine, in consultation with the California Departments of Fish and Game and Forestry and Fire Protection, that the plan meets the overall requirements of the Act and the conservation goals for the owl in that area and is complementary to the Federal Forest Plan. The process should also consider the extent to which new Board of Forestry Sustained Yield Plans (SYPs) could be used as a basis for incidental take authorization, provided that such SYPs had been reviewed and approved by the Service after consultation with appropriate State agencies. A joint State and Federal National Environmental Policy Act/

California Environmental Quality Act (NEPA)/(CEQA) document could be prepared to review the environmental effects of each CCPA plan, including any incidental take of owls.

Potential CCPA boundaries described below were derived from earlier planning efforts by the State (CDF 1992) and knowledge of current Federal conservation efforts. To the extent that the boundaries of these potential CCPAs are somewhat different from traditional past descriptions of spotted owl provinces in California, they merely represent sub-units of owl provinces.

The areas discussed below could be designated as CCPAs under the California NCCP Act for purposes of northern spotted owl or possible multi-species conservation planning. Of the 837 spotted owl site centers on non-Federal lands in California, 732 are in the combined, proposed CCPAs. There are an additional 228 site centers on Federal lands within the proposed CCPAs, of which 87 rely to some degree upon adjacent non-Federal lands.

(a) *Coastal Area* (Figure 2 to § 17.41(c)).

Extending from the Oregon border south to San Francisco Bay, this area is west of the Six Rivers and Mendocino National Forests. It consists of approximately 293,000 acres of Federal land, and 3.6 million acres of non-Federal land. Timber management is the primary land use on about 2 million acres and is concentrated in the heavily forested redwood zone within 20 miles of the Pacific Ocean coastline. In the more inland and southerly portions of the area, spotted owl habitat is largely confined to the lower portions of drainages and is naturally fragmented by grasslands, hardwoods, and chaparral.

The coastal area of northern California plays an important role in the conservation of the species. It represents more than 10 percent of the range of the spotted owl and has substantial owl populations in managed forests. Approximately 642 owl site centers located on non-Federal lands are known in this area, virtually all of them are in managed second-growth timber stands; 66 site centers are located on Federal lands of which 30 rely to some degree upon adjacent non-Federal lands.

Due to the owl's widespread distribution, the predominance of selective harvest methods, and the rapid regrowth of habitat, the degree of threat to the species in much of this area appears to be relatively low. According to analyses conducted by the California Resources Agency (Berbach *et al.* 1993), more than 75 percent of the quarter-townships in the three northern coastal counties (Del Norte, Humboldt, and Mendocino) meet or exceed the standard for spotted owl dispersal habitat described by the ISC (Thomas *et al.* 1990). Some degree of incidental take could be accommodated while maintaining a well-distributed spotted owl population. The magnitude of such incidental take, however, would be one of the items to be addressed through the NCCP process.

Because Federal lands are limited, they play a small role in the conservation of the species in the California Coastal area. The Forest Plan has placed most of the existing late-successional forests in the BLM's scattered parcels (a few thousand acres) into reserves, and Redwood National Park also provides late-successional habitat in the northern portion of this area. However, these limited Federal reserves cannot support enough spotted owls to provide for the conservation of the species in the coastal province. Therefore, non-Federal lands are generally very important to the conservation of the spotted owl.

Significant non-Federal conservation efforts are already in place or under development in the California Coastal area. Several timber companies have made substantial investments in information-gathering and planning for owl conservation. The Simpson Timber Company has completed an HCP (Simpson 1992) and received a permit for incidental take of a limited number of spotted owls on its 380,000-acre property. Pursuant to the HCP, Simpson Timber has set aside 40,000 acres for at least 10 years, is conducting research on habitat characteristics, and has banded more than 600 owls. The Pacific Lumber Company is conducting banding and radio-telemetry studies, and has completed a management plan for its 200,000-acre property that maintains owl habitat in every watershed and protects all spotted owl nest sites from take. The Georgia-Pacific and Louisiana-Pacific Corporations have conducted banding and radio-telemetry studies in cooperation with the CDFG; analyses of these data are under way. Numerous smaller-acreage landowners have conducted surveys and provided data to the State's spotted owl database.

Planning a conservation strategy for spotted owls in the California Coastal area is a complex task due to the large number of landowners (conservatively estimated at 30,000 to 50,000 (CDF 1992). Therefore, except for a small landowner exemption for people owning less than 80 acres of forestland within a given CCPA and an additional adjustment for non-Federal lands within matrix and AMA areas, the Service is not proposing to remove the prohibition of incidental take for this area at this time, but will cooperate in anticipated efforts by the California Resources Agency to utilize the NCCP process to further refine an acceptable owl conservation program for this area that addresses the question of additional relief.

(b) *Hardwood Region* (Figure 2 to § 17.41(c)).

In the southern portion of the California Coast Province and the California Klamath Province, suitable habitat is scattered due to effects of climate, soils, and human development. This area, which includes much of Lake, Sonoma, Napa, and Marin Counties is dominated by hardwoods and was designated as the Hardwoods Subprovince during the California HCP planning effort (CDF 1992). It consists of approximately 755,000 acres of Federal land and 2.0 million acres of non-Federal land. Approximately 57 owl site centers located on non-Federal lands are known in this area; 70 site centers are located on Federal land of which 9 rely to some degree upon non-Federal lands. In this area, spotted owls are widely scattered and often isolated in small patches of habitat. Because the area contains minimal Federal land, maintenance of the species' current range would depend almost entirely on providing for owls on non-Federal lands.

(c) *Wells Mountains—Bully Choop* (Figure 3 to § 17.41(c)).

This area is in eastern Trinity County south of the Salmon-Trinity Alps Wilderness, and, as identified in the draft Recovery Plan, provides an important link between the California Klamath Province and the California Cascades Province. This area consists of approximately 116,000 acres of Federal land and 176,000 acres of non-Federal lands, and is managed under Sierra-Pacific Industries' no-take owl management plan. Approximately 13 owl site centers located on non-Federal lands are known in this area; 7 site centers are located on Federal lands of which all 7 rely to some degree upon adjacent non-Federal lands. Conservation goals include maintenance of owl populations and dispersal habitat.

(d) *California Cascades* (Figure 3 to § 17.41(c)).

The California Cascades Province is east of the California Klamath Province. It consists of approximately 1.3 million acres of Federal land and 1.6 million acres of non-Federal land. Checkerboard Federal/non-Federal ownership patterns predominate. Due to the relatively dry climate and the history of recurrent

wildfires in this province, spotted owl habitat is naturally fragmented by chaparral and stands of deciduous hardwoods. In portions of the province, exclusion of fire during the last century may have encouraged development of mixed-conifer habitat suitable for spotted owls. However, during the same period, timber harvest has removed substantial amounts of suitable habitat. Approximately 105 widely scattered site centers are known. Of these sites, 20 are centered on non-Federal lands and 85 are centered on Federal lands, of which 46 rely to some degree upon adjacent non-Federal lands. The potential for dispersal throughout the province appears to be limited. This province provides the demographic and genetic link between the northern spotted owl and the California spotted owl (*Strix occidentalis occidentalis*) of the Sierra Nevada range.

Currently, threats in this province include low population numbers, the difficulty in providing for interacting population clusters, and fragmented dispersal habitat. Catastrophic wildfire is a significant threat to habitat. In 1992, a 70,000-acre fire in Shasta County substantially reduced the likelihood of contact between the northern spotted owl and the California spotted owl for the next several decades.

Due to the existing habitat condition and the importance of the province in linking the two subspecies, the entire province has been designated as an area of concern by every spotted owl management plan to date. The Forest Plan provides protection of habitat in the home range of each northern spotted owl found in the province. The province contains the 172,000-acre Goosenest AMA on the Klamath National Forest. Sierra-Pacific Industries' owl management plan covers the majority of the extensive non-Federal checkerboard ownership in the province. The primary conservation needs for both Federal and non-Federal lands are research on habitat use by nesting and dispersing spotted owls, and providing habitat for a well-distributed population and dispersal throughout the province. Because of the poor biological status of the owl in this province, the opportunity for large scale relief in this area is very limited at present. Should additional data or information suggest that the status of the owl has stabilized or is improving, options for this Province would be reconsidered.

Other Related Provisions

As is the case in the State of Washington, the proposed rule would also include a ''safe harbor'' for any timber harvest activity where more than 40 percent suitable habitat remained, post harvest, within an owl's median annual home range. This provision would be relevant for harvest activities within the four potential CCPAs.

The Service proposes to provide immediate relief upon the effective date of the final rule from owl incidental take restrictions for small landowners in California. Such relief would be independent of, and in advance of any Natural Community Conservation Planning (NCCP) process. Except within the 70-acre owl activity centers themselves, the Service proposes to relieve small landowners who own no more than 80 acres of forestland in a given CCPA as of the date of publishing this proposed rule in the **Federal Register**, from the prohibition against the incidental take of owls. The 80 acres/small landowner relief provision would remain in effect regardless of whether an NCCP process was ultimately successful in a given CCPA. The relief provision would be applicable in all four potential CCPAs. It would be unnecessary in the Klamath Province Relief Area, which is the subject of a broader proposal to relax incidental take restrictions.

The Service also proposes to modify existing incidental take restrictions within potential CCPAs that would involve non-Federal lands located amid matrix or Adoptive Management Areas (AMA) designated under the Federal Forest Plan. Where such non-Federal lands are subject to incidental take prohibitions for a given owl, the Service proposes to authorize the affected non-Federal landowners to apply either the final management prescriptions for the surrounding Federal Matrix/AMA land, as determined through the watershed analysis or AMA planning processes, as appropriate, or such management practices which comply with the current incidental take restrictions.

Application of either management strategy would absolve the affected non-Federal landowner from any liability for incidental take of an owl under the Act, resulting in the application of more uniform owl conservation standards within a matrix/AMA area regardless of land ownership.

The one exception to this policy would be where the adoption of matrix or AMA prescriptions could result in the incidental take of an owl whose site center is located within a Forest Plan reserve or Congressionally reserved or Administratively withdrawn area. In such a case, the incidental take restrictions would continue to apply for at least two more years. At the end of this period, the Service will review any new data or information involving the status of such owls and their habitats in the affected areas, including the results of any completed watershed analysis and other planning efforts under the Forest Plan. As noted previously in a discussion of this review process, the Service would assess on an area-by-area basis whether the continuation of the incidental take prohibition on affected non-Federal lands was still necessary and advisable for achieving the owl conservation goals of the Forest Plan. The Service would lift the incidental take restrictions where warranted and authorize the adoption of the final matrix or AMA prescriptions, at the discretion of the affected non-Federal landowner, as a means of avoiding an unauthorized incidental take of an owl.

Table 1 provides a summary of the various areas where incidental take relief could be provided or prohibitions retained in the two States affected by this proposed rule.

TABLE 1

Landowner type	Washington owl sites outside SEAs	Washington owl sites inside SEAs	California owl sites inside Klamath relief area	California owl sites inside CCPAs
Less than 80 acres.	Relief for all landowners except for 70-acre core.	Relief except for 70-acre core	Relief for all landowners except for 70-acre core.	Relief except for 70-acre core.
80–5,000 Acres	Relief for all landowners except for 70-acre core or where current restrictions are necessary to protect owls on a Federal reserve or withdrawn area (except for Olympic Peninsula).	Matrix/AMA prescription option. Additional relief contingent upon acceptable Local Option Plan.	Relief for all landowners except for 70-acre core or where current restrictions are necessary to protect owls on a Federal reserve or withdrawn area.	Matrix/AMA prescription option. Additional relief contingent upon successful completion of NCCP process.
More than 5,000 Acres.	Relief for all landowners except for 70-acre core or where current restrictions are necessary to protect owls on a Federal reserve or withdrawn area (except for the Olympic Peninsula).	Matrix/AMA prescription option. Additional relief contingent upon acceptable Local Option Plan.	Relief for all landowners except for 70-acre core or where current restrictions are necessary to protect owls on a Federal reserve or withdrawn area.	Matrix/AMA prescription option. Additional relief contingent upon successful completion of NCCP process.

Incidental Take on Tribal Lands

For Indian forest lands, as that term is defined at 25 CFR 163.1, in California and Washington, the proposed rule would result in the reduction of the current Federal prohibition against the incidental take of the spotted owl. Under this proposal, Tribes would be required to maintain only the closest 70 acres of suitable owl habitat around an owl site center. Any additional restrictions or prohibitions under Tribal law would continue to apply. The Service is proposing this approach in recognition of the conservation benefits provided the northern spotted owl under harvest methods practiced by many Indian Nations, such as the Yakima Indian Nation in Washington. Many tribal lands are already managed under conservation strategies for the owl or are of little habitat value for the bird. Moreover, the Service notes that the Secretary's trust responsibility for Native Americans provides him with additional fiduciary factors to weigh in exercising his broad discretionary authority under Section 4(d) of the Act.

Sunset Provision

The Service proposes a process that could result in the modification of the prohibitions of incidental take that are retained under this proposed rule should future biological information so warrant in either California or Washington.

Under this sunset provision, the Service would periodically evaluate the conservation goals for non-Federal lands within SEAs or possible CCPAs and would decide whether the conservation goals for owls in those areas have been accomplished as a result of future HCPs, no-take agreements, or other affirmative conservation activities. Should the Service conclude that success has been achieved in reaching the conservation needs of the species within a given area, restrictions due to incidental take prohibitions could be further modified or lifted, as information warrants.

