

# EPIC Petition to Remove 14 CCR 919.9(g)[939.9(g)] Before the California Board of Forestry



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Environmental Protection Information Center

[www.wildcalifornia.org](http://www.wildcalifornia.org)



Keeping Northwest California wild since 1977

# Who we are

- EPIC works to protect and restore ancient forests, watersheds, coastal estuaries, and native species in Northern California. EPIC uses an integrated, science-based approach, combining public education, citizen advocacy, and strategic litigation.
- [www.wildcalifornia.org](http://www.wildcalifornia.org)



# Northern Spotted Owl (*Strix occidentalis caurina*)

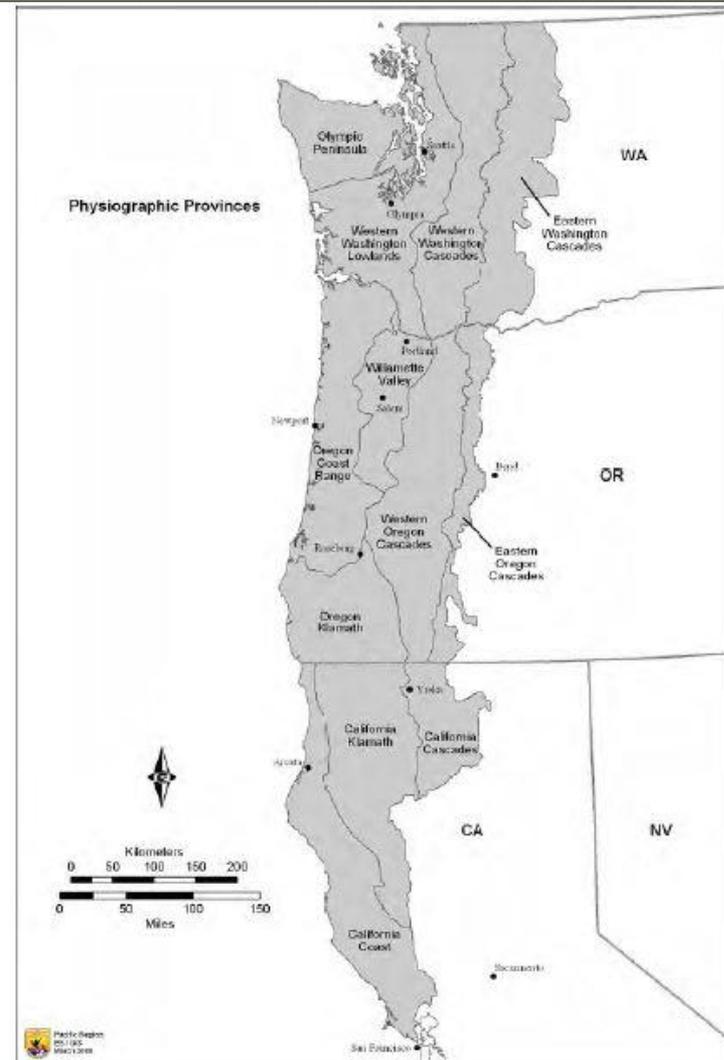


Figure A-1. Physiographic provinces within the range of the spotted owl in the United States.

# Northern Spotted Owl Habitat Needs



Photo Credit: Redwood National & State Parks

- *Inhabits* structurally complex forests from southwest British Columbia (now extinct) through the Cascade Mountains and coastal ranges in Washington, Oregon, and California, as far south as Marin County
- *The scientific* research and monitoring conclusively indicates spotted owls primarily rely on *mature and old-growth forest stands* for nesting and sheltering.
- *Foraging* habitat can be more varied, oftentimes consisting of forest edge habitat where disturbance may increase prey abundance, especially wood rats.
- *Past* habitat loss and current habitat loss are threats to the spotted owl. However, the loss of nesting and roosting habitat is more problematic since so little remains.

