

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17**

[Docket No. FWS-R8-ES-2015-0139;
4500090022]

**Endangered and Threatened Wildlife
and Plants; 12-Month Finding for the
California Spotted Owl**

AGENCY: Fish and Wildlife Service,
Interior.

ACTION: Notification of 12-month
finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on petitions to list the California spotted owl (*Strix occidentalis occidentalis*) as an endangered or threatened species under the Endangered Species Act of 1973, as amended (Act). After a thorough review of the best available scientific and commercial information, we find that it is not warranted at this time to list the California spotted owl. However, we ask the public to submit to us at any time any new information relevant to the status of the subspecies or its habitat.

DATES: The finding in this document was made on November 8, 2019.

ADDRESSES: A detailed description of the basis for this finding is available on the internet at <http://www.regulations.gov> under docket number FWS-R8-ES-2015-0139.

Supporting information used to prepare this finding is available for public inspection, by appointment, during normal business hours, by contacting the person specified under **FOR FURTHER INFORMATION CONTACT**. Please submit any new information, materials, comments, or questions concerning this finding to the person specified under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Josh Hull, telephone: 916-414-6742, email: josh_hull@fws.gov. If you use a telecommunications device for the deaf (TDD), please call the Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:**Background**

Under section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*), we are required to make a finding whether or not a petitioned action is warranted within 12 months after receiving any petition for which we have determined contained substantial scientific or commercial information indicating that the petitioned action may be warranted

(“12-month finding”). We must make a finding that the petitioned action is: (1) Not warranted; (2) warranted; or (3) warranted but precluded. “Warranted but precluded” means that (a) the petitioned action is warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened species, and (b) expeditious progress is being made to add qualified species to the Lists of Endangered and Threatened Wildlife and Plants (Lists) and to remove from the Lists species for which the protections of the Act are no longer necessary. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring that a subsequent finding be made within 12 months of that date. We must publish these 12-month findings in the **Federal Register**.

**Summary of Information Pertaining to
the Five Factors**

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations at part 424 of title 50 of the Code of Federal Regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Lists. The Act defines “endangered species” as any species that is in danger of extinction throughout all or a significant portion of its range (16 U.S.C. 1532(6)), and “threatened species” as any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532(20)). Under section 4(a)(1) of the Act, a species may be determined to be an endangered species or a threatened species because of any of the following five factors:

- (A) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (B) Overutilization for commercial, recreational, scientific, or educational purposes;
- (C) Disease or predation;
- (D) The inadequacy of existing regulatory mechanisms; or
- (E) Other natural or manmade factors affecting its continued existence.

In considering whether a species may meet the definition of an endangered species or a threatened species because of any of the five factors, we must look beyond the mere exposure of the species to the threat to determine whether the species responds to the threat in a way that causes actual impacts to the species. If there is exposure to a threat,

but no response, or only a positive response, that threat does not cause a species to meet the definition of an endangered species or a threatened species. If there is exposure and the species responds negatively, we determine whether that threat drives or contributes to the risk of extinction of the species such that the species warrants listing as an endangered or threatened species. The mere identification of threats that could affect a species negatively is not sufficient to compel a finding that listing is or remains warranted. For a species to be listed or remain listed, we require evidence that these threats are operative threats to the species and its habitat, either singly or in combination, to the point that the species meets the definition of an endangered or a threatened species under the Act.

In conducting our evaluation of the five factors provided in section 4(a)(1) of the Act to determine whether the California spotted owl (*Strix occidentalis occidentalis*) meets the definition of “endangered species” or “threatened species,” we considered and thoroughly evaluated the best scientific and commercial information available regarding the past, present, and future threats. We reviewed the petition, information available in our files, and other available published and unpublished information. This evaluation may include information from recognized experts; Federal, State, and tribal governments; academic institutions; foreign governments; private entities; and other members of the public.

The species assessment for the California spotted owl contains more detailed biological information, a thorough analysis of the listing factors, and an explanation of why we determined that this subspecies does not meet the definition of an endangered species or a threatened species. This supporting information can be found on the internet at <http://www.regulations.gov> under docket number FWS-R8-ES-2015-0139. The following is an informational summary of the finding in this document.

Previous Federal Actions

For a detailed history of prior petitions, listing actions, and litigation, please see the 12-month finding published on May 24, 2006 (71 FR 29886). Subsequent to that finding, the Service was petitioned twice to list the California spotted owl as endangered or threatened with critical habitat under the Act. The first petition was submitted in December 2014, by the Wild Nature Institute and John Muir Project of Earth

Island Institute, and the second was submitted in August 2015, by Sierra Forest Legacy and Defenders of Wildlife. On September 18, 2015, the Service published a 90-day finding (80 FR 56423) that the petitions presented substantial scientific or commercial information indicating that listing may be warranted for the California spotted owl. On March 16, 2016, the Center for Biological Diversity challenged the Service's failure to timely issue the 12-month finding in response to the recent petitions (*CBD v. Jewell, et al.*, No. 1:16-cv-00503-JDB (D.D.C.)). The parties entered into a settlement agreement whereby the Service committed to submit a 12-month finding on California spotted owl to the **Federal Register** by September 30, 2019. On May 2, 2019, the court extended the deadline until November 4, 2019, due to a previous lapse in appropriations that stopped all progress on the California spotted owl petition finding for a period of time.

