

## **Frequently Asked Questions about the Change to the Northern Spotted Owl Technical Assistance Process**

### **Technical Assistance Process Change Initial Briefing December 6, 2007**

1. Q: When will the new process go into effect?  
A: The new process will go into effect on 2/1/08.
2. Q: What will the new process entail?  
A: The new process will differ from the current one in that:
  - a. U. S. Fish and Wildlife Service (USFWS) will have a much diminished role in determining take avoidance.
  - b. The California Department of Fish and Game (DFG) may have an increased role.
  - c. The plan submitter will provide the California Department of Forestry and Fire Protection (CAL FIRE) with all of the information needed to determine take avoidance of the northern spotted owl (NSO) in the plan.

The new process will be based on the alternatives contained in 14 CCR § 919.9(a)-(g) [939.9(a)-(g)]. Please see the draft memo entitled, "Information Required for Plans Submitted Within the Range of the Northern Spotted Owl Relative to Process For Determining Take Avoidance," for more detailed information.

3. Q: Can the plan submitter continue to use the existing CAL FIRE Northern Spotted Owl (NSO) Review Guidelines for Timber Harvesting Plans, Modified Timber Harvesting Plans, Program Timber Harvesting Plans, and Nonindustrial Timber Management Plans (3/25/2005) ([http://www.fire.ca.gov/rsrc-mgt\\_content/downloads/NSOReviewGuidelines03\\_25\\_05.pdf](http://www.fire.ca.gov/rsrc-mgt_content/downloads/NSOReviewGuidelines03_25_05.pdf)) to address take of the NSO?

A: No, the plan submitter cannot continue to use the CDF NSO Guidelines to address take of the NSO. The new process will supersede those guidelines and the process around which they were developed. However, the information requirements and protection measures referenced in the guidelines may, in some instances, address the

requirements under the options contained in 14 CCR § 919.9(a)-(g) [939.9(a)-(g)].

4. Q: Who will review the information submitted to demonstrate no take of the NSO should result due to the proposed timber operations?

A: This will depend on which option is used under 14 CCR § 919.9 [939.9]:

- Under 14 CCR § 919.9(a) and (f) [939.9(a) and (f)], an independent consulting designated biologist has to review the information before it is submitted to CAL FIRE as part of the plan. A state-employed biologist and CAL FIRE review team staff will then review the information as a part of the normal harvesting document multi-disciplinary review team process per 14 CCR § 1037.5. A state-employed designated biologist will have to make written recommendations regarding whether the retained habitat configuration and protection measures proposed in the plan will prevent a take of the owl. CAL FIRE will base its decision on whether take is likely to be avoided based on the biologist's written recommendations.
- Under 14 CCR § 919.9(b) and (c) [939.9(b) and (c)], a state-employed biologist and CAL FIRE review team staff will review the information as a part of the normal harvesting document multi-disciplinary review team process per 14 CCR § 1037.5. A state-employed designated biologist will have to make written recommendations regarding whether the retained habitat configuration and protection measures proposed in the plan will prevent a take of the owl. CAL FIRE will base its decision on whether take is likely to be avoided based on the biologist's written recommendations.
- Under 14 CCR § 919.9(d) [939.9(d)], avoidance of take of the NSO will have been addressed in an existing habitat conservation plan (HCP). CAL FIRE will review any measures contained in the plan to avoid take of the NSO for consistency with the HCP as a part of the normal harvesting document multi-disciplinary review team process per 14 CCR § 1037.5.
- Under 14 CCR § 919.9(e) [939.9(e)], CAL FIRE will request that USFWS provide technical assistance (TA) regarding avoidance of take of the NSO. This will require the plan submitter providing CAL FIRE with all of the necessary information for USFWS to perform its analysis. CAL FIRE will have to review the information provided for completeness before passing it on to USFWS. CAL FIRE will base

its decision of avoidance of take on the result of USFWS's TA letter, which will have to be made part of the plan.

- Under 14 CCR § 919.9(g) [939.9(g)], CAL FIRE review team staff will review the habitat analysis and protection measures contained in the plan as a part of the normal harvesting document multi-disciplinary review team process per 14 CCR § 1037.5. CAL FIRE will base its decision on whether take is likely to be avoided based on the information provided in the plan. The following proposals will have to be reviewed by DFG and approved by CAL FIRE as not constituting a take: 1) Harvest within 500 feet of an active nest site or pair activity center during the breeding season; 2) Retention of less than 500 acres of owl habitat within 0.7 mile of an active nest site or pair activity center; 3) Operating in greater than 50% of the retained habitat within 0.7 mile of an active nest site or pair activity center in any one year; and 4) Retention of less than 1336 total acres of owl habitat within 1.3 miles of an active nest site or pair activity center.