# Northern Spotted Owl legal and regulatory history

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- ◉ Listed as “threatened” under federal ESA in 1990.
- ◉ Dwyer Injunction
- ◉ Northwest Forest Plan
- ◉ California ESA petition
- ◉ Federally “endangered” ESA up-listing petition



# Current threats to Northern Spotted Owls

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- ◉ Habitat loss
- ◉ Barred Owls
- ◉ Disease
- ◉ Genetic “bottleneck”



**Table B-2.** Estimated amount of spotted owl nesting and roosting habitat<sup>1</sup> at the start of the Northwest Forest Plan (baseline 1994/96<sup>2</sup>) and losses owing to harvest through 2006/7<sup>2</sup>, by State and ownership (adapted from Davis and Dugger in press).

Land class	Baseline (1994/96 <sup>2</sup> )	Harvest	Total Percent loss <sup>3</sup>
<b>Federal reserved</b>			
Washington	2,274,200	7,900	0.3%
Oregon	2,699,600	6,100	0.2%
California	1,214,000	2,500	0.2%
Range-wide total	6,187,800	16,500	0.3%
<b>Federal non-reserved</b>			
Washington	470,200	4,800	1.0%
Oregon	1,561,400	23,800	1.5%
California	634,400	8,700	1.4%
Range-wide total	2,666,000	37,300	1.4%
<b>Non-federal</b>			
Washington	1,258,900	234,200	18.6%
Oregon	1,382,400	301,200	21.8%
California	1,556,700	90,200	5.8%
Range-wide total	4,198,000	625,600	14.9%
<b>Range-wide total</b>	<b>13,052,000</b>	<b>679,400</b>	<b>5.2%</b>

<sup>1</sup> See Davis and Dugger (in press) for description of habitat.

<sup>2</sup> 1996 and 2006 for Oregon and Washington, 1994 and 2007 for California.

<sup>3</sup> Loss is the term used in Davis and Dugger (in press) to describe their data, which is

# California regulatory and consultation history

- ◉ Article 9 14 CCR 919.9[939.9], 919.10[939.10]
- ◉ 14 CCR 898.2(f)
- ◉ DFG consultation
- ◉ U.S. Fish and Wildlife Service Technical Assistance
- ◉ CAL FIRE “Take Avoidance Determinations???”



## 14 CCR 919.9[939.9] (a)-(g)

- (a) –(c) Spotted Owl Resource Plan (SORP)
- (d) Incidental “take” Permit (HCP)
- (e) Consultation with USFWS
- (f) Spotted Owl Expert
- (g) Follow habitat retention guidelines set forth