Other Federal Mechanisms for Promoting the Conservation of the Spotted Owl

The listing of the spotted owl, the designation of its critical habitat, and the application of Act regulations at 50 CFR Part 17 have extended the protection of the Act to this species. Under section 7 of the Act and the implementing consultation regulations at 50 CFR 402, individual project review occurs through the consultation process for those actions authorized, funded, or carried out by Federal agencies that may affect a listed species like the spotted owl or its designated critical habitat. The Section 7 consultation process is designed to ensure that a proposed action is not likely to jeopardize the continued existence of the species or adversely modify its critical habitat. The consultation process also requires the Service to determine what level of incidental take is likely to occur as a result of that action. After completing this determination, the Service issues an incidental take statement that is designed to minimize both the level and the impact of take on listed species.

In 1982, Congress amended section 10(a)(1)(B) of the Act to provide an additional mechanism for encouraging non-Federal support for the conservation of listed species. More commonly known as Habitat Conservation Planning or HCPs, this mechanism authorizes the incidental take of a listed species in exchange for a commitment from a private developer or landowner for a long-term conservation program for the affected species.

Section 10(a)(1)(B) of the Act, requires non-Federal applicants to develop Habitat Conservation Plans for listed species which would be incidentally taken in the course of otherwise lawful activities, and to submit such plans along with an application for an incidental take permit. Such plans can direct significant private sector resources in support of the overall conservation of the affected species on non-Federal lands. Three section 10(a)(1)(B) incidental take permits for the northern spotted owl have already been issued by the Service. A number of other non-Federal entities are in the process of developing HCPs for the spotted owl. The section 10 HCP process will remain available to non-Federal landowners under the proposed rule and will provide an additional alternative for adjusting the incidental take prohibitions set forth in this proposed rule. The initiation of a major and aggressive Habitat Conservation Planning Program for non-Federal forestlands in the Pacific Northwest is an integral and crucial component of the Administration's overall owl conservation program. When combined with the conservation goals of the Federal Forest Plan and this proposed section 4(d) rule, the Service's Habitat Conservation Planning initiative provides the third element for a comprehensive strategy for the owl.

Incentives for Restoring or Enhancing Owl Habitat

Prohibitions against the incidental take of the spotted owl have existed since the species was Federally listed in June of 1990. The Service believes that many landowners have felt threatened by the current regulations which could

be viewed as a disincentive to enhance, restore, or maintain habitat in a condition that is suitable for owl nesting, roosting, foraging, or dispersal. The disincentive stems from landowners' fears that owls might establish residence on, or move through, their property and impede their ability to manage their timber resources. This disincentive has had the effect of increasing timber harvest of currently suitable owl habitat and younger forests on non-Federal lands which are not presently affected by the presence of an owl. With regard to younger forests in particular, this concern or fear has accelerated harvest rotations in an effort to avoid the regrowth of habitat that is useable by owls.

For those non-Federal lands which are not currently affected by incidental take restrictions for spotted owls, the Service proposes to provide a new incentive to landowners to voluntarily manage their lands in a manner which aids in owl conservation without increased regulatory liability for the landowner. In particular, the Service desires to encourage landowners to restore or enhance former owl habitat which has been previously altered and is of little current value to the owl. The Service is also interested in encouraging owners of current suitable owl habitat to maintain that habitat and to forego premature cutting as the only perceived means of avoiding future incidental take restrictions for the owl.

The Service would offer to work directly with a non-Federal landowner through a written conservation or cooperative agreement for the purpose of managing, restoring or enhancing forest habitat so as to contribute to the survival and recovery of the owl. Working with the affected landowner, the Service would first establish an environmental baseline for the property to confirm that no Endangered Species Act-based spotted owl restrictions currently apply to the land. The Service might provide such other conservation advice or assistance as is feasible and available. The agreement would be of sufficient duration so as to enhance the conservation of the owl or to provide some benefit to the owl while still allowing economic use of the property during the term of the agreement.

At the end of the agreement, or at any time thereafter, the landowner would be free to use his or her property as desired without restrictions under the Act for the spotted owl. This would be the case even if an owl established residence or dependency upon the property at some point during or after the terms of the agreement. During the life of the agreement, the landowner also would be authorized to incidentally take any spotted owl which was otherwise in accordance with the use of the property under the agreement.

The Service believes that an incentives program of this sort will encourage primarily the development of dispersal habitat under restoration and enhancement agreements and will slow down the harvest of suitable owl habitat under habitat maintenance agreements. Under any of these approaches, there is a potential benefit for the spotted owl. Most owls using dispersal habitat are not likely to remain dependent upon that habitat as part of a resident pair or as a single. Instead, they are likely to use the area as a corridor for moving from one block of suitable habitat to another. Under these circumstances, any incidental take that might otherwise occur through land use activities on the property is likely to be inconsequential or very limited in impact or duration.

In addition, the opportunity for subsequent immunity from incidental take restrictions should provide an incentive to owners of suitable owl habitat to forego panic cutting and to enter into habitat maintenance agreements. By discouraging legal but potentially unsustainable harvests now, and stretching the retention of suitable owl habitat for the life of a maintenance agreement, the Service and the landowner would keep such habitat available for owl use during the pendency of the agreement.

Incidental Take of Other Listed Species

Several other Federally-listed species occur in the late-successional and old-growth forests that provide habitat for the spotted owl. The bald eagle (*Haliaeetus leucocephalus*), peregrine falcon (*Falco peregrinus*), gray wolf, grizzly bear (*Ursus arctos*), and marbled murrelet are known to occur on non-Federal lands in the range of the owl; the prohibition of take of these species incidental to timber harvest would remain in place.

The Service is concerned about the effects of harvest activities on the marbled murrelet, particularly since the range of the spotted owl significantly overlaps the range of the murrelet. Some areas of relief under this proposed rule for the spotted owl might also provide habitat that is occupied by the marbled murrelet. Since the date of the original listing of the murrelet, the Service has been acquiring as much additional data and information as possible to identify the constituent elements of suitable murrelet habitat, as well as to expand a landowner's ability to determine whether or not such habitat is occupied. Significant progress also has been made in the development of a draft recovery plan for the murrelet. The draft recovery plan should be available for public comments in two to three months. In order to aid a landowner in determining whether a property is occupied by murrelets, the Service encourages landowners to contact one of the Fish and Wildlife Service's three Ecological Services State Offices noted previously in this document, and request guidance or information on delineating suitable murrelet habitat and conducting murrelet surveys to determine presence of murrelets on a given piece of property. This will ensure that landowners who might receive relief from owl restrictions under this proposed rule are aware of the latest data on occupied habitat for murrelets.

The Service recognizes that additional incidental take of spotted owls may occur in SEAs in Washington and CCPAs in California, as HCPs or other long-term conservation agreements, e.g. local option conservation plans, are implemented and further take is authorized. However, the Service believes that the overall level of incidental take is acceptable in light of the habitat-based conservation strategy in the Forest Plan and the fact that such plans or agreements must satisfy the conservation requirements of the Act. The Service will review the effects of the proposed rule under a section 7 consultation as part of the process to complete this proposed rule.

In Washington and California, the Service believes that the relief from prohibitions for non-Federal landowners outside of SEAs or CCPAs and for non-Federal landowners with holdings of less than 80 acres of forestland in a given SEA or CCPA would not preclude the recovery of the spotted owl and will facilitate the maintenance of habitat conditions in some areas by removing disincentives that currently account for the premature cutting of habitat.

In general, the contributions of Federal, State, Tribal and private land management and conservation efforts for protection of the spotted owl and other species allow for reduction of the prohibitions on incidental take of the owl in many areas on non-Federal lands. As a result of this proposed rule, landowners would have more certainty about the conditions under which incidental take is likely to occur. Finally, the Service points to the long-term benefit to the owl of enhanced public support for the Act.

Public Comments Solicited

The Service intends that any final action resulting from this proposed rule

would be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other government agencies, the scientific community, industry, or any other interested party concerning this proposed rule are solicited. In particular, the Service seeks comments on:

(1) The distribution, abundance, and population trends of spotted owls on non-Federal lands in Washington and California as they would relate to the approaches described in this proposed rule;

(2) The boundaries of the proposed SEAs or CCPAs identified for Washington and California and suggestions for modification of these boundaries. In order to better assess available data on the region, the Service particularly would like to encourage public comment on the question of whether it is necessary and advisable for the conservation of the spotted owl to designate a Special Emphasis Area on the western side of the Olympic Peninsula, and if so, whether the present proposed boundaries of the Hoh/Clearwater Special Emphasis Area are warranted or whether they should be reduced in size or significantly reconfigured.

(3) The distribution and abundance of spotted owl populations that are outside of SEAs or CCPAs;

(4) The biological and economic implications of applying the proposed rule in Washington and California;

(5) The applicability of the definitions of suitable habitat and dispersal habitat for the spotted owl, specific to provinces if possible;

(6) The implications of the proposed rule on small-acreage (less than 80 acres), medium-acreage (80 to 5,000 acres), and large-acreage (more than 5,000 acres) non-Federal landowners and comments on how these different ownerships are addressed in the proposed rule;

(7) The scope and effect of the ''local option'' process for landowners who own 80 to 5,000 acres in SEAs in the State of Washington;

(8) The biological or economic implication of proposing a different SEA/CCPA approach where non-Federal buffers would be retained around any owl site centers located on Federal reserves in designated areas, and whether SEA/CCPA boundaries would change as a result of applying this type of approach; and

(9) Recommendations or comments on how to implement the proposed Habitat Enhancement Agreement conservation program for the owl, particularly with regards to possible provisions of such agreements, scope of duration of such agreements and land use assurances to private landowners which would be necessary to encourage voluntary participation.

Final promulgation of the proposed rule will take into consideration the comments and any information received by the Service. Any information the Service receives during the comment period may lead to a final rule that differs from this proposed rule.

The Act provides for a public hearing on the proposed rule, if requested. Requests must be received within 45 days of the date of publication of this proposed rule. Such requests must be written and addressed to: Regional Director, Region 1, U.S. Fish & Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181.

Section 7 Consultation

Review, pursuant to section 7 of the Act, will be conducted prior to issuance of a final rule to ensure that the proposed action will not jeopardize the continued existence of the spotted owl or any other listed species.

National Environmental Policy Act

The Fish and Wildlife Service is complying with NEPA in implementing the provisions of this proposed rule. The Service prepared an environmental assessment on this proposal and has decided to engage in a more intensive assessment of impacts through the preparation of an environmental impact statement (EIS). The Service is preparing a draft EIS at this time. The draft EIS will be published and available for public review and comment approximately 60 days after publication of this proposed rule. The end of the public comment period for the proposed rule will ultimately be extended to coincide with the end of the public comment period for the draft EIS.

Required Determinations

This proposed rule was reviewed under Executive Order 12866. The Service has not yet made a determination of the economic effects of the proposed rule on small entities as required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Specific economic effects of the proposed action will be discussed in the economic analysis that is included in the Environmental Impact Statement (EIS) for the proposed action. The EIS will be published and available for public comment at a later date. This rule does not require a Federalism assessment under Executive Order 12612 because it would not have any significant federalism effects as described in the order. The collection of information contained in this proposed rule have been approved by the Office of Management and Budget under U.S.C. 3501 *et seq.* and assigned clearance number 1018–0022. The Service has determined that this proposed action qualifies for categorical exclusion under the requirements of Executive Order 12630, ''Government Actions and Interference with Constitutionally Protected Property Rights'', and preparation of a Takings Implications Assessment is not required. Regulations that authorize take of listed species, as is proposed in this special rule, are designated as categorical exclusions.

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List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

§ 17.11 [Amended]

2. Section 17.11(h), is amended by revising the ''special rules'' column in the table entry for ''Owl, northern spotted'' under BIRDS to read ''17.41(c)'' instead of ''NA''.

3. Section 17.41 is amended by adding paragraph (c) to read as follows:

§ 17.41 Special rules—birds.

* * * * *

(c) Northern spotted owl (*Strix occidentalis caurina*).

(1) *Prohibitions.* Except as provided in this paragraph (c)(1) or by a permit issued under paragraph (c)(2) of this section, the following prohibitions apply to the northern spotted owl.

(i) *Taking.* Except as provided in this paragraph (c)(1)(i), no person shall take a northern spotted owl in Washington or California.

(A) *Taking pursuant to cooperative agreements.* Any employee or agent of the Fish and Wildlife Service (Service), or of a conservation agency of the State of Washington or State of California that is carrying out a conservation program pursuant to the terms of a cooperative agreement with the Service in accordance with section 6(c) of the Endangered Species Act, who is designated by his/her agency for such purposes, may, when acting in the course of his/her official duties, take a northern spotted owl covered by an approved cooperative agreement to carry out a conservation program under the agreement in Washington or California.

