June 20, 2011
Public Hearing Testimony on
Proposed Northern Spotted Owl Critical Habitat Designation,
Draft Economic Analysis and Draft Environmental Assessment
Portland, Oregon

Presented by Ann Forest Burns, Vice President

The American Forest Resource Association (AFRC) is a trade association incorporated under the laws of the State of Oregon. Its members include most of the forest products manufacturers throughout the range of the Northern Spotted Owl which depend upon public timber as a source of supply. AFRC has been involved with northern spotted owl policy decisions since long before the species was listed as threatened in 1990. Our members have been and will continue to be heavily impacted by the Northern Spotted Owl Recovery Plans and Critical Habitat designations.

My testimony tonight will focus on the major flaws in the current Critical Habitat Proposal and the draft Economic Analysis. Because of these flaws, we recommend that both be completely redone in order to meet the requirements of the Endangered Species Act.

What I will present tonight is only a preliminary summary of our findings. We will submit detailed written comments by July 6.

The current proposal to revise the designated critical habitat for the northern spotted owl fails to meet the requirements of section 3(5)(A) of the ESA and accompanying regulations. The process used is incapable of determining what areas were "*occupied at the time of listing*" and/or are "*essential for the conservation of the species*." The Draft Economic Analysis of Critical Habitat Designation for the Northern Spotted Owl fails to meet the requirements of section 4(b)(2) of the ESA and accompanying regulations. It misrepresents the current situation (baseline) therefore grossly underestimating the economic consequences of the proposal. The Draft Environmental Assessment for the Designation of Critical Habitat for the Northern Spotted Owl fails to disclose the true environmental consequences of the proposal and is based on the faulty processes of the previous two documents. The proposal to revise the designated critical habitat for the northern spotted owl and economic analysis should be completely redone using processes that will meet the requirements of sections 3(5)(A) and 4(b)(2) of the ESA.

Flaws in the process used to determine areas that contain the physical or biological features essential to the conservation of the species

1. The use of the GNN-LT database is inappropriate to determine what stands contain the primary constituent elements (PCE's) needed for the conservation of the species. This is because it does not depict what actual vegetative components exist on the ground but is

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rather a computer simulation of what might exist on the ground. It creates a hypothetical landscape which is only useful for region wide, large scale, general planning level discussions and according to its creators should not be used *"as input data for models that depend on local habitat connectivity, patch sizes, and structure"* which is exactly how the USFWS used it. Significant discrepancies exist between what is actually on the ground and the hypothetical vegetative layer produced by the GNN-LT model.

2. The use of MaxEnt to define primary constituent elements is the biggest flaw in the process. First it uses a predicted vegetation layer (GNN-LT) instead of the actual vegetation that exists on the ground which misrepresents the vegetation at least 30%-50% of the time and almost 100% of the time when using more than one variable. The habitat definitions used by the USFWS contain an average of 15 variables. Secondly, the vast majority of the range of the spotted owl has not been surveyed for owls so the habitat within these regions is severely unrepresented in the owl location data. Thirdly, the MaxEnt model is only capable of identify the relative differences between the hypothetical habitat definitions given to it but in no way can tell how good the "best" definition is and its outputs only show how good one area is relative to another in terms of the habitat definition chosen. Lastly, the USFWS fails to show how the hypothetical habitat definitions they developed for testing and the ones chosen by MaxEnt as the "best" affect the different life function of the spotted owl such as survival, fecundity, site fidelity, juvenile dispersal or availability of a viable food supply that are the determining factors for identifying Primary Constituent Elements.

3. In summary, the process used in the first two steps of the process used to define the areas proposed for critical habitat definition are incapable of identifying what physical and biological features are essential for the conservation of the species and furthermore is incapable of determining what areas within the 24 million acres within the range of the spotted owl contain those features.

4. The USFWS used the erroneous data produced by GNN-LT and MaxEnt as the input to another model, Zonation. Once again, they have used a model for purposes it was not designed to do. The authors of Zonation clearly state that it is not to be used to develop conservation networks, which is exactly how the USFWS used it. The modeling teamed warned the USFWS to not use the outputs of Zonation to define critical habitat boundaries but the USFWS ignored these.