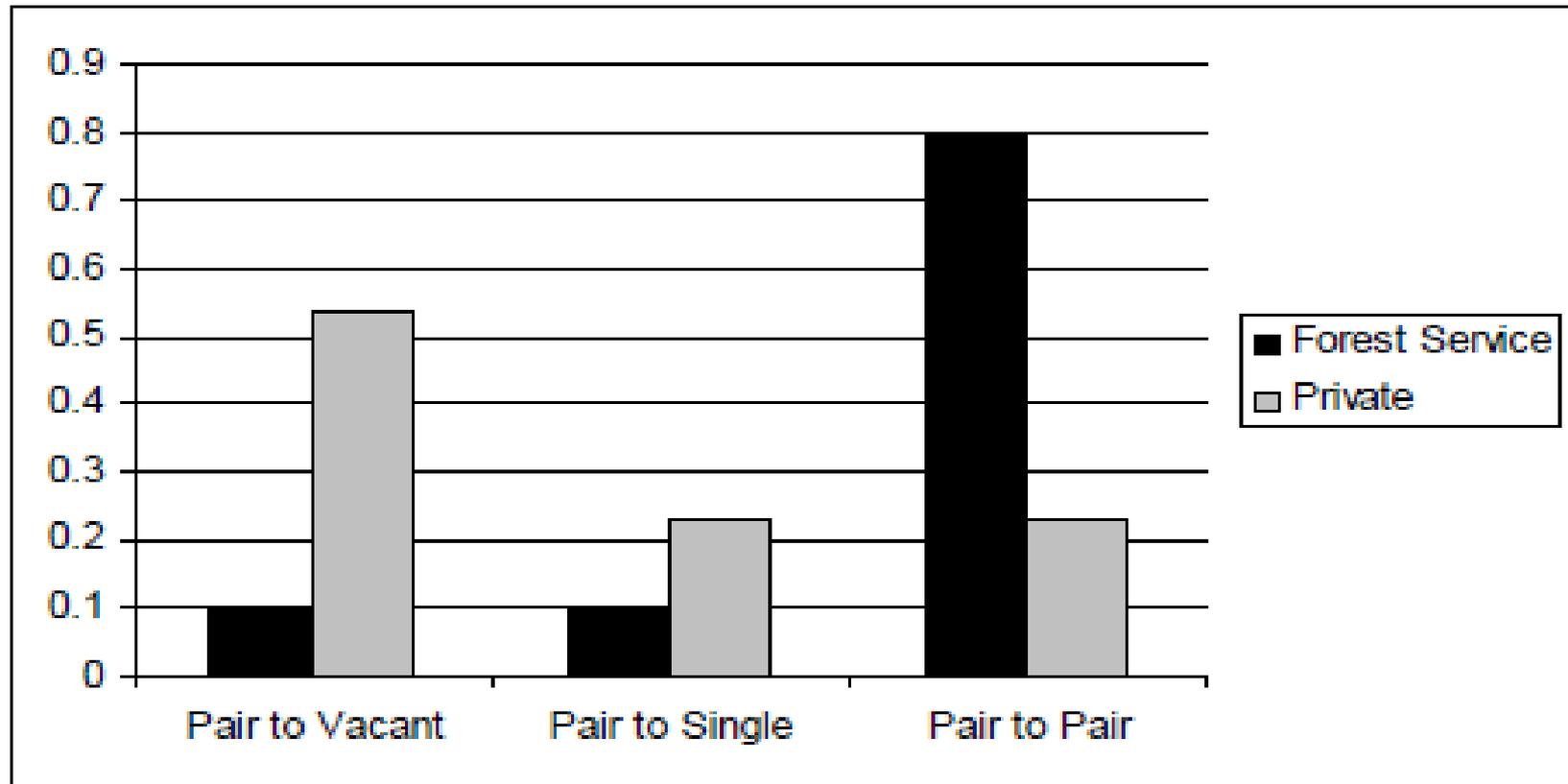
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## USFWS (2009) critique of 919.9(g)[939.9(g)]

- “...our combined experience with hundreds of THPs indicates that **the cumulative effects of repeated entries within many NSO home ranges has reduced habitat quality to a degree causing reduced occupancy rates and frequent site abandonment.** In a large proportion of technical assistance letters to CAL FIRE and industrial timberland owners during the past five years, we noted the lack of NSO responses at historic territories, and described habitat conditions considered inadequate to support continued occupancy and reproduction.”



**Figure I.B.1. Status of valid historical northern spotted owl activity centers (pair sites only) when resurveyed after 5-10 years. Data are from U.S. Fish and Wildlife Service technical assistance records and USFS monitoring records**



# USFWS (1989-2007) technical assistance evaluation

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- The remaining 57 private-land activity centers had verified NSO status in at least one year between 1989 and 2007; 44 of these sites had supported pairs during at least one year. Of these verified pair sites, 54% declined from pair status to no response, and an additional 23% declined from pair status to a territorial single owl during subsequent protocol surveys (Figure I.B.1).
- On Forest Service-administered lands, 80% of pair sites did not change status during the same time periods.