(B) *Taking by designated officials.* Any employee or agent of the Service, National Park Service, Bureau of Land Management, U.S. Forest Service, Washington Department of Wildlife, or California Department of Fish and Game, who is designated by his/her agency for such purposes, may, when acting in the course of his/her official duties, take a northern spotted owl in Washington or California if such action is necessary to:

(*1*) Aid a sick, injured or orphaned owl;

(*2*) Dispose of a dead owl; or

(*3*) Salvage a dead owl which may be useful for scientific study: *Provided,* that any taking pursuant to paragraph (c)(1)(i)(B) of this section must be reported in writing to the U.S. Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 19183, Washington, DC 20036, within 5 days. The specimen may only be retained, disposed of or salvaged in accordance with directions from the Service.

(C) *Incidental Take on Tribal Lands.* On Indian forest lands in Washington and California, as defined in 25 CFR 163.1, any person may, when acting in accordance with tribal forestry rules and regulations, take a northern spotted owl incidental to timber harvest activity if the harvest does not destroy or degrade the 70 acres of nesting, roosting and foraging habitat closest to an owl site center.

(D) *Spotted Owl Habitat Enhancement Agreement.* Any person who has voluntarily entered into a Cooperative Habitat Enhancement Agreement (Agreement) with the Service for the purpose of restoring, enhancing or maintaining forestland habitat to aid in the conservation of the spotted owl may, pursuant to the terms of that Agreement, incidentally take spotted owls on the subject lands either during or after the period when the Agreement is in effect: *Provided,* that such Agreements shall only apply to parcels of land that are free of all incidental take restrictions for the spotted owl as of the date that such Agreements enter into force and effect, and that such Agreements must be of sufficient duration to aid in the conservation of the spotted owl.

(E) *Incidental Take in State of Washington.* The provisions of this paragraph (c)(1)(i)(E) shall apply to the incidental take of northern spotted owls from timber harvest activity in the State of Washington.

(*1*) *Outside Special Emphasis Areas (SEA).* Any person may take a northern spotted owl incidental to timber harvest activity outside an SEA if the harvest does not destroy or degrade the 70 acres of nesting, roosting and foraging habitat closest to an owl site center: *Provided,* that such incidental take is not authorized with regard to an owl whose site center is located within and along

the boundary of an SEA; or a Federal reserve or Congressionally reserved or Administratively withdrawn area which is otherwise located off the Olympic Peninsula.

(*2*) *Inside SEAs—Matrix and Adaptive Management Area authorization.* Any person may take a northern spotted owl incidental to timber harvest activity within an SEA if the harvest is on non-Federal land surrounded by or located within Federal Matrix or Adaptive Management Area lands and complies with the final Federal harvest prescriptions or restrictions adopted for such lands: *Provided,* that this authorization shall not apply to any northern spotted owl whose site center is located within a Federal Reserve or a Congressionally reserved area or Administratively withdrawn area.

(*3*) *Inside SEAs—Small landowners.* Any person who owns, on February 17, 1995, no more than 80 acres of forestland within a given SEA, may take a northern spotted owl incidental to timber harvest activity within such 80 acres if the harvest does not destroy or degrade the 70 acres of nesting, roosting and foraging habitat closest to an owl site center.

(*4*) *Inside SEAs—Local option conservation plans.* (*i*) *Authorization.* Any person who owns on February 17, 1995 more than 80 acres, but not more than 5000 acres, of forestland in a given SEA may take a northern spotted owl incidental to timber harvest activity conducted on such land in accordance with a Local Option Conservation Plan approved by the Service.

(*ii*) *Application.* Each application for a Local Option Conservation Plan shall be submitted to the Service's State Supervisor, U.S. Fish and Wildlife Service, 3704 Griffin Lane SE, Suite 102, Olympia, Washington 98501, on an official application (Form 3–200) provided by the Service. Each application must include, as an attachment, a plan that contains a description of the area to be covered by the proposed plan; the size of the affected land ownership(s) and the intended duration of the plan; the number of affected spotted owls and the habitat condition in the area to be covered by the proposed plan, if known; the extent to which the plan will contribute to or be consistent with the owl conservation needs identified for the SEA affected by the plan; the extent to which the incidental take of spotted owls resulting from timber activities under the plan will be complementary with the goals of the Federal Forest Plan for the affected area; the extent to which the land is adjacent to, or interspersed within, Federal Matrix or Adaptive Management Area lands and a description of the final management prescriptions delineated for any such lands, if known; the measures to be taken to minimize and mitigate the impacts of incidental take of spotted owls; the impact of the plan on affected watershed(s); what commitments the landowner(s) will provide to ensure implementation or adequate funding for the plan; what procedures will be used to deal with any unforeseen circumstances which could result in significant adverse effects to spotted owls in the affected area; any additional measures the Service requires as being necessary or appropriate for the goals of the plan to be met, e.g., reporting and review requirements; and, where the State has implemented regulations for a local option conservation plan review process that complements or is consistent with this proposed rule, whether the State has certified the plan.

(*iii*) *Approval.* After consideration of the information submitted with an application and received during a public comment period, the Service shall approve a Local Option Conservation Plan if it finds that any anticipated taking will be incidental; the applicant will minimize and mitigate the impact of such takings; the local option conservation plan contributes to or is consistent with the conservation needs of the northern spotted owl in the affected SEA and will not result in the incidental take of a spotted owl deemed essential for providing demographic support for a Federal reserve established under the Federal Forest Plan as necessary to achieve conservation objectives; the applicant will provide adequate assurances or funding for the implementation of the local option plan; and the taking will not appreciably reduce the likelihood of survival and recovery of any listed species in the wild.

(*5*) *Safe Harbor Authorization.* Any person may take a northern spotted owl incidental to timber harvest activity within an SEA if the harvest does not destroy or degrade the 70 acres of nesting, roosting and foraging habitat closest to an owl site center, and does not reduce, to less than 40 percent, the amount of nesting, roosting and foraging habitat within the median annual home range of the affected owl.

(*6*) *Sunset provision.* The Service shall periodically review and evaluate the effectiveness of the conservation measures and program for the spotted owl for each SEA. If the review indicates that the conservation goals for an SEA have been effectively achieved, the Service shall propose regulations to modify or withdraw the incidental take prohibitions in this paragraph as appropriate with respect to such SEA.

(F) *Incidental Take in State of California.* The provisions of this paragraph (c)(1)(i)(F) shall apply to the incidental take of northern spotted owls from timber harvest activity in the State of California.

(*1*) *Klamath Province Relief Area.* Any person may take a northern spotted owl incidental to timber harvest activity in the Klamath Province Relief Area (Figure 1 to § 17.41(c)) if the harvest does not destroy or degrade the 70 acres of nesting, roosting and foraging habitat closest to an owl site center: *Provided,* that such incidental take is not authorized with regard to an owl whose site center is located within and along the boundary of a Federal reserve or a Congressionally reserved or Administratively withdrawn area.

(*2*) *Potential California Conservation Planning Areas.* (*i*) *Matrix and Adaptive Management Area authorization.* Any person may take a northern spotted owl incidental to timber harvest activity within a potential California Conservation Planning Area (CCPA) if the harvest is on non-Federal land surrounded by or located within Federal Matrix or Adaptive Management Area lands and complies with the final Federal harvest prescriptions or restrictions adopted for such lands: *Provided,* that this authorization shall not apply to any northern spotted owl whose site center is located within a Federal reserve or a Congressionally reserved or Administratively withdrawn area.

(*ii*) *Small landowners.* Any person who owns, on February 17, 1995, no more than 80 acres of forestland within a given potential CCPA may take a northern spotted owl incidental to timber harvest activity within such 80 acres if the harvest does not destroy or degrade the 70 acres of nesting, roosting and foraging habitat closest to an owl site center.

(*iii*) *Natural Communities Conservation Plans.* Any person may take a northern spotted owl incidental to timber harvest activity within a potential CCPA if the harvest is conducted in accordance with a Natural Communities Conservation Plan (Plan) for spotted owls prepared by the State of California and approved by the Service. The Service shall approve any such Plan if it finds that the Plan is consistent with achieving the conservation goals for the spotted owl in the affected CCPA, is complementary to the Federal Forest Plan and is consistent with the criteria of section 10(a)(2) of the Endangered Species Act (16 USC 1539(a)(2)).

(*iv*) *Safe Harbor Authorization*. Any person may take northern spotted owls incidental to timber harvest activity within a potential CCPA if the harvest does not destroy or degrade the 70 acres of nesting, roosting and foraging habitat closest to an owl site center, and does not reduce, to less than 40 percent, the amount of nesting, roosting and foraging habitat within the median annual home range of the affected owl.

(*v*) *Sunset provision*. The Service shall periodically review and evaluate the effectiveness of the conservation measures and program for the spotted owl established for each CCPA. If the review indicates that the conservation goals for a CCPA have been effectively achieved, the Service shall propose regulations to modify or withdraw the incidental take prohibitions of this paragraph, as appropriate, with respect to such CCPA.

(ii) *Unlawfully taken owls*. No person shall possess, sell, deliver, carry, transport, or ship, any northern spotted owl taken in violation of paragraph (c)(1)(i) of this section: *Provided*, that Federal and State law enforcement officers may possess, deliver, carry, transport or ship any endangered wildlife taken in violation of the Act as necessary in performing their official duties.

(iii) *Commercial transportation*. No person shall deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of a commercial activity any northern spotted owl.

(iv) *Sales*. No person shall sell or offer for sale in interstate or foreign commerce any northern spotted owl.

(v) *Importation or exportation*. No person shall import into the United States, or export from the United States, any northern spotted owl.

(2) *Permits*. In accordance with the provisions of § 17.32 of this Part, permits are available to authorize otherwise prohibited activities involving the northern spotted owl in Washington and California.

(3) *Definitions*. As used in this paragraph (c):

(i) *Administratively withdrawn area* means lands that are excluded from planned or programmed timber harvest under agency planning documents or the preferred alternative for draft agency planning documents.

(ii) *Adaptive management area* means the 10 landscape units that were adopted in the April 13, 1994 *Record of Decision for Amendments to U.S. Forest Service and Bureau of Land Management Planning Documents within the Range of the Northern Spotted Owl* (USDA/USDI 1994) for development and testing of technical and social approaches to achieving specific ecological, economic, and other social objectives.

(iii) *Congressionally reserved area* means lands with Congressional designations that preclude timber harvest, as well as other Federal lands not administered by the Forest Service or Bureau of Land Management, including National Parks and Monuments, Wild and Scenic Rivers, National Wildlife Refuges, and military reservations.

(iv) *Federal Forest Plan* means the Federal forest management strategies, standards and guidelines adopted in the April 13, 1994, Record of Decision for the Final Supplemental Environmental Impact Statement for 19 National Forests and 7 Bureau of Land Management Districts located within the range of the northern spotted owl.

(v) *Federal Matrix Land* means those Federal lands generally available for programmed timber harvest which are outside of the Congressionally reserved and Administratively withdrawn areas, Federal reserves and Adaptive Management Areas as delineated in the Standards and Guidelines adopted in the April 13, 1994, Record of Decision.

(vi) *Federal Reserve* means those Federal lands delineated in the April 13, 1994, Record of Decision on which programmed timber harvest is not allowed and is otherwise severely limited. There are two types of reserves: late-successional reserves, which are designed to produce contiguous blocks of older forest stands; and riparian reserves, which consist of protected strips along the banks of rivers, streams, lakes, and wetlands that act as a buffer between these water bodies and areas where timber harvesting is allowed.

(vii) *Home range* means the area a spotted owl traverses in the course of normal activities in fulfilling its biological needs during the course of its life span.

(viii) *Nesting, roosting and foraging habitat or suitable habitat* means those areas with the following vegetative structure and composition necessary to assure successful nesting, roosting, and foraging activities for a territorial single or breeding pair of spotted owls:

(A) In the California provinces, suitable habitat consists, as a general matter, of coniferous or mixed coniferous/hardwood forests with multiple canopy layers; multiple overstory conifers greater than 16 inches in diameter at breast height (dbh); and total canopy closure among dominant, co-dominant, and understory trees of greater than 60 percent;

(B) In the Western Washington Lowlands province, the Western Washington Cascades province, and the Washington Olympic Peninsula province, suitable habitat consists, as a general matter, of coniferous or mixed coniferous/hardwood forests with multiple canopy layers; multiple large overstory conifers greater than 20 inches dbh, and total canopy closure among dominant, co-dominant and understory species of greater than 60 percent;

(C) In the Eastern Washington Cascades province, suitable habitat consists, as a general matter, of coniferous forests with stands that contain greater than 20 percent fir (Douglas fir, Grand fir) and/or hemlock trees; multiple canopy layers of multiple large overstory conifers greater than 12 inches dbh; and total canopy closure among dominant, co-dominant and understory species of greater than 50 percent.

(ix) *Northern spotted owl, spotted owl, or owl* means any northern spotted owl (*Strix occidentalis caurina*), alive or dead, and any part, egg, nest, or product thereof.

(x) *Person* has the meaning provided in 16 USC 1532(13).

