

Questions from Rep. Bentz

Question 1. In response to a question by Congressman Bentz, Mr. Guertin noted that “the Administration has issued its intent to revise critical habitat for the northern spotted owl. We believe that it involves a combination of control of barred owl as well as a lot of habitat restoration measures. However, our planning also supports a very robust fuels treatment as well as timber management program.” Please provide responses to the following questions:

- a. Mr. Guertin’s response suggested that the Biden Administration’s July 20, 2021 proposal to revise the USFWS’ 2021 northern spotted owl (NSO) critical habitat designation was somehow connected to barred owl control efforts and habitat restoration measures. For the record, please clarify how or if the July 20, 2021 proposal to revise the NSO critical habitat designation has any connection to barred owl removal efforts or habitat restoration activities to reduce the risk of catastrophic wildfire.**

Response: The 2012 critical habitat rule helps to guide federal forest land management and identifies areas where habitat conservation is most important and where restoration is appropriate. The final rule, published November 10, 2021, at 86 FR 62606, revising critical habitat builds upon the 2012 rule and addresses the Bureau of Land Management’s (BLM) updated resource management plans (RMP), which incorporate recovery strategy for maintaining and restoring high-value habitat, addressing barred owl management, and actively managing fire-prone forests to address climate change and wildfire threats.

- b. In light of the USFWS’ recognition about the importance of habitat restoration and a “very robust fuels treatment as well as a timber management program” as referenced by Mr. Guertin, please provide the Committee the number of acres of NSO critical habitat that are at a moderate to high risk of catastrophic wildfire, any associated maps produced by the agency outlining these areas, and any examples of communications or reports sent by the USFWS to federal land management agencies recommending specific areas where forest health treatments be conducted.**

Response: The 2011 Northern Spotted Owl Recovery Plan explicitly recommends “active management” of dry forests to reduce the risk of high-severity wildfire. Specific areas identified include the Klamath Provinces, the Eastern Washington Cascades, the Eastern Oregon Cascades, and the California Cascade Provinces. While the Department defers to the USDA Forest Service for information related to that agency’s land management actions, since 2012 the BLM has conducted roughly 149,500 acres of forest health treatments in Oregon and Washington and 3,300 acres of hazardous fuels reduction treatments in California within northern spotted owl critical habitat. The BLM estimates the total area of northern spotted owl critical habitat burned within the perimeter of large wildland fires since 2012 is approximately 1.6 million acres,

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including 933,000 acres in California, 553,000 acres in Oregon, and 172,000 acres in Washington.

The BLM estimates 300 northern spotted owl nesting sites were within the perimeter of large wildland fires since 2012. Based on the relative suitability model from the Western Oregon Resource Management Plans, 1.9 million acres of nesting and roosting habitat and 3.5 million acres of dispersal habitat have been burned by large wildland fires.

- c. **The 2011 revised recovery plan for the NSO and the 2019 NSO species assessment both highlighted the critical importance of mitigating the impact of the barred owl on the NSO. The USFWS' Biological Opinion for the 2016 BLM Resource Management Plan for western Oregon also committed to the completion of a barred owl removal plan by the USFWS. Other than conducting limited barred owl removal pilot studies, what has the USFWS done to finalize a barred owl removal plan? When will such a plan be finalized? Will the agency be requesting funding to finalize and implement such a plan?**

Response: The Service is working collaboratively with an interagency team of biologists from multiple agencies, including the USFS, BLM, U.S. Geological Survey, National Park Service, and state wildlife agencies across the range of the northern spotted owl to develop a barred owl management strategy. The Service is also collaborating with private industry scientists. The Service anticipates completing a plan within two years. The best science concludes that managing the barred owl threat is the most pressing near term conservation need for spotted owls, while long term habitat conservation remains fundamental to preventing the species' extinction.

Question 2. In response to a question by Congressman Huffman, Mr. Guertin suggested that critical habitat designations do not preclude forest thinning and fuels reduction efforts on federal lands. Please provide responses to the following questions:

- a. **Do critical habitat designations create additional consultation requirements for federal land management agencies that propose forest thinning and fuels reduction activities within designated critical habitat?**

Response: Under section 7 of the ESA, federal agencies must ensure that actions they authorize, fund, or carry out do not jeopardize the existence of any species listed under the ESA, or destroy or adversely modify designated critical habitat of any listed species. However, in cases where the proposed activities would also provide benefits to the species and its critical habitat, such benefits would also be considered during consultation.

- b. **Do critical habitat designations expose federal land management agencies or the US Fish and Wildlife Service to additional litigation risk challenging projects conducted**

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within these areas, including claims regarding “adverse modification of critical habitat?”

Response: As noted above, federal agencies consult with the Service to ensure their actions are not likely to jeopardize listed species or destroy or adversely modify designated critical habitat. The ESA allows a party to file a lawsuit to enforce compliance with section 7 of the ESA, including the Service’s biological findings under section 7(a)(2).

c. Since the adoption of the 2012 NSO critical habitat rule, how many acres of mechanical fuels reduction treatments within NSO critical habitat have been approved through USFWS’ consultations of Forest Service and BLM forest management projects?

Response: The section 7 consultation process allows for site-specific adjustments to proposed actions to minimize adverse effects while still allowing the project to move forward. To date, we have not found that fuels reduction projects consulted on are incompatible with critical habitat or the recovery of the northern spotted owl. As noted in response to a previous question, while we must defer to the USDA Forest Service for information related to that agency’s land management actions, since 2012 the BLM has conducted roughly 149,500 acres of forest health treatments in Oregon and Washington and 3,300 acres of hazardous fuels reduction treatments in California within northern spotted owl critical habitat. The BLM estimates the total area of northern spotted owl critical habitat burned within the perimeter of large wildland fires since 2012 is approximately 1.6 million acres, including 933,000 acres in California, 553,000 acres in Oregon, and 172,000 acres in Washington.

The BLM estimates 300 northern spotted owl nesting sites were within the perimeter of large wildland fires since 2012. Based on the relative suitability model from the Western Oregon Resource Management Plans, 1.9 million acres of nesting and roosting habitat and 3.5 million acres of dispersal habitat have been burned by large wildland fires.

d. In a December 14, 2020 comment letter on the 2021 NSO critical habitat rule, the USDA noted that “critical habitat designations added restrictions to forest management on millions of acres of national forests” and “have unfortunately created challenges in recovery of the NSO.” Does the USFWS agree with the views of the USDA Forest Service that critical habitat designations make it more difficult for that agency to implement forest management activities?

Response: As described above, the Service strongly supports science-based forest fuels management to improve forest health. Section 7 of the ESA does not prohibit all impacts to critical habitat; only those impacts that appreciably diminish the value of critical habitat for the NSO are prohibited. In those cases, the Service works with USFS to identify reasonable and prudent alternatives to the proposed activities that allow for forest management without

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destroying or adversely modifying the critical habitat. The final rule published on November 10, 2021, at 86 FR 62606, allows for appropriate fuels management for forest health. Land managers such as the USFS and BLM must comply with the ESA and other federal, state, and local laws as they plan and implement fuels treatment. The Service works closely with these partners to develop programmatic approvals to these types of projects that streamline the process and minimize the time taken to review and approve actions.