# Comparison of Option “g” to USFWS Guidelines

## OPTION “g”

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- Habitat definitions based on 14 CCR 895.1
- Rely on aggregate habitat retention
  - 500 acres total habitat within 0.7 miles
  - 1,336 total acres of habitat retention within 1.3 miles
  - Harvest allowed within 500’ of nest site if approved

## USFWS GUIDELINES

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- Habitat definitions based on Service’s guidance
- Rely on specific habitat quality retention standards
- 0.5 mile core area analysis radius
- No harvest allowed within 1,000 feet



Habitat\* Retention Acres ( $\geq 1335$ ) by Distance from

$\geq 400$  acres within Core Area (Activity Center out to 0.5 mile radius)

AND

$\geq 935$  acres within outer ring (0.5 mile radius to 1.3 miles radius)

250 acres Nesting/roosting Habitat composed of:

+

150 acres Foraging Habitat composed of:

935 acres Foraging Habitat composed of:

100 acres High Quality Nesting/roosting Habitat

+

150 acres Nesting/roosting Habitat

100 acres Foraging Habitat

+

50 acres Low Quality Foraging Habitat

655 acres Foraging Habitat

+

280 acres Low Quality Foraging Habitat

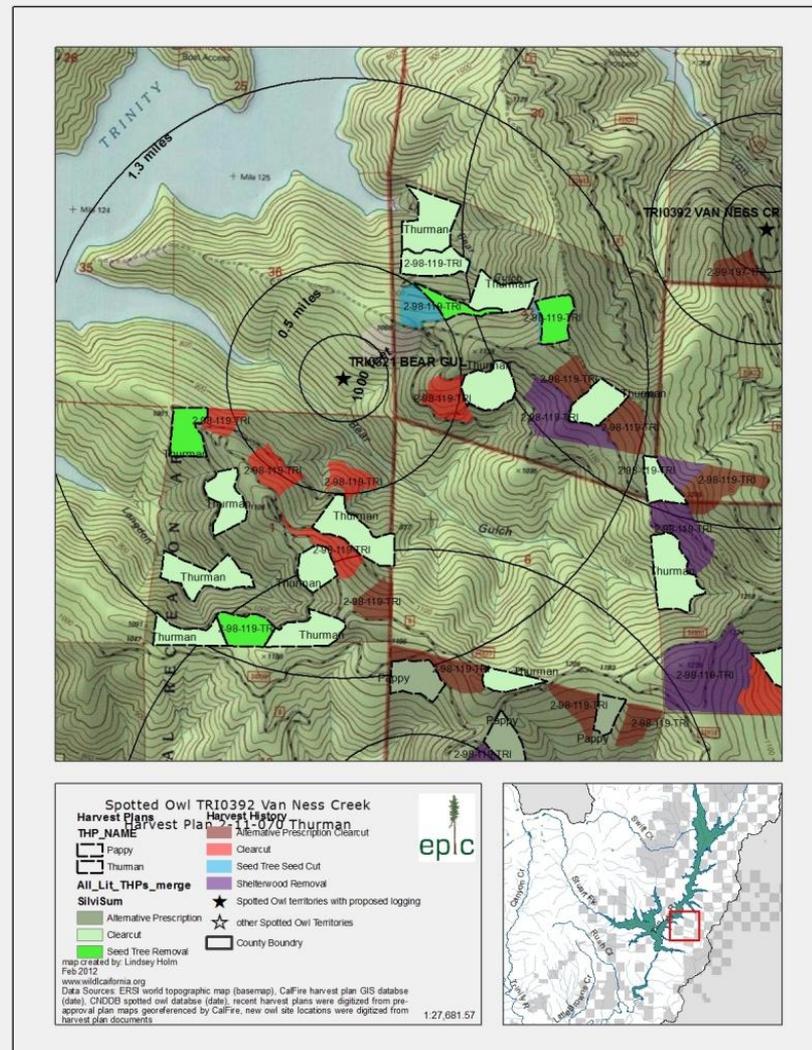
# EPIC



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SELF DEFENSE  
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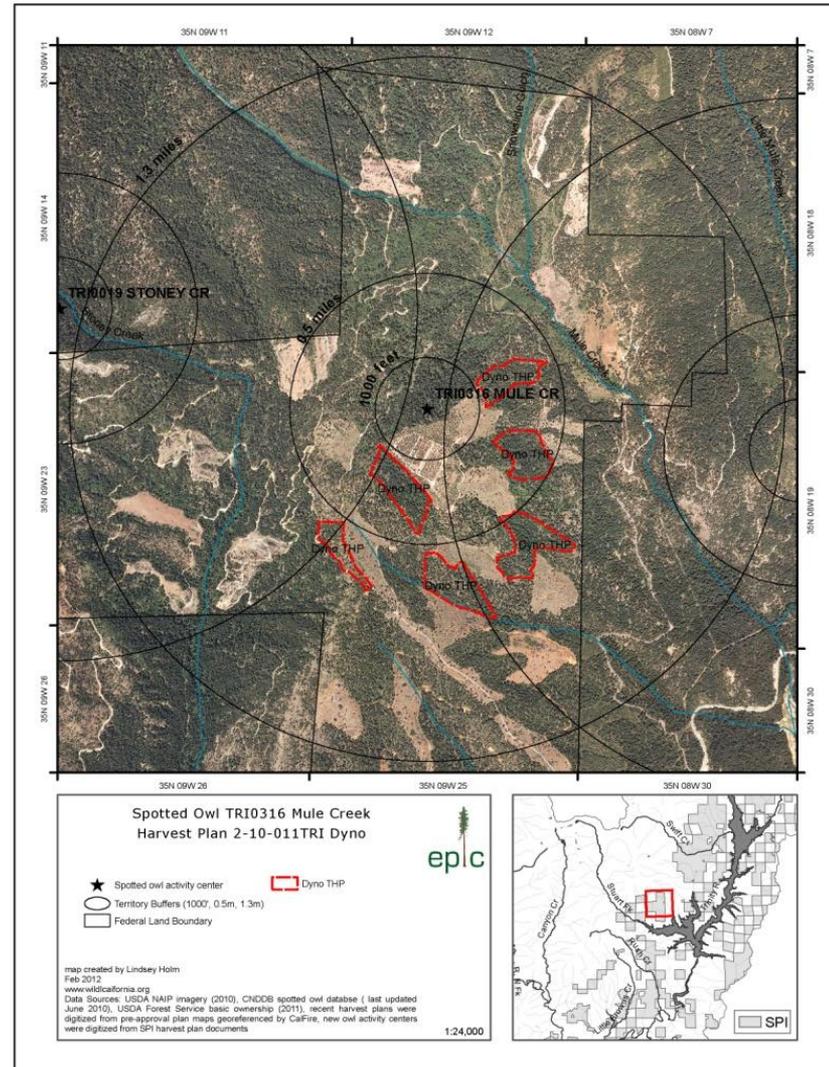
# EPIC (2009-2012) Methods and Actions

- Tracked, reviewed and commented on THPs utilizing Option “g”
- Obtained past USFWS technical assistance records
- Tracked the harvest history and occupancy status for NSO sites



# Findings and Results

- Fruit Growers Supply Company stopped using Option “g” and moved to Option “e” and now has a habitat conservation plan (HCP)
- Sierra Pacific Industries
  - Between 2009 and 2012, SPI filed 25 THPs utilizing “g” that will result in the loss of nearly 6,000 acres of suitable spotted owl habitat affecting nearly 70 territories (*interior only*)
  - EPIC filed 60-day notice of intent to sue SPI for “take” of NSO under federal ESA