(xi) *Potential California Conservation Planning Area (CCPA)* means any of the following four areas in the State of California (Figure 1 to § 17.41(c)):

(A) *California Coastal Area (Humboldt Meridian and Baseline)* (Figure 2 to § 17.41(c)) Beginning at the intersection of the California-Oregon State Line and the shoreline of the Pacific Ocean, then east along the California-Oregon State Line, then south along the east border of S33 T19NR01E, S04 T18NR01E, S09 T18NR01E, S16 T18NR01E, S21 T18NR01E, S28 T18NR01E, S33 T18NR01E, then west along the south border of S33 T18NR01E, then south along the east border of S05 T17NR01E, S06 T17NR01E, then east along the north border of S16 T17NR01E, then south along the east border of S16 T17NR01E, S21 T17NR01E, S28 T17NR01E, S33 T17NR01E, and S04 T16NR01E, then east along the north border of S10 T16NR01E, then south along the east border of S10 T16NR01E, S15 T16NR01E, then east along the north border of S23 T16NR01E, then south along the east border of S23 T16NR01E and S26 T16NR01E, then east along the north border of S36 T16NR01E, then south along the east border of S36 T16NR01E, then east along the north border of S06 T15NR02E, then south along the east border of S06 T15NR02E, S07 T15NR02E, S18 T15NR02E, then east along the north border of S20 T15NR02E, S21 T15NR02E, S22 T15NR02E, S23 T15NR02E, then north along the west border of S13 T15NR02E,

S12 T15NR02E, then east along the north border of S12 T15NR02E, S07 T15NR03E, S08 T15NR03E, then south along the east border of S08 T15NR03E, S17 T15NR03E, then west along the south border of S17 T15NR03E, then south along the east border of S19 T15NR03E, S30 T15NR03E, S31 T15NR03E, then west along the south border of S31 T15NR03E, then south along the east border of T14NR02E, T13NR02, and T12NR02E, then east along the north border of T12NR03E, then south along the east border of T12NR03E and T11NR03E, then east along the north border of S06 T10NR04E, then south along the east border of S06 T10NR04E, S07 T10NR04E, S18 T10NR04E, S19 T10NR04E, S30 T10NR04E, S31 T10NR04E, S06 T09NR04E, S07 T09NR04E, S18 T09NR04E, then southwest along the north border of the Hoopa Valley Indian Reservation, then southeast along the west border of the Hoopa Valley Indian Reservation, then south along the east border of S17 T07NR04E, S20 T07NR04E, S29 T07NR04E, S32 T07NR04E, S05 T06NR04E, S08 T06NR04E, S17 T06NR04E, S20 T06NR04E, S29 T06NR04E, S32 T06NR04E, then east along the north border of S04 T05NR04E, then south along the east border of S04 T05NR04E, then east along the north border of S10 T05NR04E, then south along the east border of S10 T05NR04E, S15 T05NR04E, S22 T05NR04E, then east along the north border of S26 T05NR04E, S25 T05NR04E, then south along the east border of T05NR04E and T04NR04E, then east along the north border of S31 T04NR05E, then south along the east border of S31 T04NR05E, S06 T3NR05E, S07 T3NR05E, S18 T3NR05E, then east along the north border of S20 T03NR05E, S21 T03NR05E, then south along the east border of S21 T3NR05E, S28 T3NR05E, S33 T3NR05E, S04 T02NR05E, S09 T02NR05E, S16 T02NR05E, then east along the north border of S22 T02NR05E, then south along the east border of S22 T02NR05E, then east along the north border of S26 T02NR05E, S25 T02NR05E, then south along the east border of T02NR05E, then east along the north border of T01NR06E, then south along the east border of S03 T01NR06E, S10 T01NR06E, S15 T01NR06E, S22 T01NR06E, then east along the north border of S26 T01NR06E, then south along the east border of S26 T01NR06E, then east along the north border of S36 T01NR06e, S31 T01NR07E, then north along the east border of S29 T01NR07E, then east along the north border of S29 T01NR07E, then south along the east border of S29 T01NR07E, S32 T01NR07E, then west along the south border of T01NR07E, then south along the east border of T01SR06E, then west along the south border of S24 T01SR06E, S23 T01SR06E, S22 T01SR06E, S21 T01SR06E, S20 T01SR06E, S19 T01SR06E, S24 T01SR05E, S23 T01SR05E, then south along the east border of S27 T01SR05E, S34 T01SR05E, then east along the north border of S02 T02SR05E, then south along the east border of S02 T02SR05E, S11 T02SR05E, S14 T02SR05E, then east along the north border of S24 T02SR05E, then south along the east border of T02SR05E, then east along the north border of S31 T02SR06E, then south along the east border of S31 T02SR06E, then east along the north border of S06 T03SR06E, S05 T03SR06E, S04 T03SR06E, S03 T03SR06E, S02 T03SR06E, S01 T03SR06E, then south along the east border of T03SR06E, then west along Ruth Zenia Road, Alderpoint Bluff Road, Zenia Bluff Road, Alder Point Road, then south along Harris Road, Bell Springs Road, and U.S. Highway 101, then west along Sebatopol Road, Bodega Highway, and California Highway 1, then north along California Highway 1, then west along Salmon Creek, then north along the shoreline of the Pacific Ocean to the point of beginning.

(B) *Hardwood Region (Mt Diablo Meridian and Baseline Except Where Township Designation Is Followed by * Which Indicates Humboldt Meridian and Baseline)* (Figure 2 to § 17.41(c))

Beginning at the Intersection of Ruth Zenia Road and the east border of T03SR06E*, then south along the east border of T03SR06E*, then east along the north border of T04SR07E* and T04SR08E*, then south along the east border of T04SR08E* and T05SR08E*,/ ****Meridian Change/ then east along the north border of T05SR08E* and T25NR12W, then south along the east border of T25NR12W, then east along the north border of S18 T25NR11W, S17 T25NR11W, S16 T25NR11W, then south along the east border of S16 T25NR11W, S21 T25NR11W, then west along the south border of S21 T25NR11W, S20 T25NR11W, then south along the east border of S30 T25NR11W, then west along the south border of S30 T25NR11W, then south along the east border of T25NR12W, S01 T24NR12W, and S12 T24NR12W, then east and south along the border of the Trinity National Forest, then east along the north border of S32 T24NR11W, then south along the east border of S32 T24NR11W, then east along the north border of S04 T23NR11W, then south along the east border of S04 T23NR11W, S09 T23NR11W, S16 T23NR11W, then east along the north border of S22 T23NR11W, S23 T23NR11W, S24 T23NR11W, S19 T23NR10W, then south along the east border of S19 T23NR10W, S30 T23NR10W, S31 T23NR10W, then east along California State Highway 162, then south along the eastern border of the East Cascades Province, then north along the shoreline of the Pacific Ocean, then east along Salmon Creek, then south along California Highway 1, then east along Bodega Highway and Sebastopol Road, then north along U.S. Highway 101, Bell Springs Road, and Harris Road, then east along Alder Point Road, Zenia Bluff Road, Alderpoint Bluff Road and Ruth Zenia Road to the point of beginning.

(C) *Wells Mountain-Bully Choop Area (Mt. Diablo Meridian and Baseline)* (Figure 3 to § 17.41(c))

Beginning at the northwest corner of S04 T34NR11W, then east along the north border of T34NR11W, then south along the east border of S03 T34NR11W and S10 T34NR11W, then east along the north border of S14 T34NR11W, S13 T34NR11W, S18 T34NR10W, then north along the east border of S08 T34NR10W, then east along the north border of S08 T34NR10W, then south along the east border of S08 T34NR10W, S17 T34NR10W, S20 T34NR10W, S29 T34NR10W, then east along the north border of S33 T34NR10W, then south along the east border of S33 T34NR10W, then east along the north border of S03 T34NR10W, then north along the west border of S35 T34NR10W, S26 T34NR10W, S23 T34NR10W, then east along the north border of S23 T34NR10W, then north along the west border of S13 T34NR10W, then east along the north border of S13 T34NR10W, S18 T34NR09W, S17 T34NR09W, and S16 T34NR09W, then north along California Highway 3, then east along the border of the Whiskeytown-Shasta-Trinity National Recreation Area, then south along the east border of S03 T34NR09W, then east along the north border of S11 T34NR09W, S12 T34NR09W, then south along the east border of T34NR09W, then east along the north border of S19 T34NR08W, S20 T34NR08W, then south along the east border of S20 T34NR08W, S29 T34NR08W, S32 T34NR08W, then west along the south border of S32 T34NR08W, then south along the east border of S06 T33NR08W, then east along the north border of S08 T33NR08W and S09 T33NR08W, then north along the west border of S03 T33NR08W, then east along the north

border of T33NR08W and T33NR07W, then south along Trinity Mountain Road, then east along California Highway 299, then south along the east border of S26 T32NR06W, S35 T32NR06W, S02 T31NR06W, then west along the south border of the southeast of S02 T31NR06W, then south along the east border of the northwest of S11 T31NR06W, then west along the south border of the northwest of S11 T31NR06W and northeast S10 of T31NR06W, then south along Mule Town Road, then west along the boundary of the Klamath Province, then north along the west border of the northeast of S20 T30NR09W, then west along the Shasta-Trinity County Line, then north along the west border of T30NR09W, then east along the south border of T31NR09W and T31NR10W, then south along the east border of S05 T30NR10W, then east along the south border of S05 T30NR10W, then north along the west border of S05 T30NR10W, then west along the south border of T31NR10W, then north along the west border of T31NR10W and T32NR10W, then east along California Highway 3, then west along California Highway 299, then north along the west border of S28 T34NR11W, S21 T34NR11W, S16 T34NR11W, S09 T34NR11W, S04 T34NR11W to the point of beginning.

(D) *California Cascades, (Mt Diablo Meridian and Baseline)* (Figure 3 to § 17.41(c))

Beginning at the Intersection of Interstate Highway 5 and the California-Oregon State Line, then east along the California-Oregon State Line, then south along the Eastern Boundary of the California Cascades Province, then north along Mule Town Road, then east along the north border of the southeast of S10 T31NR06W and southwest of S11 T31NR06W, then north along the west border of the northeast of S11 T31NR06W, then east along the north border of the northeast of S11 T31NR06W, then north along the west border of S01 T31NR06W, S36 T32NR06W, and S25 T32NR06W, then west along California Highway 299, then north along Trinity Mountain Road, then east along the south border of T34NR07W and T34NR08W, then south along the east border of S04 T33NR08W, then west along the south border of S04 T33NR08W and S05 T33NR08W, then north along the west border of S05 T33NR08W, then east along the north border of S05 T33NR08W, then north along the west border of S33 T34NR08W, S28 T34NR08W, S21 T34NR08W, then west along the south border of S17 T34NR08W, S18 T34NR08W, then north along the west border of S18 T34NR08W and S07 T34NR08W, then east along the south border of S01 T34NR09W, S02 T34NR09W, then north along the west border of the S02 T34NR09W, then west along the border of the Whiskeytown-Shasta-Trinity National Recreation Area then south along California Highway 3, then west along the south border of S09 T34NR09W, S08 T34NR09W, and S07 T34NR09W, then north along the west border of S07 T34NR09W, then east along the north border of S07 T34NR09W, then north along the west border of S05 T34NR09W, S32 T35NR09W, then west along the south border of S30 T35NR09W, then north along the west border of T35NR09W, then east along the north border of S19 T35NR09W, then north along the west border of S17 T35NR09W, then east along the north border of S17 T35NR09W, S16 T35NR09W, S15 T35NR09W, then north along the west border of S11 T35NR09W, then east along the north border of S11 T35NR09W, then north along the west border of S01 T35NR09W, then east along the north border of T35NR09W and T35NR08W, then north along the west border of S32 T36NR08W and S29 T36NR08W, then east along the north border of S29 T36NR08W, then north along the west border of S21 T36NR08W, S16 T36NR08W, S09 T36NR08W, S04 T36NR08W, then east along the north border of T36NR08W, then north along the west border of S34 T37NR08W, S27 T37NR08W, and S22 T37NR08W, then west along the south border of S16 T37NR08W, S17 T37NR08W, then north along the west border of S17 T37NR08W and S08 T37NR08W, then east along the north border of S08 T37NR08W, then north along the west border of S04 T37NR08W, then east along the north border of T37NR08W, then north along the west border of S36 T38NR08W, then east along the north border of S36 T38NR08W, then north along the west border of S30 T38NR07W, then west along the south border of S24 T38NR08W, then north along the west border of S24 T38NR08W and S13 T38NR08W, then east along the north border of S13 T38NR08W, then north along the west border of S07 T38NR07W, then east along the north border of S07 T38NR07W, S08 T38NR07W, S09 T38NR07W, then north along the west border of S03 T38NR07W, S34 T39NR07W, S27 T39NR07W, S22 T39NR07W, and S15 T39NR07W, then west and north along California Highway 3 and Interstate Highway 5 to the point of beginning.

(xii) *Province or physiographic province* means a geographic area having a similar set of biological and physical characteristics and processes due to effects of climate and geology which result in patterns of soils and broad-scale plant communities. Habitat patterns, wildlife distributions, and historical land use patterns may differ significantly from those of adjacent provinces. The seven northern spotted owl provinces in the States of Washington and California are the Olympic Peninsula Province, the Western Washington Lowlands Province, the Western and Eastern Washington Cascades Provinces, and the California Coastal, Klamath and Cascades Provinces (Figure 4 to § 17.41(c)).

(xiii) *Record of Decision (ROD)* means the April 13, 1994, *Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents within the Range of the Northern Spotted Owl* (USDA/USDI 1994).