Under all of the options contained in 14 CCR 919.9 [939.9], CAL FIRE must apply the criteria described in 14 CCR §§ 919.10(a)-(b) [939.10(a)-(b)] to the information provided by the plan submitter and obtained during the review period to make a finding as to whether the proposed timber operations will take an NSO.

5. Q: Will CAL FIRE be able to approve plans prior to the completion of all NSO surveys?

A: CAL FIRE expects to be able to approve plans prior to the completion of all NSO surveys. The RPF will have to provide an appropriate range of mitigation measures to avoid take of the NSO in the plan. These mitigations may apply depending on the possible outcomes of the surveys. Timber operations will likely not be allowed until surveys are completed and the results are provided to CAL FIRE. The survey results, which will confirm the presence or absence of the NSO on, or within 1.3 miles of, the plan area, will have to be amended into the plan along with an indication of which mitigations, if any, will apply. This information may be treated as either a minor or substantial deviation, depending on the content and the resultant change in timber operations.

6. Q: Will USFWS continue to provide TA for already approved plans that require initial or subsequent letters of TA after 2/1/08? These plans may have up to five operational seasons that apply and contain the current CDF NSO Guidelines process' language that requires the plan submitter to seek TA from USFWS prior to any operations and to amend the TA letter into the plan.

A: USFWS' proposal is to continue TA, but with these changes:

- USFWS will have a much slower turnaround to complete the TA process (~6 weeks).
- TA requests must come through CAL FIRE to ensure completeness.
- There will be times when USFWS cannot get to a TA because of workload, in which case it will notify CAL FIRE that it cannot get to CAL FIRE's requested TA.

USFWS will continue to provide TA for already approved plans after the request is first submitted to CAL FIRE; after CAL FIRE has reviewed the package for completeness; and after CAL FIRE has submitted a request to USFWS for TA. In case USFWS cannot provide TA, then the plan submitter will need to submit the information to CAL FIRE as an amendment to the plan. Such an amendment will require the plan submitter to present the information in terms of one of the alternatives required by 14 CCR § 919.9(a)-(g) [939.9(a)-(g)] and include the minimum information required by the selected alternative. This information may be treated as either a minor or substantial deviation, depending on the content and the resultant change in timber operations.

7. Q: What about already approved plans where USFWS may already be in the process of providing TA?

A1: For plans that USFWS has in hand (basically a complete package) and is conducting an evaluation of habitat and NSO location data, USFWS will continue its review without requiring the TA to come through CAL FIRE. It will work directly with the plan submitter to obtain any clarifications of the information in order to complete the review.

A2: If USFWS has already completed its initial review of a plan and a TA request is made for annual review of NSO survey data, that request must go through CAL FIRE. In the case that USFWS cannot provide TA, then the plan submitter will need to submit the information to CAL FIRE as an amendment to the plan. Such an amendment will require the plan submitter to present the information in terms of one of the alternatives required by 14 CCR § 919.9(a)-(g) [939.9(a)-(g)] and include the minimum information required by the selected alternative. This information may be treated as either a minor or substantial deviation, depending on the content and the resultant change in timber operations.

A3: If USFWS only has a TA request and an incomplete package associated with a plan, USFWS will require the package to go through CAL FIRE before it will review for TA. In the case that USFWS cannot provide TA, then the plan submitter will need to submit the information to CAL FIRE as an amendment to the plan. Such an amendment will require the plan submitter to present the information in terms of one of the alternatives required by 14 CCR § 919.9(a)-(g) [939.9(a)-(g)] and include the minimum information required by the selected alternative. This information may be treated as either a minor or substantial deviation, depending on the content and the resultant change in timber operations.

8. Q: Will USFWS provide TA on plans, which were submitted prior to, but will not be approved by, 2/1/08, on which it has not begun the TA analysis? These plans may contain the current CDF NSO Guidelines process' language that requires the plan submitter to seek TA from USFWS prior to any operations and to amend the TA letter into the plan.

A: These TA requests must first come through CAL FIRE, and expected turnaround is six weeks for USFWS review, unless USFWS notifies CAL FIRE that it cannot get to the requested TA. In the case that USFWS cannot provide TA, then the plan submitter will need to submit the minimum information required by one of the alternatives described in 14 CCR § 919.9(a)-(g) 939.9(a)-(g)] to CAL FIRE for inclusion in the plan. CAL FIRE will have to review the request for take determination as part of the normal harvesting document multi-disciplinary review team process per 14 CCR § 1037.5.

