

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
ECOSYSTEM CONSERVATION DIVISION
POST OFFICE BOX 944209
SACRAMENTO, CA 94244-2090



CALIFORNIA ENDANGERED SPECIES ACT
CONSISTENCY DETERMINATION NO. 2080-2020-009-00

Project: Sierra Pacific Industries – Habitat Conservation Plan for Northern and California Spotted Owl

Location: Siskiyou, Trinity, Shasta, Modoc, Lassen, Tehama, Mariposa, Plumas, Butte, Yuba, Sierra, Nevada, Placer, Eldorado, Amador, Calaveras, and Tuolumne counties

Applicant: Sierra Pacific Industries

Background

Sierra Pacific Industries (SPI) developed a fifty-year Habitat Conservation Plan (HCP) (Project) (effective 09/30/2020) that supports the issuance of authorizations from the United States Fish and Wildlife Service (Service) that allows for limited take of Northern spotted owl (*Strix occidentalis caurina*; hereafter NSO) incidental to SPI's forest management activities on their commercial timberlands. The HCP covers 1,565,707 acres of land spread throughout the Klamath, Cascade, and Sierra Nevada ranges in California.

SPI's HCP covers timber operations and related management activities including, but not limited to: growing, harvesting, and transporting timber; timber stand regeneration and improvements; road and landing construction and maintenance; fuel break construction and maintenance; and monitoring and research (e.g., for spotted owls) (Project activities).

The Project activities described above are expected to incidentally take¹ NSO where those activities take place within the Klamath Mountains, Southern Cascades, and Sierra Nevada ecological subregions (Project area). In particular, NSO could be incidentally taken as a result of habitat modification and lost reproduction. NSO is designated as a threatened species pursuant to the federal Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.) and a threatened species pursuant to the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.). (See Cal. Code Regs., tit. 14, § 670.5, subd. (b)(5)(G).)

NSO individuals are documented as present within the Project area and there is unoccupied but suitable NSO habitat within and adjacent to the Project area. Because of the presence of NSO, proximity of the nearest documented NSO, dispersal patterns NSO, and the presence

¹ Pursuant to Fish and Game Code section 86, "'Take' means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." See also *Environmental Protection Information Center v. California Department of Forestry and Fire Protection* (2008) 44 Cal.4th 459, 507 (for purposes of incidental take permitting under Fish and Game Code section 2081, subdivision (b), "'take'...means to catch, capture or kill").

of suitable NSO habitat within the Project area, the Service determined that NSO is reasonably certain to occur within the Project area and that Project activities are expected to result in the incidental take of NSO.

Because the Project is expected to result in take of a species designated as threatened under the federal ESA, SPI prepared an HCP in support of an application for an incidental take permit (ITP) pursuant to section 10(a)(1)(b) of the ESA. The ITP requires full implementation of, and compliance with, all conservation measures listed in the HCP for avoidance, minimization, and mitigation for impacts to NSO, all of which the Service incorporated as conditions of the ITP. On September 25, 2020, the Service issued a biological opinion (Service file No. 08EYRE00-2020-F-0151) (BO). The BO describes the Project, requires SPI to comply with terms of the BO and its ITP, and incorporates additional measures.

The ITP also requires the Applicant to implement and adhere to measures contained within the HCP.

On October 16, 2020, the Director of the Department of Fish and Wildlife (CDFW) received a notice from SPI requesting a determination pursuant to Fish and Game Code section 2080.1 that the BO and its related ITP are consistent with CESA for purposes of the Project and the anticipated incidental take of NSO. (Cal. Reg. Notice Register 2020, No. 44-Z, p. 1445.)