(xiv) *Special Emphasis Area (SEA)* means any of the following six areas (Figure 5 to § 17.41(c)) in the State of Washington (references are in relation to the Willamette Meridian and baseline):

(A) *Columbia River Gorge/White Salmon* (Figure 6 to § 17.41(c))

(*1*) *Columbia River Gorge Segment* (Figure 6 to § 17.41(c)) Beginning at the northwest corner of T03NR05E, then east along the north border of T03NR05E, T03NR06E, T03NR07E, T03NR07.5E, and T03NR08E, then south along the east border of T03NR08E, then west along the north Shore of the Columbia River, then north along the west border of T01NR05E, T02NR05E, and T03NR05E to the Point of Beginning.

(*2*) *White Salmon Segment* (Figure 6 to § 17.41(c)) Beginning at the northwest corner of T06NR10E, then east Along the north border of T06NR10E, then north along the west border of T07NR11E, then east along the north border of S19 T07NR11E, S20 T07NR11E, S21 T07NR11E, then south along the east border of S21 T07NR11E, S28 T07NR11E, then south along the west border of the Yakama Indian Reservation, then south along the east border of T05NR11E, T04NR11E, then southwest along Rattle Snake Creek, then south along the east border of T04NR10E and T03NR10E, then west along the north Shore of the Columbia River, then north along the west border of T03NR09E, then east along the north border of T03NR09E, then north along the west border of T04NR10E, T05NR10E, and T06NR10E to the point of beginning.

(B) *Siouxon Creek* (Figure 7 to § 17.41(c)) Beginning at the intersection of the south border of S16 T06NR04E and the Cowlitz-Clark County line, then north and east along the Cowlitz-Clark County line, then south along the west border of S31 T07NR05E, then east along the north border of the SW of NW, SE of NW, and SW of NE S31 T07NR05E, then north along the west border of the NE of NE S31 T07NR05E, then east along the Lewis River, then south along the east border of S30 T07NR05E, then east along the north border of S32 T07NR05E, then north along the west border of the SE of SW S29 T07NR05E, then east along the Lewis River, then south along the east border of the SW of SE S29 T07NR05E, then east along the north border of S32 T07NR05E, then north along the west border of S28 T07NR05E, then east along the north border of S28 T07NR05E, then south along the east border of the NE of NE S28 T07NR05E, then west along the south border of the NE of NE S28 T07NR05E, then south along the east border of the SW of NE S28 T07NR05E, then east along the north border of the NE of SE S28 T07NR05E, then south along the east border S28 T07NR05E, then east along the channel of Swift Reservoir and the Lewis River, then south and west along the Gifford Pinchot National Forest boundary, then south along the Clark-Skamania County line, then west along Canyon Creek, then north along the west border of S03 T05NR04E and S34 T06NR04E, then west along the south border of NE of SE, NW of SE, and NE of SW S33 to 6NR04E, then north along the west border of the NE of SW S33 T06NR04E, then east along the north border of the NE of SW S33 T06NR04E, then north along the west border of the NE S33 T06NR04E and SE S28 T06NR04E, then east along the north border of the SE of S28 T06NR04E, then north along the west border of the SE of NE and NE of NE S28 T06NR04E, then east along the north border of S28 T06NR04E, then north along the west border S22 T06NR04E, then west along the south border of S16 T06NR04E to the point of beginning.

(C) *Mineral Block* (Figure 8 to § 17.41(c)) Beginning at the northwest corner of T15NR03E, then east along the north border of T15NR03E, T15NR04E, T15NR05E and T15NR06E, then south along the east border of T15NR06E and T14NR06E, then west along the south border of T14NR06E, then south along the east border of T13NR06E and T12NR06E, then west along the south border of S24, S23, S23, S21, S20, and S19 T12NR06E, then south along the east border of S24 T12NR05E, then west along the south border of S24, S23, S22, S21, S20, and S19 T12NR05E, then north along the west border of T12NR05E, then northwest along U.S. Highway 12, then west along the Tilton River, then north along the west border of T13NR03E, T14NR03E, and T15NR03E, to the point of beginning.

(D) *I–90 Corridor* (Figure 9 to § 17.41(c)) Beginning at the northwest corner of T22NR09E, then east along the north border of T22NR09E and T22NR10E, then north along the west border of T22NR11E, then east along the north border of T22NR11E, then north along the west border of T22NR12E, then east along the north border of T22NR12E, T22NR13E, T22NR14E, T22NR15E, T22NR16E, and T22NR17E, then north along the west border of S34 T23NR17E, S27 T23NR17E, S22 T23NR17E, S15 T23NR17E, S10 T23NR17E, S03 T23NR17E, then east along the north border of S03 T23NR17E, then north along the west border of S34 T24NR17E, S27 T24NR17E, and S22 TNR17E, then east along the north border of S22 T24NR17E, S23 T24NR17E, S24 T24NR17E, S19 T24NR18E, S20 T24NR18E, S21 T24NR18E, then south along the east border of S21 T24NR18E, S28 T24NR18E, S33 T24NR18E, then west along the south border of S33 T24NR18E, then south along the east border of S04 T23NR18E, S09 T23NR18E, S16 T23NR18E, S21 T23NR18E, S8 T23NR18E, S33 T23NR18E, then east along the north border of S04 T22NR18E, then south along the east border of S04 T22NR18E, S09 T22NR18E, S16 T22NR18E, S21 T22NR18E, S28 T22NR18E, S33 T22NR18E, then west along the south border of T22NR18E, T2NR17E, then south along the east border of T21NR16E, then west along the south border of T21NR16E, then south along the east border of T20NR16E, then west along the south border of S13 T20NR16E, S14 T20NR16E, S15 T20NR16E, S16 T20NR16E, S17 T20NR16E, S18 T20NR16E, then south along the east border of T20NR15E, T19NR15E, then east along the north border of T18NR15E, then south along the east border of T18NR15E, T17NR15E, then west along the south border of T17NR15E, then north along the west border of T17NR15E, T18NR15E, then west along the south border of T19NR15E, T19NR14E, T19NR13E, T19NR12E, T19NR11E, T19NR10E, T19NR09E, T19NR08E, then north along the west border of T19NR08E, then east along the north border of T19NR08E, then north along the west border of T20NR09E, T21NR09E, and T22NR09E to the point of beginning.

(E) *Finney Block* (Figure 10 to § 17.41(c)) Beginning at the northwest corner of T36NR07E, then east along the north border of T36NR07E, T36NR08E and T36NR09E, then south along the east border of T36NR09E, then east along the north border of T35NR10E and T35NR11E, then south along the east border of T35NR11E, then west along the south border of T35NR11E, then south along the east border of T34NR10E, T33NR10E, T32NR10E, then west along the south border of T32NR10E, T32NR09E, T32NR08E, and T32NR07E, then north along the west border of S34 T32NR07E, then west along the south border of the southeast of the northeast quarter of S34 T32NR07E, then north along the west border of the southeast of the northeast quarter of S34 T32NR07E, then west along the south border of the northwest of the northeast quarter of S34 T32NR07E, northeast quarter of the northwest quarter of S34 T32NR07E, northwest quarter of the northwest quarter of S34 T32NR07E, and northeast quarter of the northeast quarter of S32 T32NR07E, then north along the west border of the northwest quarter of the northwest quarter of S32 T32NR07E, then west along south border of S29 T32NR07E, S30 T32NR07E, then south along the east border of the northwest of the northeast quarter, the southwest of the northeast quarter, the northwest of the southeast quarter, and the southwest of the southeast quarter of S31 of T32NR07E, then west along the south border of T32NR07E, then north along the west border of T32NR07E, T33NR07E, T34NR07E, T35NR07E, and T36NR07E to the point of beginning.

(F) *Hoh/Clearwater (Olympic Peninsula)* (Figure 11 to § 17.41(c)) (*1*) *Hoh/Clearwater—North.*

Beginning at the Intersection of the Olympic National Park Boundary, and the north border of T30NR15W, then east along the north border of T30NR15W, T30NR14W, T30NR13W, then south along the Olympic National Forest Boundary, then east along the north border of the southwest quarter of the southwest quarter of S23 T29NR13W, then south along the east border of the southwest quarter of the southwest quarter of S23 T29NR13W, then west along the south border of the southwest quarter of the southwest quarter of S23 T29NR13W, then south along the east border S27 T29NR13W, then east along the north border of the southwest quarter of the southwest quarter of S26 T29NR13W, the southeast quarter of the southwest quarter of S26

T29NR13W, and the southwest quarter of the southeast quarter of S26 T29NR13W, then south along the east border of the southwest quarter of the southeast quarter of S26 T29NR13W, then east along the north border of S35 T29NR13W, then south along the east border of S35 T29NR13W, then east along the north border of the southwest quarter of the northwest quarter of S36 T29NR13W, the southeast quarter of the northwest quarter of S36 T29NR13W, the southwest quarter of the northeast quarter of S36 T29NR13W, and the southeast quarter of the northeast quarter of S36 T29NR13W, then south along the east border of T29NR13W and T28NR13W, then east along the north border of T27NR12W, then south along the Olympic National Park Boundary, then west along the south border of S20 T25NR10W and S19 T25NR10W, then south along the east border of S25 T25NR11W and S36 T25NR11W, then east along the north border of T24NR11W, then south and west along the Olympic National Park Boundary, then west along the north border of the Quinalt Indian Reservation, then north along the Olympic National Park Boundary to the point of beginning.

(*2*) *Hoh/Clearwater—South.* Beginning at the Intersection of U.S. Highway 101 and the Queets River Road in S34 T24N R12W, then north along the Queets River Road, then south along the east border of S34 T24NR12W, then east along the Olympic National Forest boundary, then south along the east border of T24NR11W and S01 T23NR11W, then east and south along the border of the Quinalt Indian Reservation, then west along U.S. Highway 101 to the point of beginning.

(xv) *Site center* means the actual nest tree of a pair of spotted owls or the primary roost for a non-nesting pair or territorial single.

(xvi) *Timber harvest activity or harvest* means any activity which results in the harvest or felling of trees comprising the suitable habitat of a northern spotted owl.

(4) *Information Collection.* The collection of information requirements contained in § 17.41(c) have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0022. This information is being collected to provide information necessary to evaluate permit applications and make decisions, according to criteria established in various Federal wildlife and plant conservation statutes and regulations, on the issuance or denial of permits. Response is required to obtain or retain a permit. Public burden for this collection of information is estimated to vary from 15 minutes to 4 hours per response, with an average of 1.028 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden or any other aspect of this collection of information, including suggestions for reducing the burden, to the Service Information Collection Clearance Office, MS–224 ARLSQ, Fish and Wildlife Service, Washington, DC 20240 and the Office of Management and Budget, Paperwork Reduction Project (1018–0022), Washington, DC 20503.

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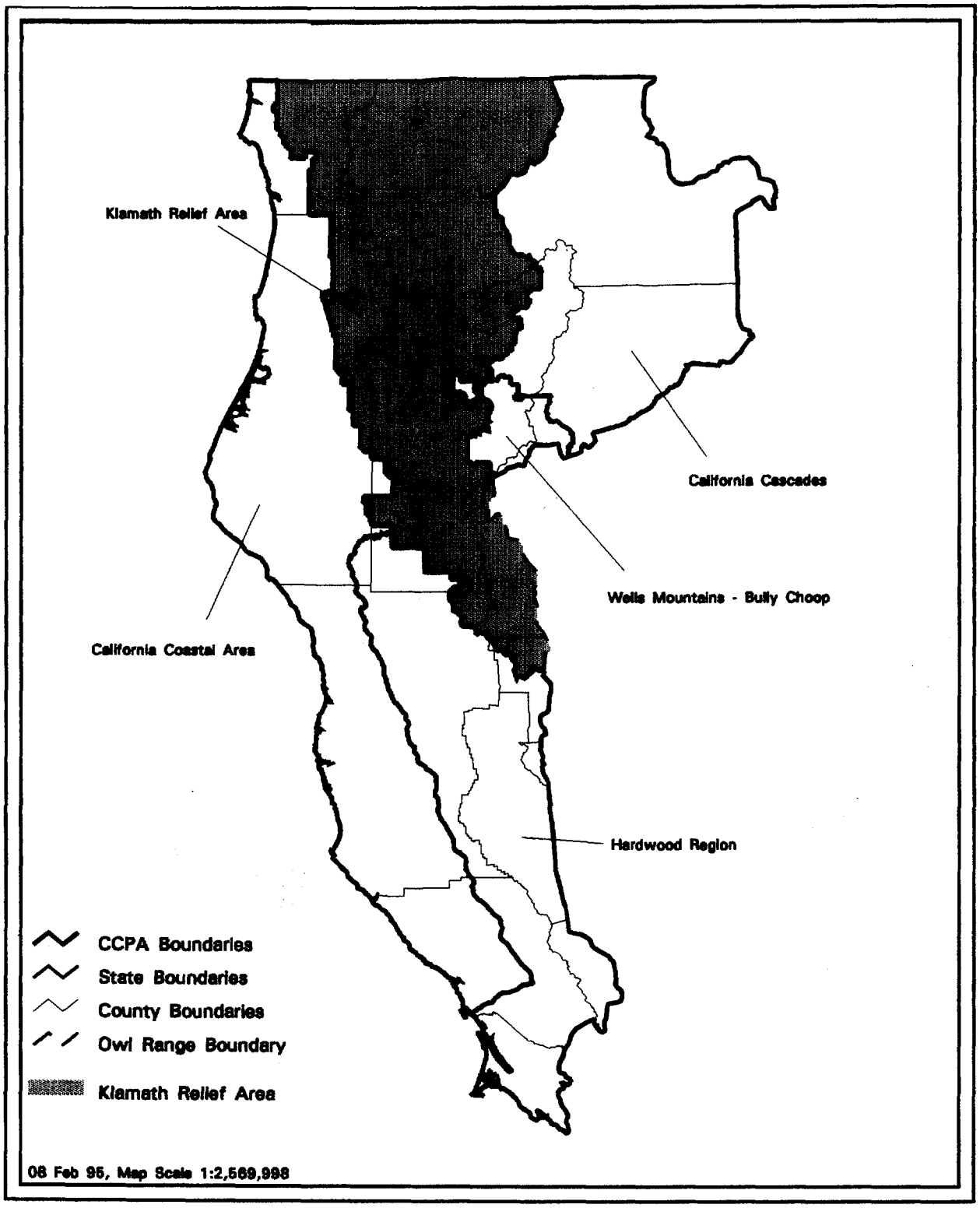

Figure 1 to § 17.41 (c) California Conservation Planning Areas (CCPAs).