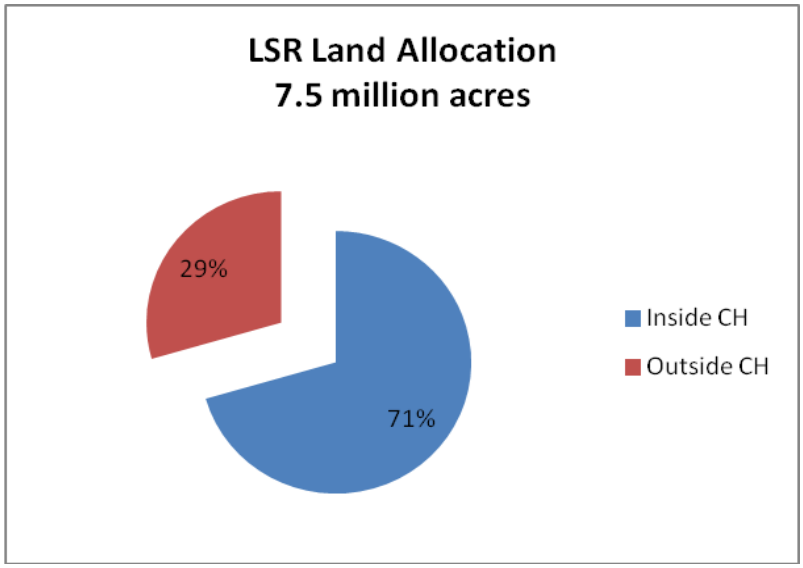
> *"Also, it is important to recognize these scenarios are not recommendations for the specific size or location of habitat conservation blocks – they are only scenarios for the purpose of comparing to other scenarios to evaluate how they influence spotted owl population performance in the population simulation model." "These depictions are for demonstrative purposes only, not recommendations. They are essentially asking what would be the conservation value to spotted owls if habitat conservation areas were restricted to various land ownership categories."*

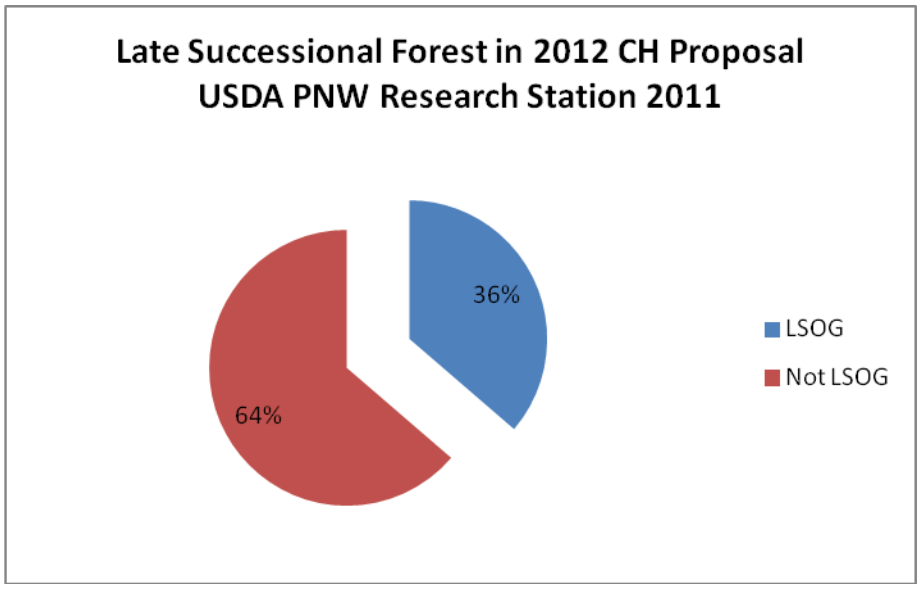
Despite the caveats made by the authors of the Zonation model and those of the modeling team, the USFWS used the outputs of the Zonation model to delineate areas as being "*essential for the conservation of the species*" when in fact the models do nothing of the sort.