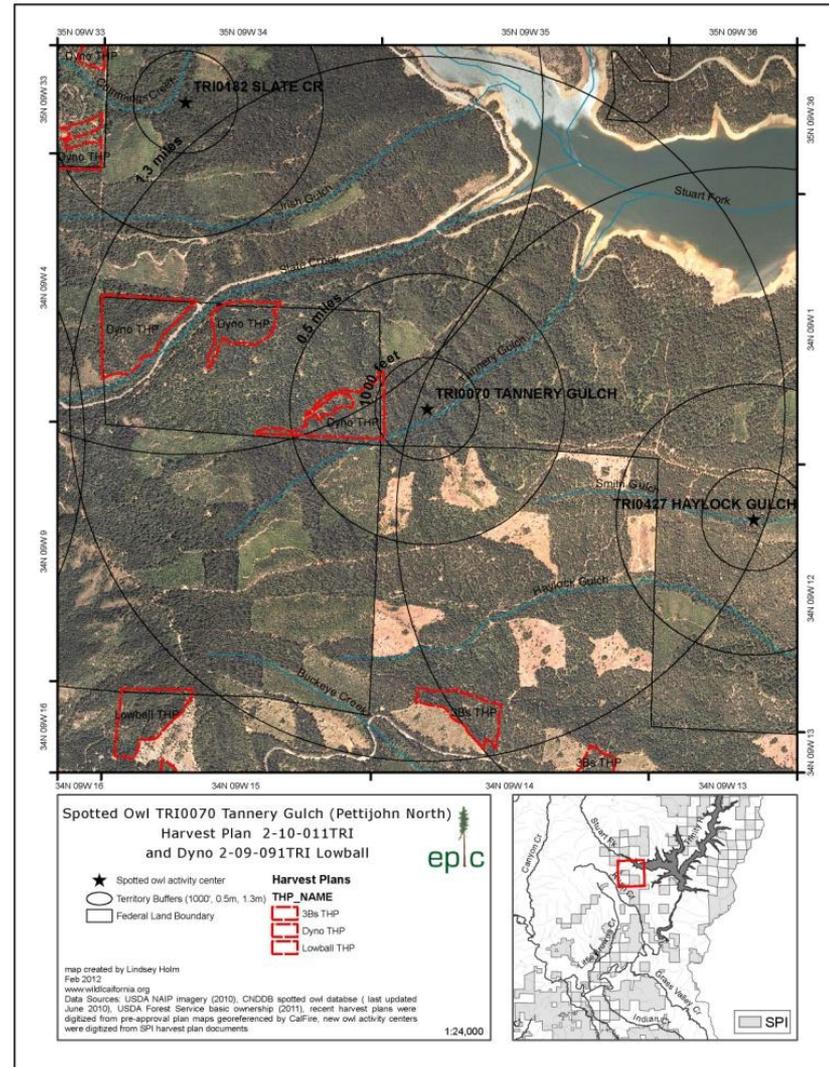
# Regulatory definitions: “ “Take” & “Harm”