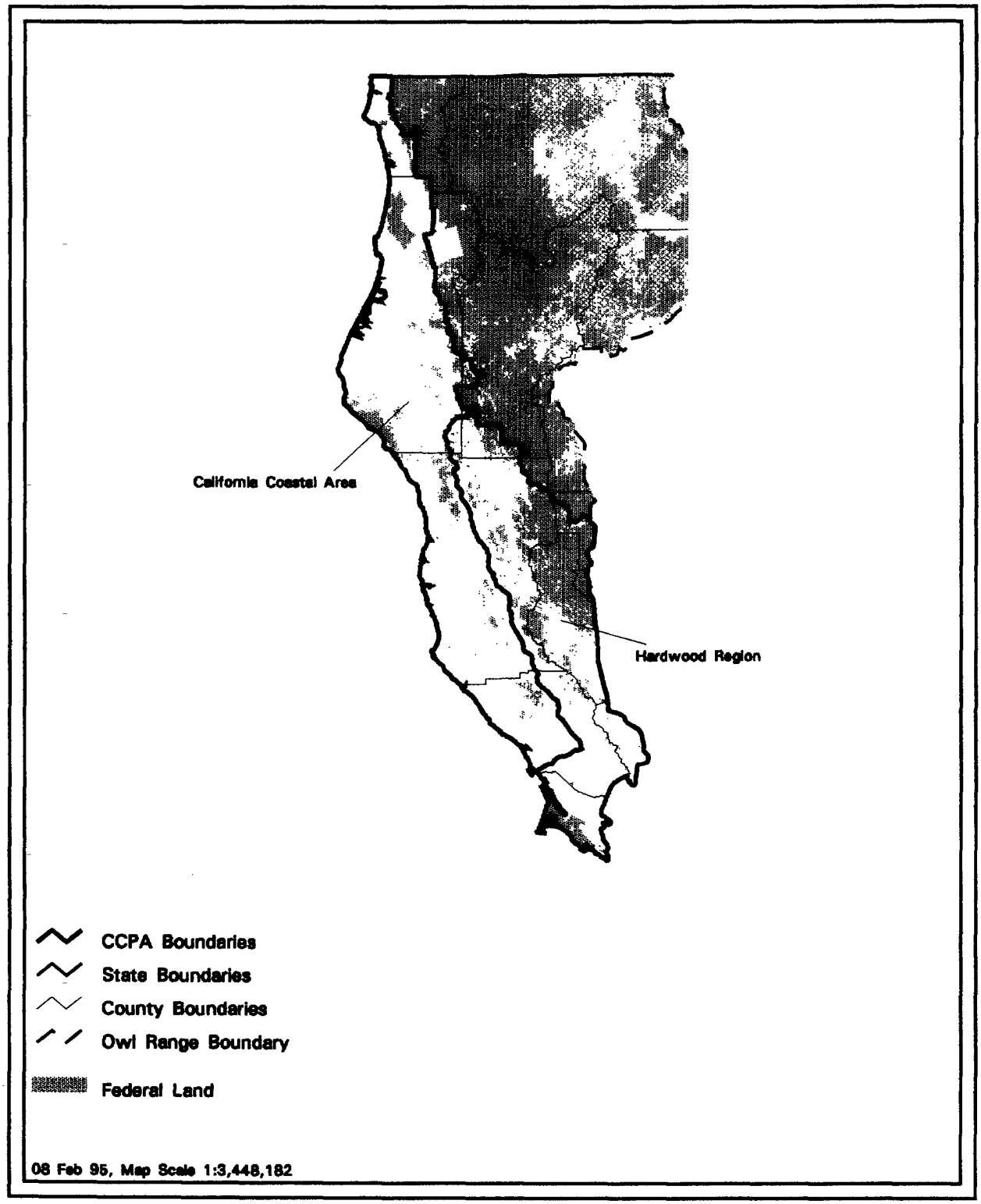

Figure 2 to § 17.41 (c) California Coastal and Hardwood Region Conservation Planning Areas.

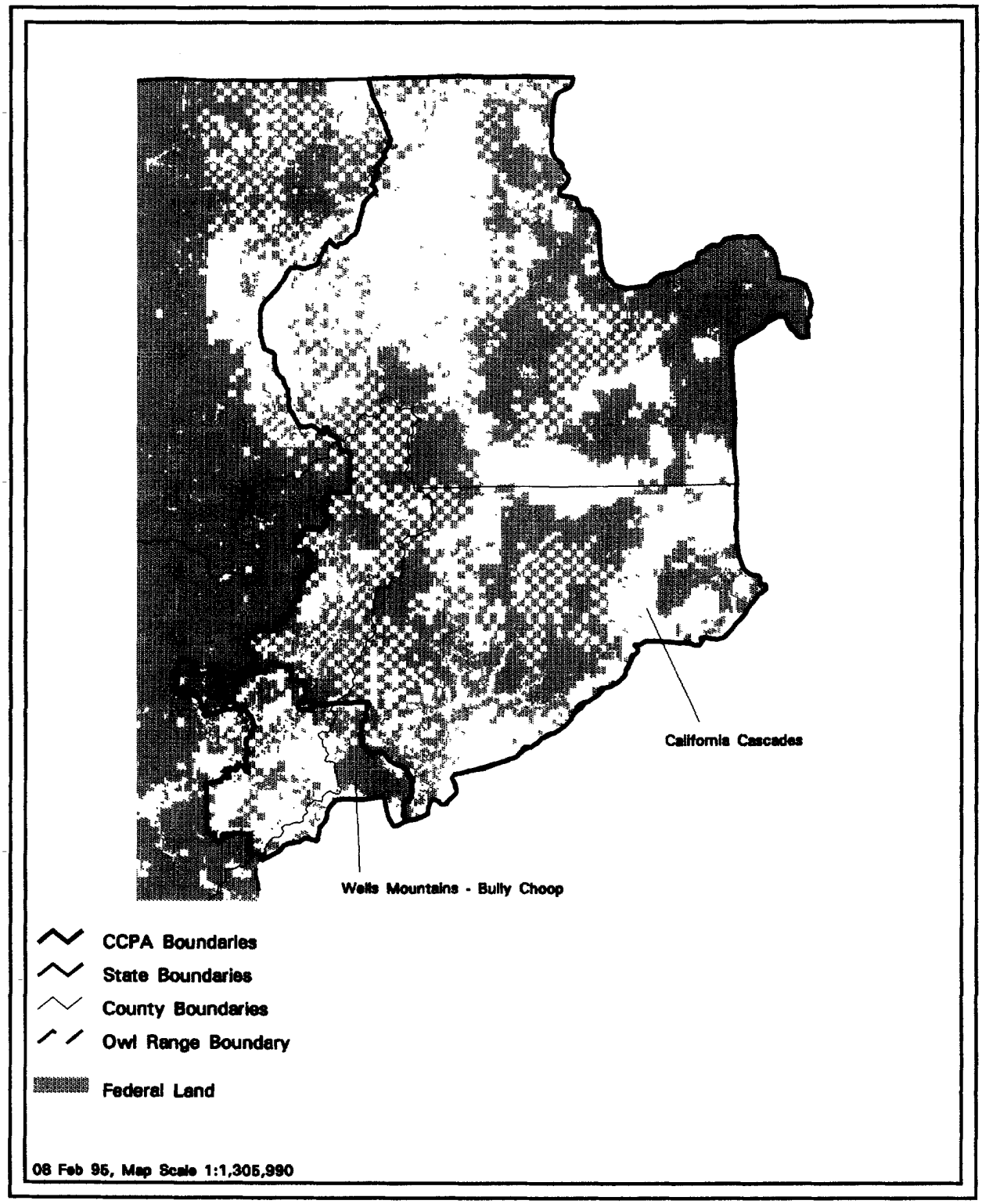

Figure 3 to § 17.41 (c) California Cascades and Wells Mountains - Bully Choop Conservation Planning Areas.

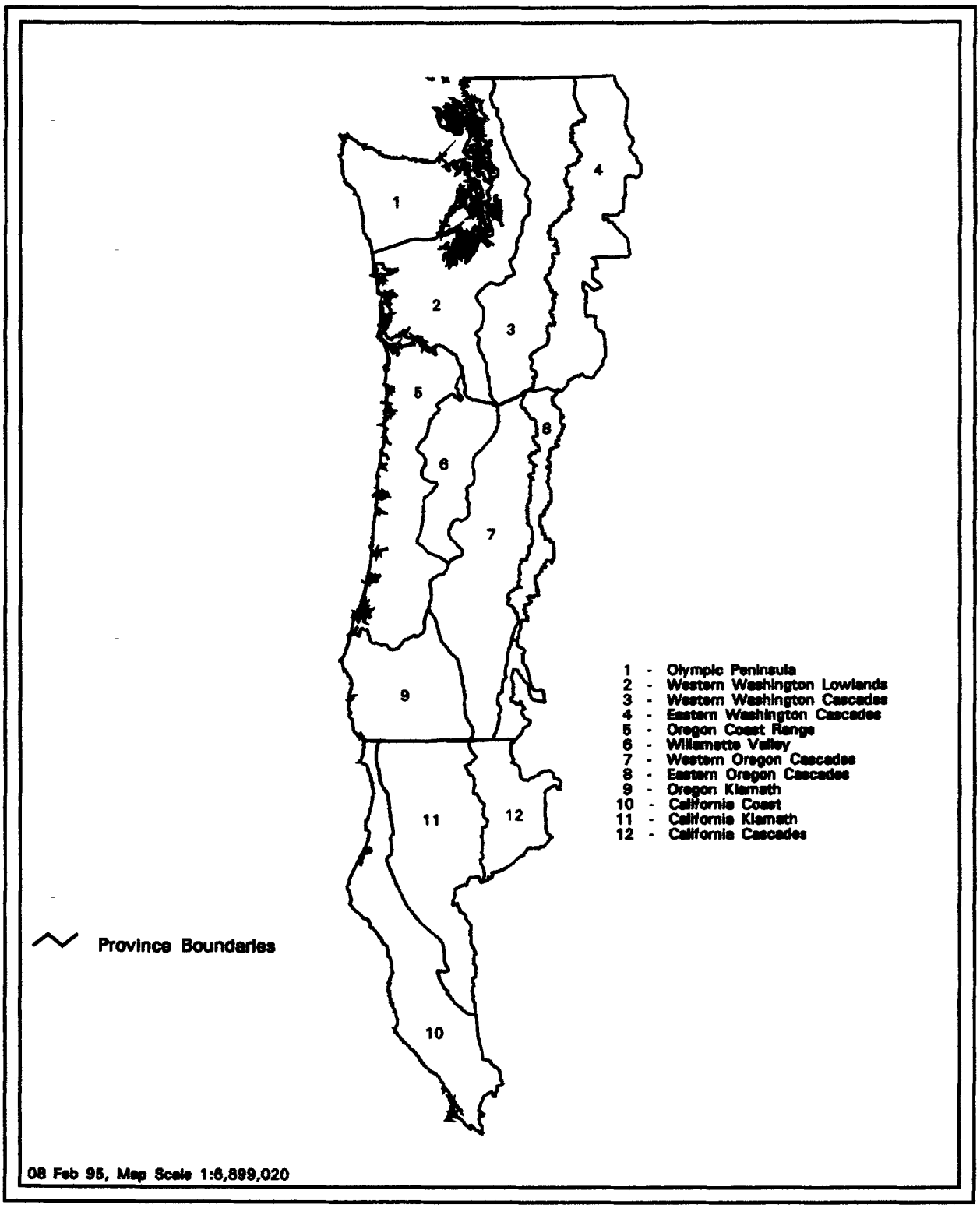

Figure 4 to § 17.41 (c) Physiographic Provinces within the range of the Northern Spotted Owl.