Summary of Finding

The California spotted owl is a subspecies of spotted owl that occurs throughout the Sierra Nevada mountain range in California and Nevada; in southern and coastal California in the Coastal, Transverse, and Peninsular mountain ranges; and in Sierra San Pedro Martir in Baja California Norte, Mexico.

In the Sierra Nevada range, a majority of California spotted owls occur within mid-elevation ponderosa pine, mixed-conifer, white fir, and mixed-evergreen forest types, with fewer owls occurring in the lower elevation oak woodlands of the western foothills. On the central coast of California and in southern California, California spotted owls are found in riparian/hardwood forests and woodlands, live oak/big cone fir forests, and redwood/California laurel forests. California spotted owls primarily prey upon a variety of small- to medium-sized mammals, such as northern flying squirrels (*Glaucomys sabrinus*) and woodrats (*Neotoma* spp.). California spotted owls require multi-layered high canopy cover, large trees, coarse woody debris, forest heterogeneity, and nest trees within a patch size large enough to fulfill the needs of the owls and in a particular pattern across the landscape.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the California spotted owl, and we evaluated all relevant considerations under the five

listing factors, including any regulatory mechanisms and conservation measures addressing the identified threats. The primary threats affecting the California spotted owl's status include large-scale, high-severity fire; increased tree mortality; drought; effects of climate change; and the invasion of barred owls into the California spotted owl's range. Many of these threats, such as wildfire and increased tree mortality, have been acting on the landscape for several decades, yet over half of the Sierra Nevada portion of the range is in moderate or high condition, meaning that populations in those areas are currently likely to be able to persist through a catastrophic event, and the California spotted owl currently demonstrates high representation and moderate redundancy.

While some threats such as drought, tree mortality, and effects of climate change cannot be addressed by conservation measures, existing conservation measures and regulatory mechanisms will help increase resiliency so that the subspecies can withstand future threats, particularly in the northern Sierra Nevada portion of the owl's range. Specifically, measures described in the 2004 Sierra Nevada Forest Plan Amendment, the 2005 Southern California National Forest Land Management Plans, and other conservation measures will continue to decrease the negative effects of clearcutting and mechanical thinning. They will benefit the California spotted owl by maintaining high canopy cover and large trees within owl territories. Further, increased mechanical thinning will help to reduce the risk of large-scale high-severity fire on the landscape. Though these forest plans and conservation measures cannot fully remove the risk of large-scale high-severity fire, they are reducing the overall potential for wildfires to become the large-scale high-severity fires that are particularly detrimental to California spotted owl habitat. Additionally, the Barred Owl Removal Project is currently reducing the density of barred owls on the landscape. Continued removal of barred owls is expected to stem the expansion of barred owl further into the California spotted owl range.

Though the conditions of California spotted owl habitat and populations are expected to decline in some areas, existing conservation measures and regulatory mechanisms are expected to continue and will reduce the effects of threats to the owl such that the

California spotted owl will retain sufficient redundancy, resiliency and representation to allow it to persist into the foreseeable future. Overall, the threats are not affecting the subspecies at such a level to cause it to be in danger of extinction throughout all or a significant portion of its range or to become an endangered species in the foreseeable future throughout all or a significant portion of its range.

Therefore, we find that listing the California spotted owl as an endangered species or threatened species under the Act is not warranted. A detailed discussion of the basis for this finding can be found in the California spotted owl species assessment and other supporting documents (see **ADDRESSES**, above).

New Information

We request that you submit any new information concerning the taxonomy of, biology of, ecology of, status of, or threats to the California spotted owl to the person specified under **FOR FURTHER INFORMATION CONTACT**, whenever it becomes available. New information will help us monitor this subspecies and make appropriate decisions about its conservation and status. We encourage local agencies and stakeholders to continue cooperative monitoring and conservation efforts.

References Cited

The list of the references cited in the petition finding is available on the internet at <http://www.regulations.gov> under docket number FWS-R8-ES-2015-0139 and upon request from the person specified under **FOR FURTHER INFORMATION CONTACT**.

Authors

The primary authors of this document are the staff members of the Species Assessment Team, Ecological Services Program.

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 1, 2019.

Margaret E. Everson,

Principal Deputy Director, U.S. Fish and Wildlife Service, Exercising the Authority of the Director, U.S. Fish and Wildlife Service.

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