9. Q: What about cases where USFWS may already be in the process of evaluating the plan, which was submitted prior to 2/1/08 and will not be approved by 2/1/08, for take of the NSO?

A: USFWS will not require that these requests come through CAL FIRE, but expected turnaround is six weeks for USFWS review, unless USFWS notifies CAL FIRE that it cannot get to the requested TA. In the case that USFWS cannot provide TA, then the plan submitter will need to submit the minimum information required by one of the alternatives described in 14 CCR § 919.9(a)-(g) [939.9(a)-(g)] to CAL FIRE for inclusion in the plan. CAL FIRE will review the request for take determination as part of the normal harvesting document multi-disciplinary review team process per 14 CCR § 1037.5.

10. Q: Will plan submitters still be able to seek TA directly from USFWS, as provided in the forest practice rules?

A: USFWS is trying to move away from this, as it does not have the budget to continue this function as it has for the past eight years. If plan

submitters seek TA directly from USFWS, it will direct them to CAL FIRE for assistance. In the case that USFWS cannot provide TA, then the plan submitter will need to submit the minimum information required by one of the alternatives described in 14 CCR § 919.9(a)-(g) [939.9(a)-(g)] to CAL FIRE for inclusion in the plan. CAL FIRE will review the request for take determination as part of the normal harvesting document multi-disciplinary review team process per 14 CCR § 1037.5.

11. Q: Does CAL FIRE anticipate that it will have to seek TA from USFWS on certain plans?

A: Yes, CAL FIRE does expect that it may have to seek TA from USFWS on some plans. This will depend on the extent of DFG's involvement in the plan review process, the rule alternative selected, and the likelihood that the proposed timber operations appear to present a possible threat to the NSO. Such cases will likely involve proposed harvesting in deficit home ranges, owls located on the plan area, significant habitat modification within 0.5 mile of an activity center, significant change of historic owl locations, or any proposal to deviate from the standard habitat retention or protection measures contained in the rules.

12. Q: Will the change in process add additional time to plan review?

A: CAL FIRE anticipates that the change in take avoidance determination process may add additional time to plan review. Additional plan review time depends on whether:

- TA must be requested from USFWS. This will especially occur when CAL FIRE seeks TA and USFWS indicates it cannot provide TA. In the case that USFWS cannot provide TA, then the plan submitter will need to submit the minimum information required by one of the alternatives described in 14 CCR § 919.9(a)-(g) [939.9(a)-(g)] to CAL FIRE for inclusion in the plan. CAL FIRE will review the request for take determination as part of the normal harvesting document multi-disciplinary review team process per 14 CCR § 1037.5.
- DFG is not able to commit some level of resources to the plan review process within the range of the NSO.
- The plan contains insufficient, unclear, incomplete, or erroneous information regarding the NSO, which requires CAL FIRE to request additional information before it can make its decision as to whether take will be avoided.

- CAL FIRE must request TA from USFWS and the information USFWS requires for its analysis is not provided to CAL FIRE in a timely fashion, requires extensive clarification, or is incomplete.
- The rule alternative selected to address take avoidance requires a greater amount of review by CAL FIRE. Those alternatives that allow written documentation from a designated independent consulting biologist may require less review than those that do not.

13. Q: How can a plan submitter possibly avoid added plan review time?

A: Pre-consultation with DFG, CAL FIRE, and the designated independent consulting biologist should help the plan submitter decide on which alternative contained in 14 CCR § 919.9(a)-(g) [919.9(a)-(g)] best applies to the site specific conditions found on the plan area and vicinity. Such pre-consultation may help reduce plan review while preventing take of the NSO.

14. Q: Who will assist CAL FIRE is designating independent consulting biologists?

A: CAL FIRE anticipates that DFG will assist in designating independent consulting biologists, as provided for in 14 CCR § 919.9 [939.9].

15. Q: If the plan submitter chooses to use the take avoidance alternative afforded by 14 CCR §§ 919.9(a) and (f) [939.9(a) and (f)], what qualifications will the designated independent consulting biologist have to possess?

A: According to 14 CCR § 919.9 [939.9], the designated independent consulting biologist must have sufficient knowledge and education to determine harm or harassment of the NSO. To be designated by CAL FIRE, the independent consultant must be accepted by DFG and must demonstrate, in the field, sufficient knowledge and education to recognize and analyze data from field conditions and present information, which helps determine harm or harassment of the NSO. CAL FIRE and DFG will further clarify what qualifications the designated independent consulting biologist must possess. CAL FIRE will provide this information as soon as it is available.