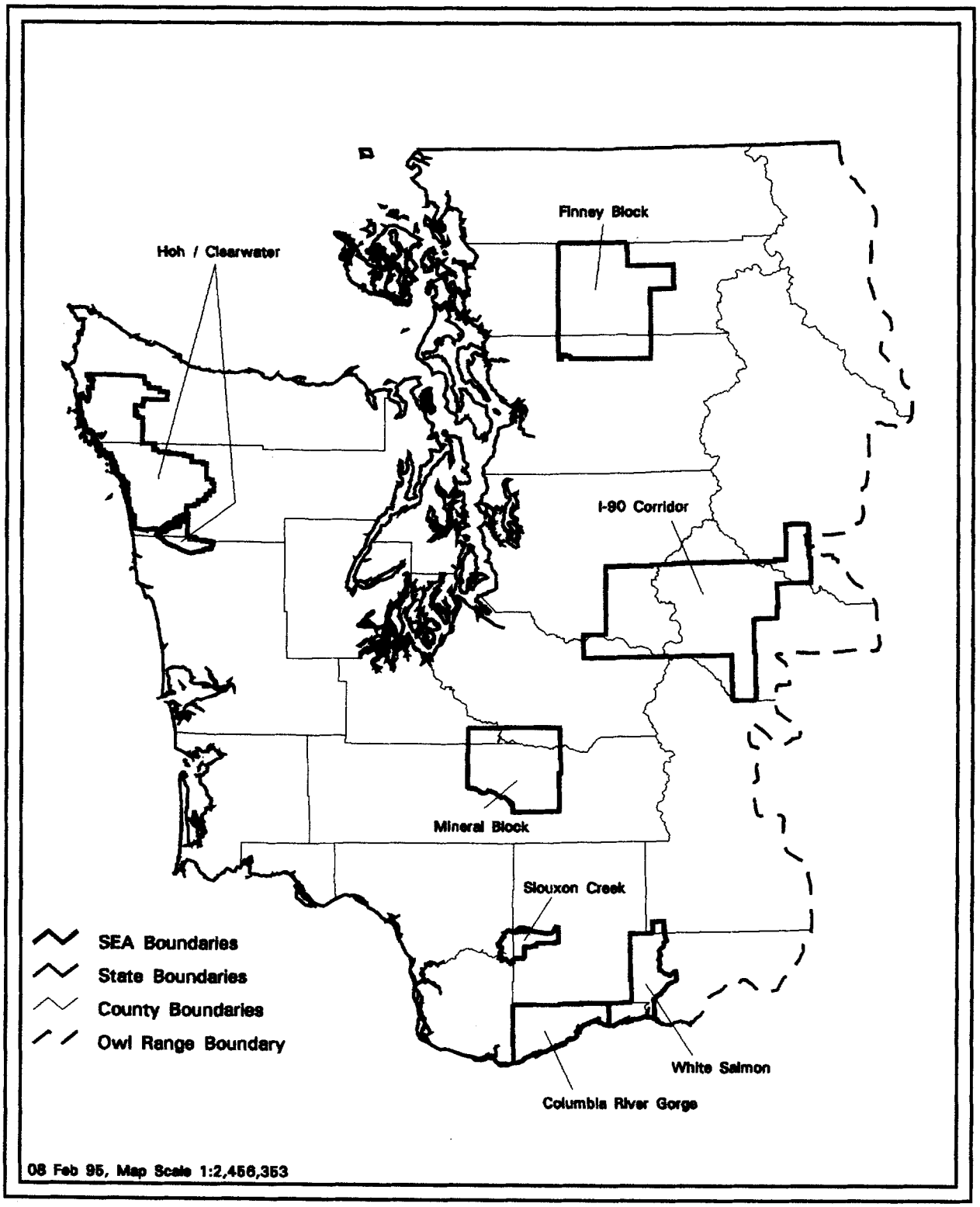

Figure 5 to § 17.41 (c) Special Emphasis Area (SEA) boundaries in Washington.

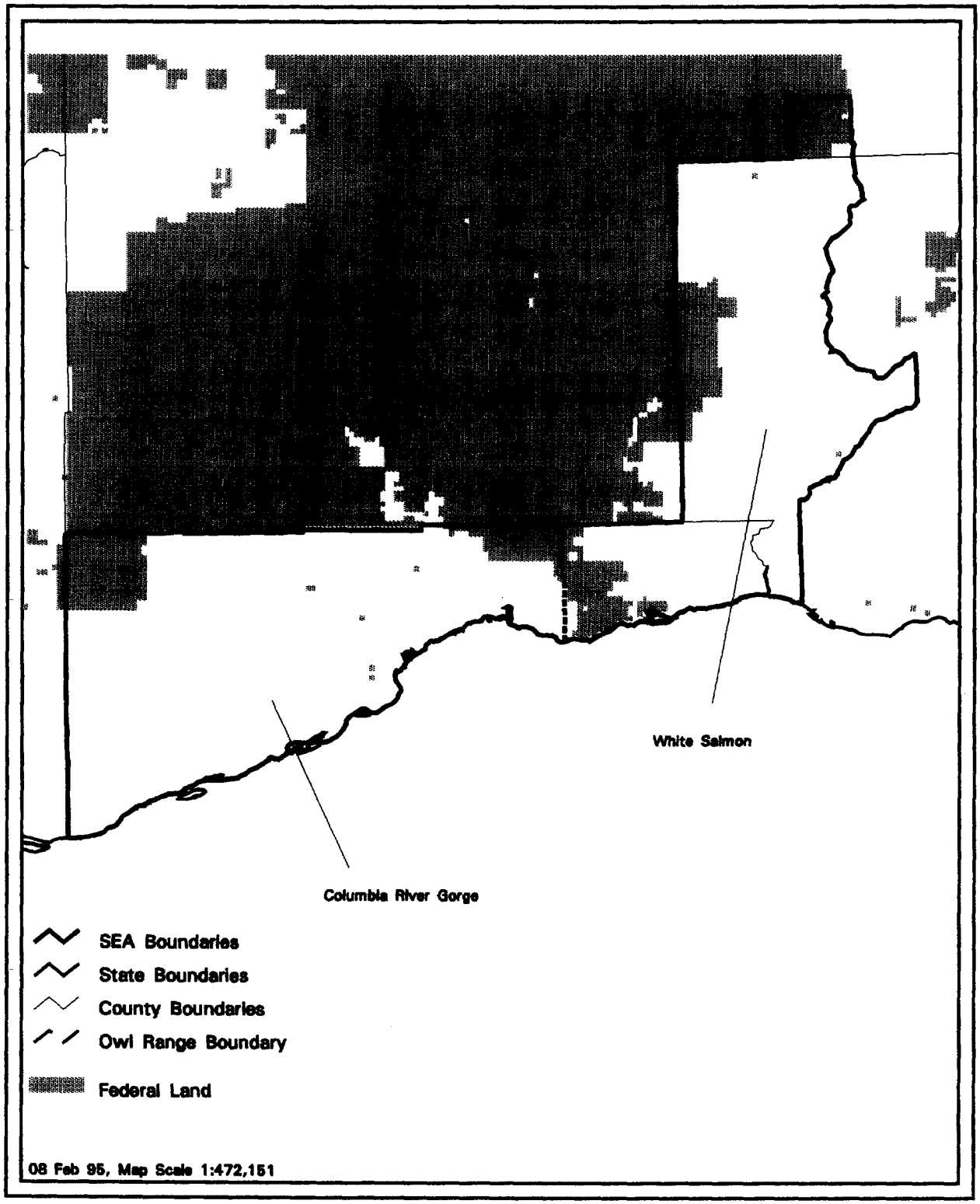

Figure 6 to § 17.41 (c) White Salmon and Columbia River Gorge SEA in Washington.

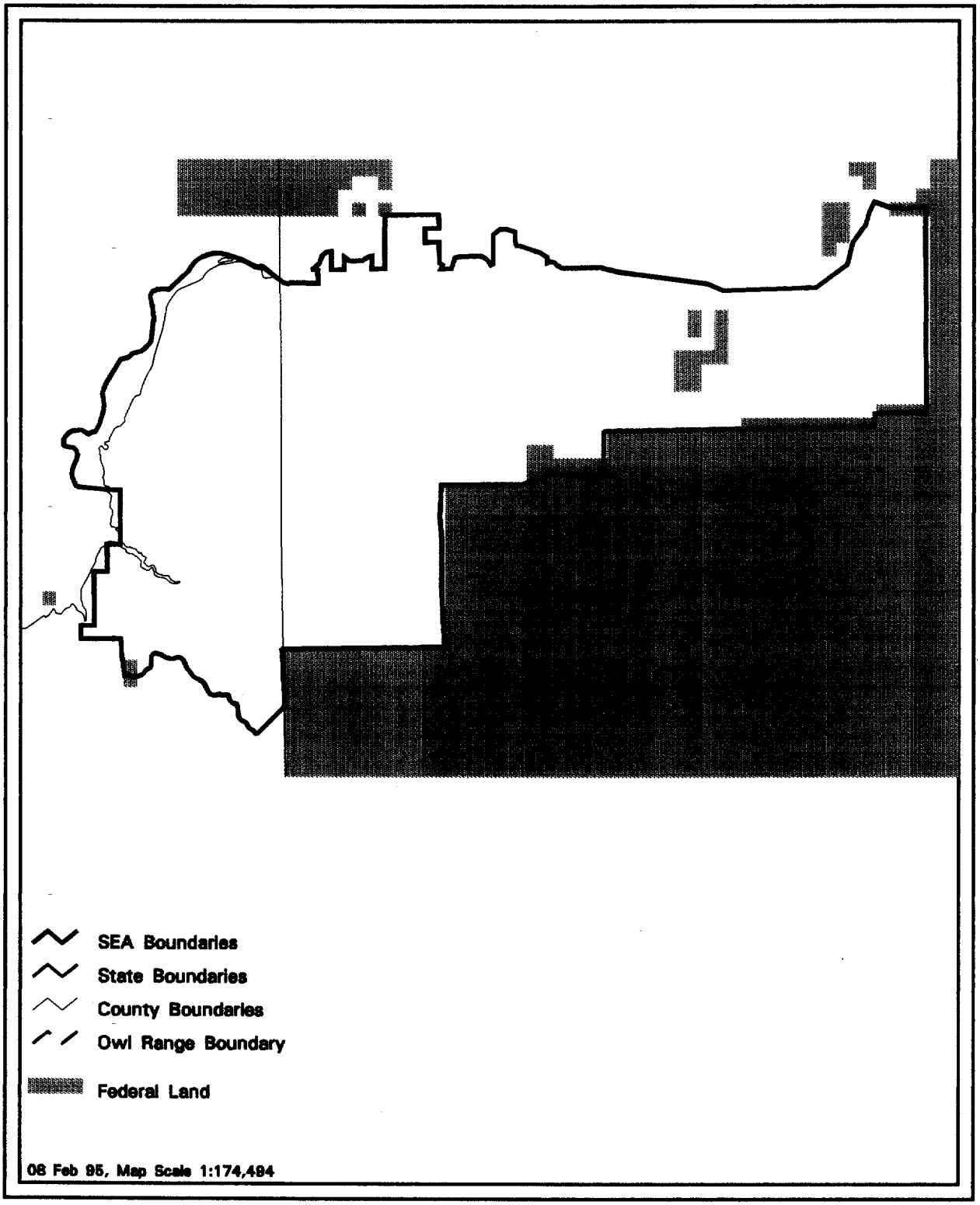

Figure 7 to § 17.41 (c) Siouxon Creek SEA in Washington.

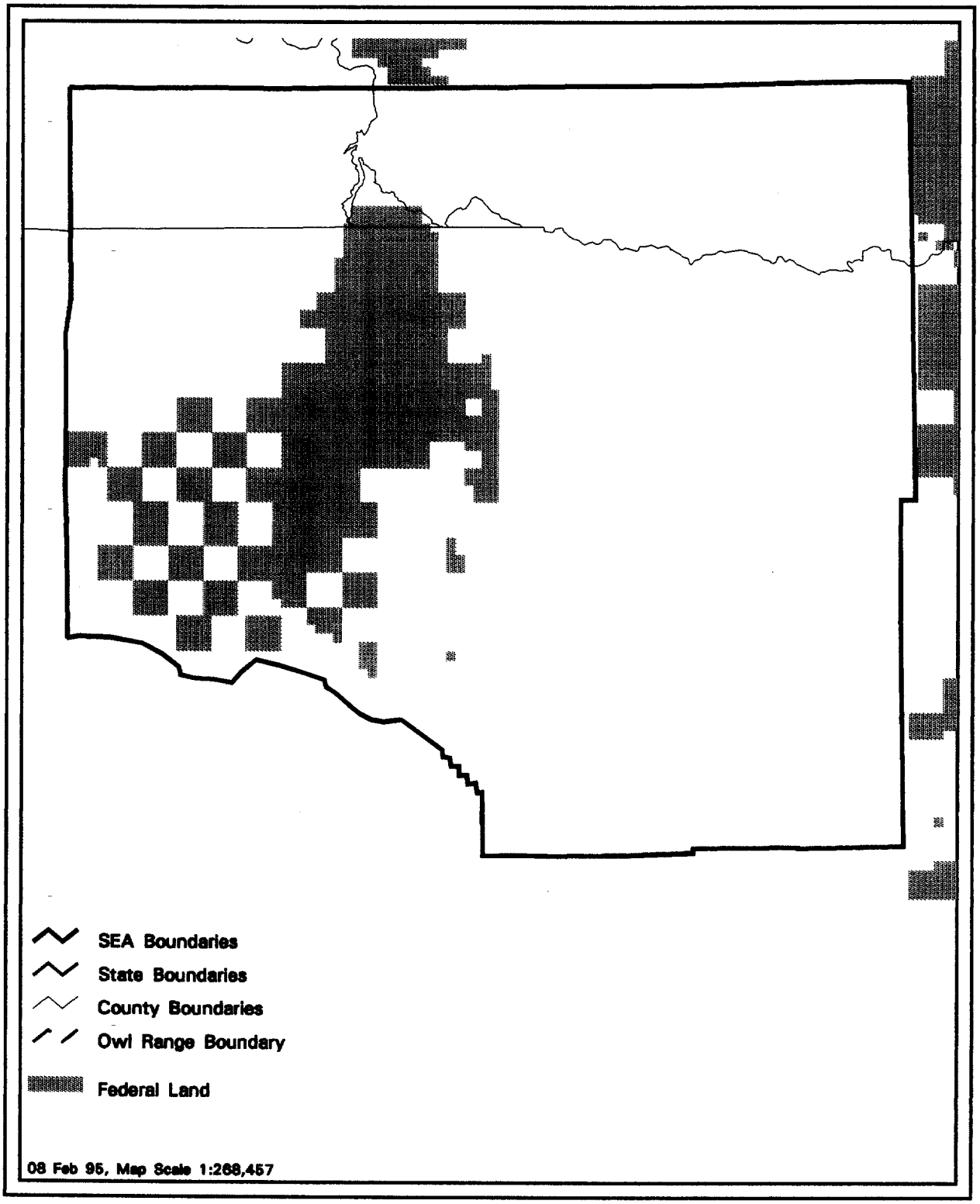

Figure 8 to § 17.41 (c) Mineral Block SEA in Washington.