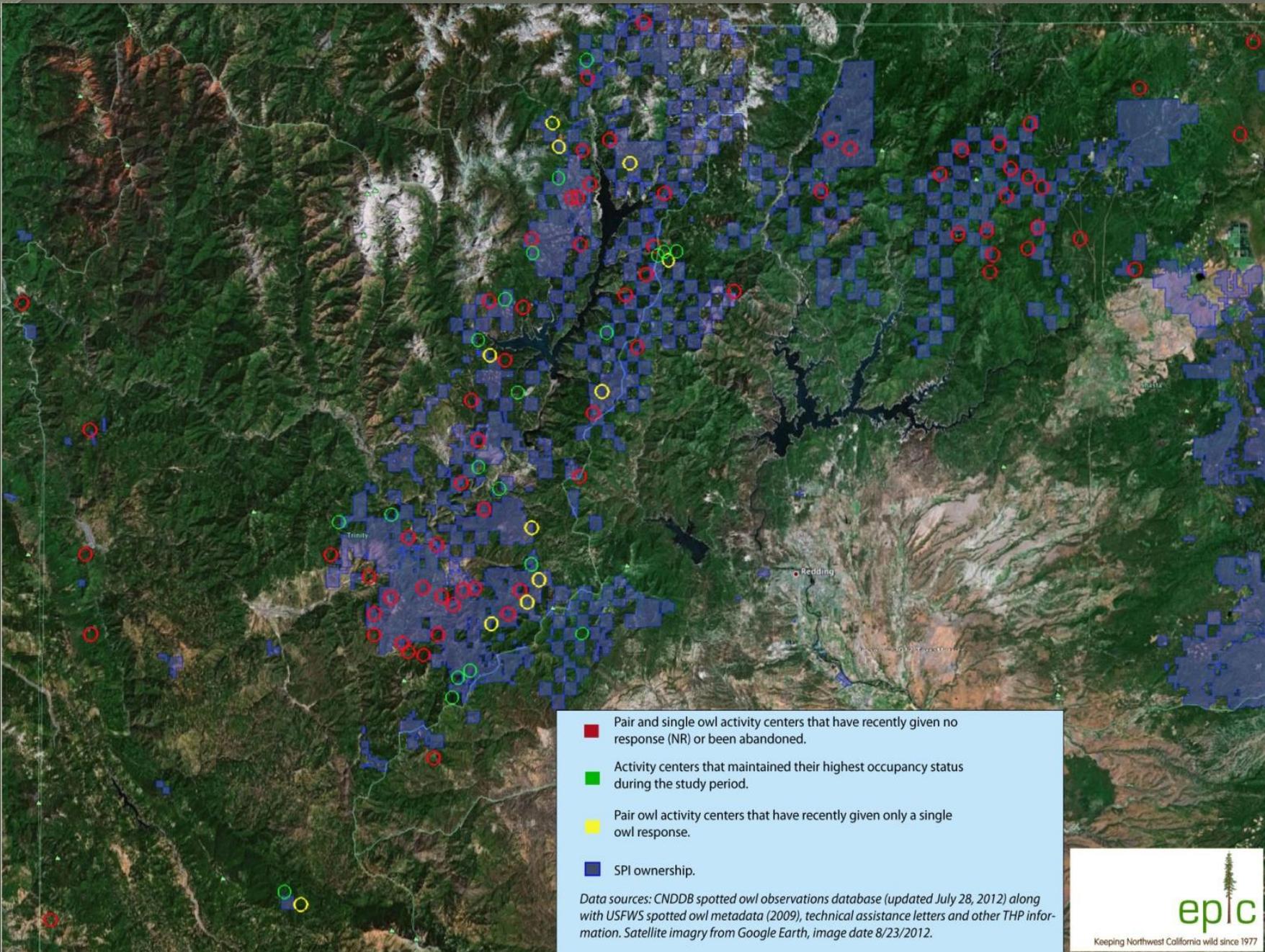
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- The ESA defines “**take**” as:
- “...to harass, **harm**, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct.”
- The term “**harm**” is further defined by regulation that as been upheld by the Supreme Court (*Sweet Home*):
- “an act which actually kills or injures wildlife. Such act may include **significant habitat modification or degradation** where it actually kills or injures wildlife by significantly **impairing essential behavioral patterns**, including breeding, feeding, or sheltering.