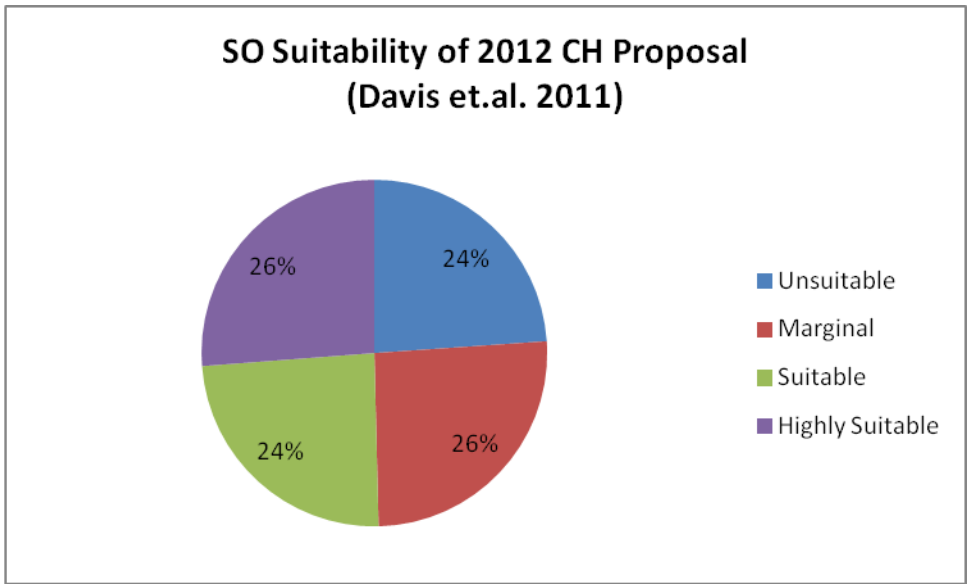
5. The USFWS used Zonation outputs that captured 70% of the habitat values as the basis for the proposed revision of critical habitat. This in no way supports that these areas are essential for the conservation of the species. All Zonation shows is a computers calculation of the minimum amount of land needed to encompass 70% of the habitat values which are smoothed indices of a relative habitat suitability index based on biased spotted owl locations overlaid on a hypothetical landscape which is based on radiation bands collected from a satellite circling the Earth.
6. Another shortcoming of the process used by the USFWS to delineate areas essential for the conservation of the species is that the USFWS fails to show that any of the scenarios will actually lead to the conservation of the species. For something to be essential to the conservation of the species it must be shown that conservation is actually possible. They have failed to do so and therefore they cannot substantiate that the areas delineated in the proposed revision are "essential" to delisting.
7. In fact, even the HexSim models show that under the best case scenario of the current situation where barred owls are rapidly displacing spotted owl, there is no habitat conservation network that will lead to a stable or increasing population. Without a reduction in the barred owl population, the spotted owl population will continue to decline no matter how much land is designated as critical habitat.
8. The proposal to revise the designated critical habitat for the northern spotted owl fails to meet the requirements of section 3(5)(A) of the ESA and accompanying regulations as the process used is incapable of determining what areas were "*occupied at the time of listing*" and/or are "*essential for the conservation of the species*." We show in our detailed comments that the process used by the USFWS to delineate the 13,962,449 acres proposed for critical habitat designation is incapable of distinguishing between which areas contain the physical or biological features essential for the conservation of the species and which do not. We also show that many of the proposed areas are already being managed more strictly than required by designation and therefore do not "*require special management considerations or protection"* and are not eligible for designation. Because of the fatal flaws that exist in the process used in the proposed revision of critical habitat, this process should be abandoned and a new one developed that is based on the real world rather than a virtual reality created by computer models.
9. We have also made some comparisons of this proposal and some of the standards that have defined spotted owl recovery over the last 20 years.
    a. The 7.5 million acres Late Successional Reserves system of the Northwest Forest Plan has been the foundation of the recovery effort. The USFWS continues to support the validity of this network yet only 70% of it has been classified as "essential for the conservation of the species" and therefore is included in the proposal. Does this mean that thirty percent of the LSR network is no longer needed for recovery since the models classified them as not being suitable spotted owl habitat?
    b. The USFWS continues to stress the importance of late-successional forests as the mainstay of spotted owl habitat needs. The USDA, Pacific Northwest Research Station recently updated their assessment of the location of these forests within