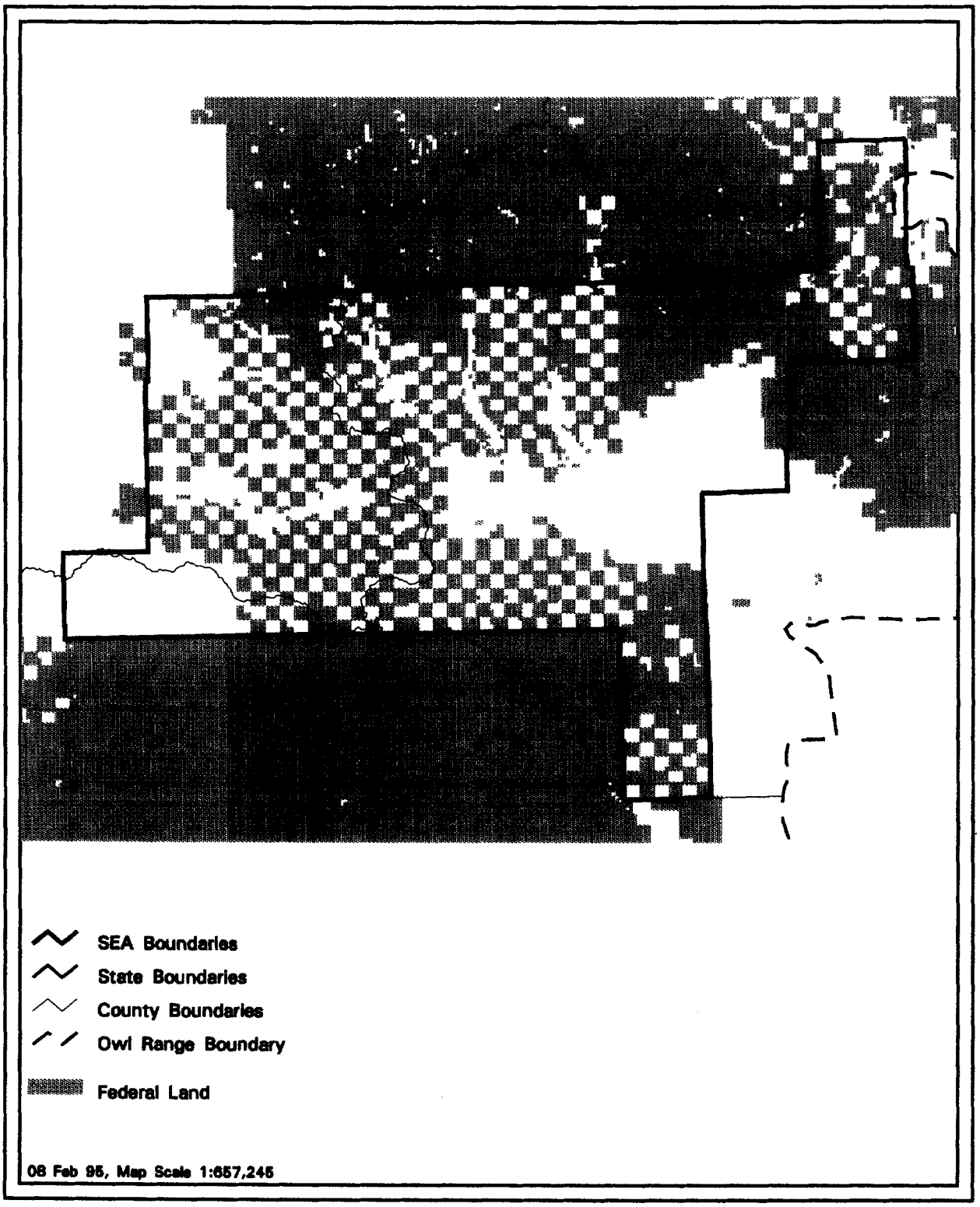

Figure 9 to § 17.41 (c) I-90 Corridor SEA in Washington.

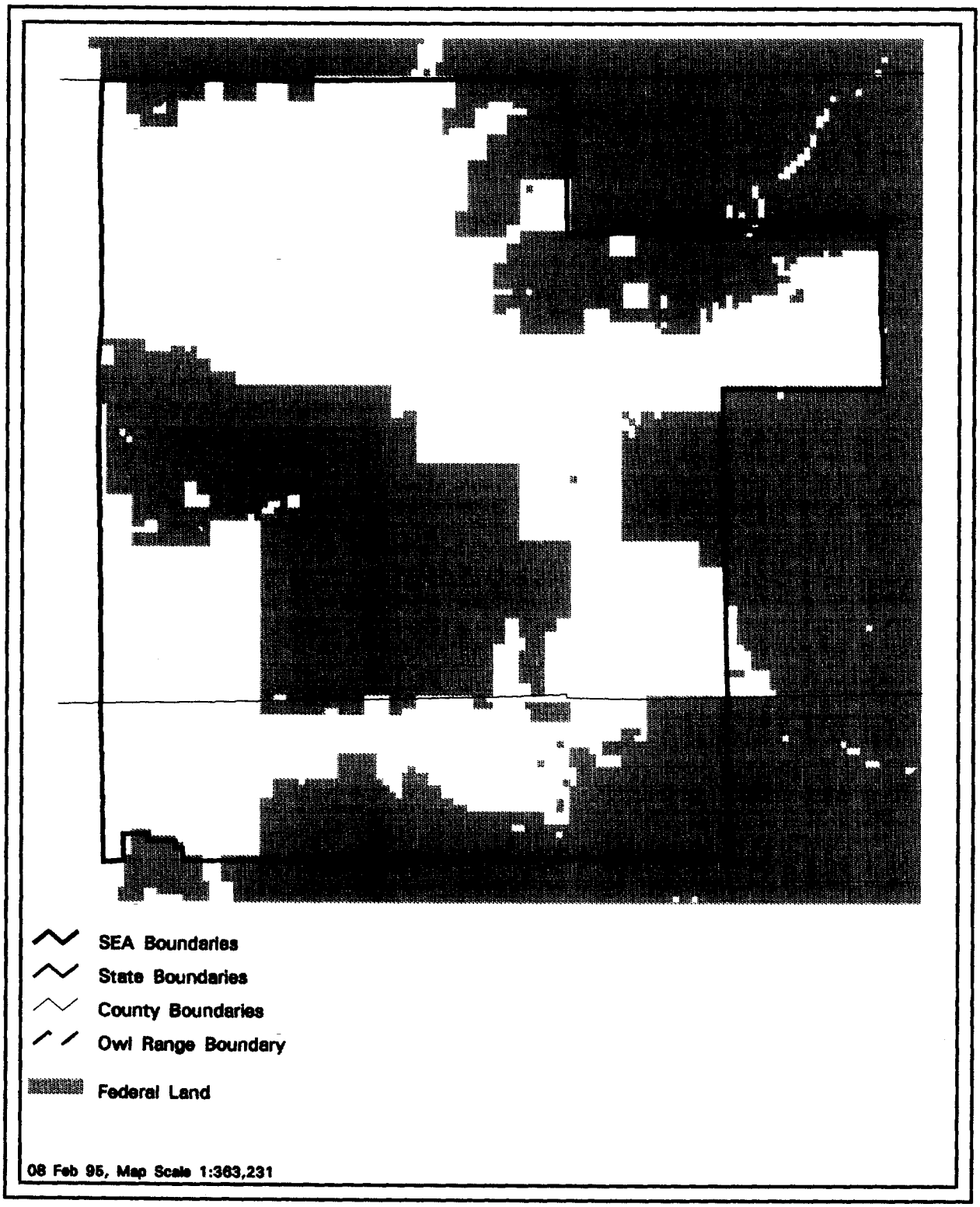

Figure 10 to § 17.41 (c) Finney Block SEA in Washington.

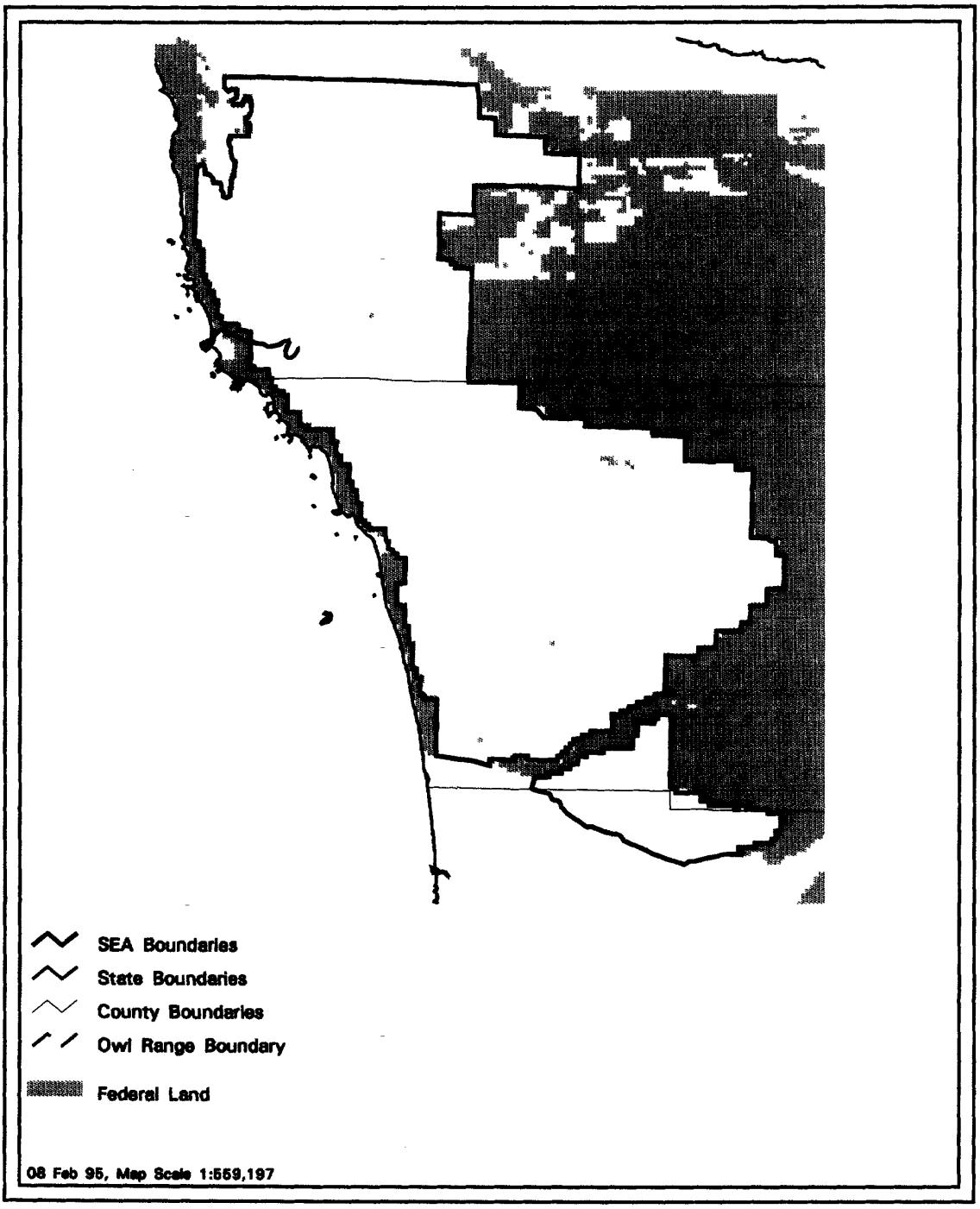

Figure 11 to § 17.41 (c) Hoh / Clearwater SEA in Washington.

Dated: February 13, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–3922 Filed 2–16–95; 8:45 am]

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