Determination

CDFW has determined that the ITP and BO, including the Incidental Take Statement (ITS), is consistent with CESA as to the Project and NSO because the mitigation measures contained in the BO and ITP, as well as the conditions in the Environmental Impacts Statement (EIS) meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c), for authorizing incidental take of CESA-listed species. Specifically, CDFW finds that: (1) take of NSO will be incidental to an otherwise lawful activity; (2) the mitigation measures identified in the BO and ITP, and the associated EIS, will minimize and fully mitigate the impacts of the authorized take; (3) adequate funding is ensured to implement the required avoidance minimization and mitigation measures and to monitor compliance with, and effectiveness of those measures; and (4) the Project will not jeopardize the continued existence of NSO. The mitigation measures in the BO and ITP and EIS that will be implemented by SPI include, but are not limited to, the following:

Avoidance, Minimization, and Mitigation Measures

- 1) **Increase Potential Habitat Areas (PHAs).** PHAs (a 1,000-acre area consisting of a pair of adjoining 500-acre hexagons in SPI's habitat model) will increase across the landscape over the permit term. SPI will implement habitat management and protection strategies that will identify, maintain, restore, and increase PHAs composed of at least 50% nesting habitat in the Project area. The number of PHAs is modeled to increase in the NSO range from 147 (88,527 acres on SPI lands) to 497 (287,476 acres on SPI lands).

- 2) **Protect habitat at the three most recently known NSO Yearly Activity Centers (YACs).** YACs (a 500-foot-radius circle around the location of a nest site or day roost site of the NSO in a territory, creating an 18 acre circle) and surrounding areas will be protected from most operations through the establishment of protection zones (PZs). PZs are established around all known and newly discovered NSO YACs. To establish a PZ, the best available habitat is first identified (a minimum of 72 acres, regardless of ownership). The portion of that habitat identified on SPI lands becomes the PZ. Most vegetation-disturbing activities on SPI land will be precluded in all PZs. Operations that may be allowed include salvage operations in substantially damaged timberlands and minor modification of habitat following analysis of the potential impacts of such modification and Service review, and will be subject to the limitations of the ITP. There are currently 367 PZs on SPI lands, covering 21,747 acres (this number includes both NSO and California spotted owl (*Strix occidentalis occidentalis*) PZs). SPI will maintain at least 80% of this currently protected acreage regardless of current occupancy.
- 3) **Mitigate substantially damaged timberlands.** SPI will retain important habitats (e.g., large snags and broken top trees) during salvage harvesting to accelerate the development of future habitat for NSO in sites that are reforested following salvage logging.
- 4) **Reduce potential for catastrophic fire.** SPI will reduce the risk of catastrophic fire that may consume NSO habitat by establishing fuel breaks and other fuel reduction strategies.
- 5) **Reduce potential impacts to reproductive sites.** When covered activities occur under a Timber Harvesting Plan, SPI will conduct pre-operational surveys for NSO. Active nest sites will be protected by a 0.25-mile buffer from March 15 to August 31. No harvesting or vegetation-disturbing activities will be allowed within the buffer during this period. Prolonged excessive noise that could result in take will also be restricted. If road use is reasonably certain to disturb NSO, SPI will consult with the Service to adopt minimization measures. While full protocol surveys may not occur before Exemption and Emergency Operations, efforts will be made to locate and avoid NSO.
- 6) **Reduce potential impact from illegal activities.** SPI will implement land access control activities (gated roads and active patrols) and cooperate with local, state, and federal law enforcement agencies to eradicate illegal marijuana plantations and prevent illegal firewood cutting that could remove snags and other habitat structures.
- 7) **Manage for habitat elements and operating standards.** Habitat elements that will be retained include:
 - All trees that have contained NSO nest structures at any time in the past;
 - Habitat Retention Areas (HRAs) at a rate of two percent per harvest area;
 - One wildlife tree (a hardwood greater than 22 inches diameter at breast height (dbh) or a non-merchantable live, green conifer greater than 30 inches dbh with appropriate wildlife characteristics) per five acres of harvest area;
 - All Legacy Trees (any hardwood tree greater than 36 inches dbh or non-merchantable, live, green conifer greater than 30 inches dbh.)

- Additionally Retained Trees (trees required to be retained in addition to all other required elements) in regeneration units no further than 150 feet from other retained habitat elements;
- In non-regeneration harvest areas, at least two hardwoods greater than or equal to 22 inches dbh per acre, or the next largest available;
- In regeneration harvest areas, less than six inches dbh hardwoods will be retained or stump-sprouting hardwoods will be recruited at a rate of two per acre;
- Snags and green culls (a live tree that contains less than 25 percent sound merchantable wood within its bole); and
- Portions of plantations will not be thinned to promote within-stand heterogeneity and maintain density-induced mortality processes.