the range of the spotted owl. Their work shows that only 36% of the proposed critical habitat is classified as late-successional forest.

c. The USDA, Pacific Northwest Research Station also recently updated their spotted owl habitat suitability assessment of all the lands within the range of the spotted owl. According to this research, only 26% of this critical habitat proposal is comprised of "highly suitable" habitat and 50% is classified as "unsuitable or marginal" habitat.







Flaws in Critical Habitat Economic Impact Summary

The *Draft Economic Analysis of Critical Habitat Designation for the Northern Spotted Owl* grossly underestimates the economic impact of the proposed Critical Habitat Designation on federally managed lands by:

1. Misrepresenting the current situation (baseline)
2. Severely underestimating the impacts this designation will have on timber harvest and the resulting economic loss

It also is not a meaningful economic analysis of the proposed action as it shows over 100 potential outcomes depending on what scenarios are chosen for federal, state and private lands.

<u>Baseline Assumption Errors</u>

1. For the Forest Service, the Economic Analysis erroneously uses what was harvested between 1995 and 2010 to represent the starting point for determining the baseline instead of the current land management plans.

2. For the BLM, the Economic Analysis reworked the data given to them by the BLM to estimate annual volume reductions. The process they used is not clearly presented and the end results are far lower than estimated by the BLM.

3. The Economic Analysis erroneously presumes that all of the recommendations made in the recently adopted Spotted Owl Recovery Plan are being fully implemented and therefore their economic affect has already occurred and is therefore incorporated into the baseline.

The true baseline is represented by the land management plans that have been adopted by the agencies through the formal rule making process. The current long term sustained yield associated with these plans within the area encompassed by the proposed Critical Habitat

designation is 533 mmbf for Region 6 of the USFS, 161 mmbf for Region 5 of the USFS, 203 mmbf for the BLM for a total of 840 mmbf.

Underestimation of Impacts

1. The Economic Analysis concludes that the maximum impact on timber harvest would be 24.56 mmbf per year. Data provided to the USFWS by the BLM indicates that on their 10.6% of the proposed critical habitat, the timber harvest reduction would be 111 mmbf which represents over one half of the current 203 mmbf authorized under the NWFP.

2. The Forest Service has 2,855,512 acres of matrix and other non-reserved lands within the proposed which is over 10 times that managed by the BLM. You can see that the annual impacts could be 350 mmbf – 400 mmbf if the same proportional reductions as used that were estimated by the BLM.

3. If the annual timber sale program is reduced by a total of 500 mmbf, 9,000 current and potential jobs would be lost. This loss is aggravated by the loss of tax revenue and the unemployment burden the Counties would have to bear.

4. Using a stumpage rate of $250/mbf, a 500 mmbf loss equates to a financial impact of $125,000,000 per year. If one assumes a more realistic stumpage rate of $350/mbf the cost raises to $175,000,000 not the $6,140,000 estimated in the Economic Analysis.

Conclusion

AFRC appreciates the opportunity to review and comment on the Proposed Northern Spotted Owl Critical Habitat Designation, the Draft Economic Analysis and the Draft Environmental Impact Statement. Unfortunately, the both the proposed designation and the draft economic analysis are fatally flawed and would not pass muster under the statutory mandate provided by Congress in the Endangered Species Act. Therefore, we recommend that both be completely redone. Do not allow the deadline which the agency itself asked the district court to impose to deter you from doing what is needed to make these documents legally sufficient.