16. Q: Can the designated independent consulting biologist be employed by the plan submitter for whom he or she is making a take avoidance determination?

A: The designated biologist should be an independent consultant and cannot be directly employed by the plan submitter for wages as compensation.

17. Q: Will CAL FIRE recommend a designated independent consulting biologist or provide a listing of such biologists?

A: CAL FIRE will not recommend a designated independent consulting biologist. However, a list of designated independent consulting biologists will be compiled and CAL FIRE will post it on the CAL FIRE web site.

18. Q: Can the plan submitter use an independent consulting biologist to make the written recommendations regarding whether the retained habitat configuration and protection measures proposed in the plan will prevent a take of the owl until such time as CAL FIRE has compiled a list of designated independent consulting biologists?

A: Yes, for an interim period, the plan submitter can use an independent consulting biologist who is acceptable to CAL FIRE, has previously worked with USFWS, and possesses sufficient knowledge and education to recognize and analyze data from field conditions and present information, which helps determine harm or harassment of the NSO.

19. Q: Can CAL FIRE make a take avoidance determination for the life of a plan, or will it have to make periodic determinations based on additional owl surveys?

A: CAL FIRE may be able to make take determination for the life of the plan in the cases where there will be no timber operations in suitable habitat, or there is insufficient suitable habitat on, or adjacent to, the plan area to support owls. The plan submitter may have to provide CAL FIRE with periodic updates of the status of presence or absence of the NSO on the plan area and within 1.3 miles of the plan boundary.

20. Q: Will a Spotted Owl Management Plan (SOMP) assist in the proposed process?

A: A SOMP may assist in the proposed process pursuant to 14 CCR § 919.9(e) [939.9(e)].

21. Q: How will the change in take determination process affect the use of a SOMP and the plans tiered to them?

A: CAL FIRE will likely have to get written confirmation that a company has a current SOMP, what the SOMP covers, and how USFWS will

interact with the plan submitter, if at all, when plans are tiered to the SOMPs.

22. Q: Can a plan submitter withdraw a previous request for TA from USFWS on a plan that is still under review and use one of the alternatives contained under 14 CCR § 919.9(a)-(g) [939.9(a)-(g)]?

A: Yes, the plan submitter can withdraw a previous request for TA from USFWS on a plan that is still under review and use one of the alternatives contained under 14 CCR § 919.9(a)-(g) [939.9(a)-(g)]. The plan submitter should notify USFWS of the withdrawal of the TA request. He or she will also need to modify the plan to provide the information required by whichever alternative under 14 CCR § 919.9(a)-(g) [939.9(a)-(g)] applies to the site specific conditions found on the plan and its vicinity.

In those cases where NSOs are located on, or within 1.3 miles of, the plan area, the plan submitter should be able to use the alternative described under 14 CCR § 919.9(g) [939.9(g)] without much modification to the information provided as a part of CDF's NSO Guidelines found in the plan.

23. Q: What definitions will CAL FIRE use for the terms, "nest site" and "activity center?"

A: CAL FIRE will use the definition of "nest site" contained in 14 CCR § 895.1<sup>1</sup> and the definition of "activity center" that is currently used in the CDF NSO Guidelines<sup>2</sup>.

24. Q: When using alternative (g) under 14 CCR § 919.9 [939.9], what level of documentation of habitat will be required to demonstrate retention of sufficient owl habitat within 0.7 and 1.3 miles of a active nest site or pair activity center?

A: In order for CAL FIRE to properly evaluate whether sufficient type and quantity of habitat is retained per alternative (g) under 14 CCR § 919.9 [939.9], the plan submitter will need to supply a map showing the location of functional nesting habitat within 500 feet, functional roosting habitat within 500-1000 feet, 500 acres of owl habitat within 0.7 mile, and 1336 acres of owl habitat within 1.3 miles of an active nest site or pair activity center. In addition, the plan submitter will need to supply sufficient stand description information in order for CAL FIRE to ascertain whether the

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<sup>1</sup> Nest Site means the geographic area surrounding habitat that includes the nest tree(s), perch tree(s), screening tree(s), and replacement tree(s) of a bird species of special concern.

<sup>2</sup> Activity Center: means sites identified through surveys acceptable to USFWS resulting in either the presence of nesting, pair status or resident single status. The final determination of an activity center's status and location is at the discretion of USFWS.

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retained owl habitat meets the definitions of functional nesting, functional roosting, or owl habitat contained in 14 CCR § 895.1.

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