8) **Addressing barred owl (*Strix varia*) as a stressor on NSO populations.** In 2015, as a precursor to the development of the HCP, SPI began studying barred owl management via removal activities. The study's objectives included assessing the genetic differentiation of barred owl populations across northern and central California, analyzing allele frequency changes on the front of the range expansion, estimating the amount of barred owl-spotted owl interbreeding in each population, and identifying what barred owls are preying on in California. These efforts are ongoing, and SPI will continue this study for the term of the permit or for as long as Federal and State permits allow. This study includes the collection of 50 barred owls per year, for a potential total of 2,500 barred owls collected over the course of the 50-year term of the HCP.

Monitoring and Reporting Measures

To inform the HCP and ITP, assumptions were made by SPI and the Service regarding habitat quality and quantity, owl detection probability, effects of habitat modification on NSO reproductive performance, effectiveness of fuels reduction strategies in altering wildfire behavior, and the influence of barred owl removal on NSO nesting success. Due to these assumptions, monitoring and adaptive management will be required to evaluate and verify the effectiveness of the conservation measures in the HCP over time. SPI will meet with the Service biannually to discuss progress on the HCP and ensure it is being implemented as proposed. Each of the eight conservation measures has an annual reporting requirement, which includes quantifiable metrics.

The BO requires the Applicant to submit monitoring reports to the Service every three months. Although not a condition of the BO, CDFW requests a copy of the monitoring reports as well. The reports should include dates operations occurred and the success of revegetation and restoration.


Financial Assurances

In the HCP, SPI warrants that it has, and shall expend, such funds as necessary to fulfill its obligations under the ITP and HCP. HCP Table 8.1 projects a total Project implementation cost of \$32,250,000 in 2018 dollars. Each year, SPI will provide a summary of expenditures made in the previous year, a scope of work and budget for all monitoring actions, and any other HCP implementation actions to take place in the following year. The HCP states that a responsible corporate official with authority to commit SPI's financial resources shall certify under penalty of perjury that funds to implement the HCP have been budgeted and will be committed for use in the following year, as well as any material changes in cost estimates based on actual work performed. The annual funding commitment includes \$35,000 for barred owl management research, \$10,000 for annual Operations and Maintenance training related to barred owl management, and \$35,000 for additional barred owl studies or measures in response to adaptive management.

Pursuant to Fish and Game Code section 2080.1, take authorization under CESA is not required for the Project for incidental take of NSO, provided the Applicant implements the Project as described in the BO, including adherence to all measures contained therein, and complies with the mitigation measures and other conditions described in the BO and ITP and the EIR. If there are any substantive changes to the Project, including changes to the mitigation measures, or if the Service amends or replaces the BO and ITS or the EIR, the Applicant shall be required to obtain a new consistency determination or a CESA incidental take permit for the Project from CDFW. (See generally Fish & G. Code, §§ 2080.1, 2081, subds. (b) and (c)).

In making this determination, CDFW acknowledges that the BO addresses NSO, a species designated as threatened under the ESA, and threatened under CESA. (See Cal. Code Regs., tit. 14, § 670.5, subd. (b)(5)(g).) This species is known to occur within the Project area. The Service determined in the BO and ITS that, for purposes of the ESA, mortality or injury to individual adult NSO is unlikely but that the authorized take of habitat could result in limited mortality of eggs, nestlings, and juveniles. The Service authorized such take under the ESA, requiring the Applicant to implement various avoidance and minimization measures for the species. The Applicant is aware that, for purposes of CESA, take of NSO as defined by state law is prohibited, except as authorized by the Fish and Game Code. (See generally Fish & G. Code, §§ 86, 2080.)

CDFW's determination that the Service BO and ITS are consistent with CESA is limited to NSO.

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 By: _____
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Date: 11/16/2020

Chad Dibble, Deputy Director
 Ecosystem Conservation Division
 California Department of Fish and Wildlife

Consistency Determination
 No. 2080-2020-009-00