# Option “g” case study: Sierra Pacific Industries

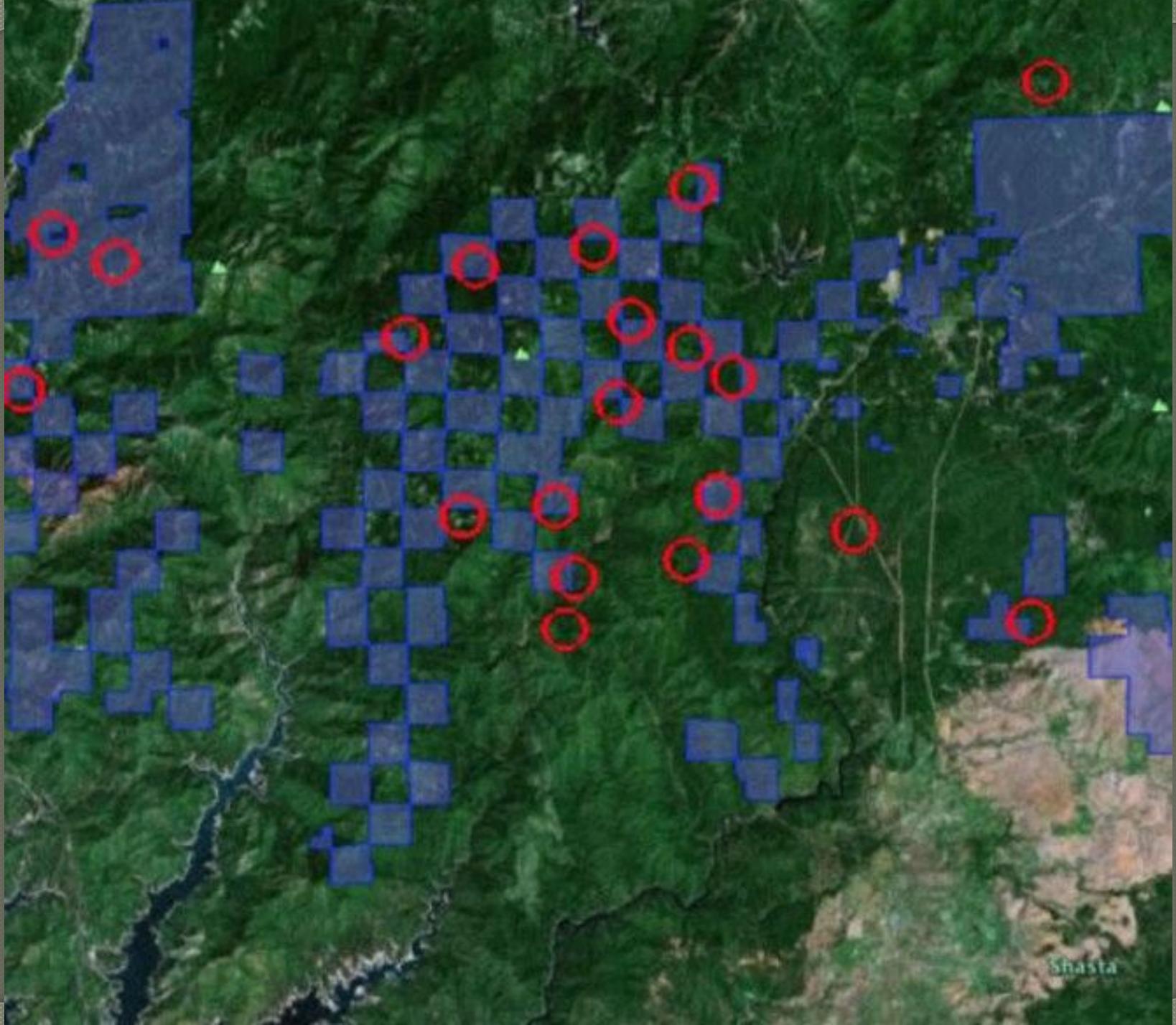
- EPIC identified 120 owl sites subjected to SPI logging during the USFWS Technical Assistance period
  - 52 occurred on USFS lands
  - 34 occur on SPI lands
  - 34 occur on other private ownerships
- Only 7 of the sites located on SPI lands maintained pair status throughout the study period
- 12 Sites on SPI lands went from pair to no response
- 19 sites on USFS lands went from pair to no response



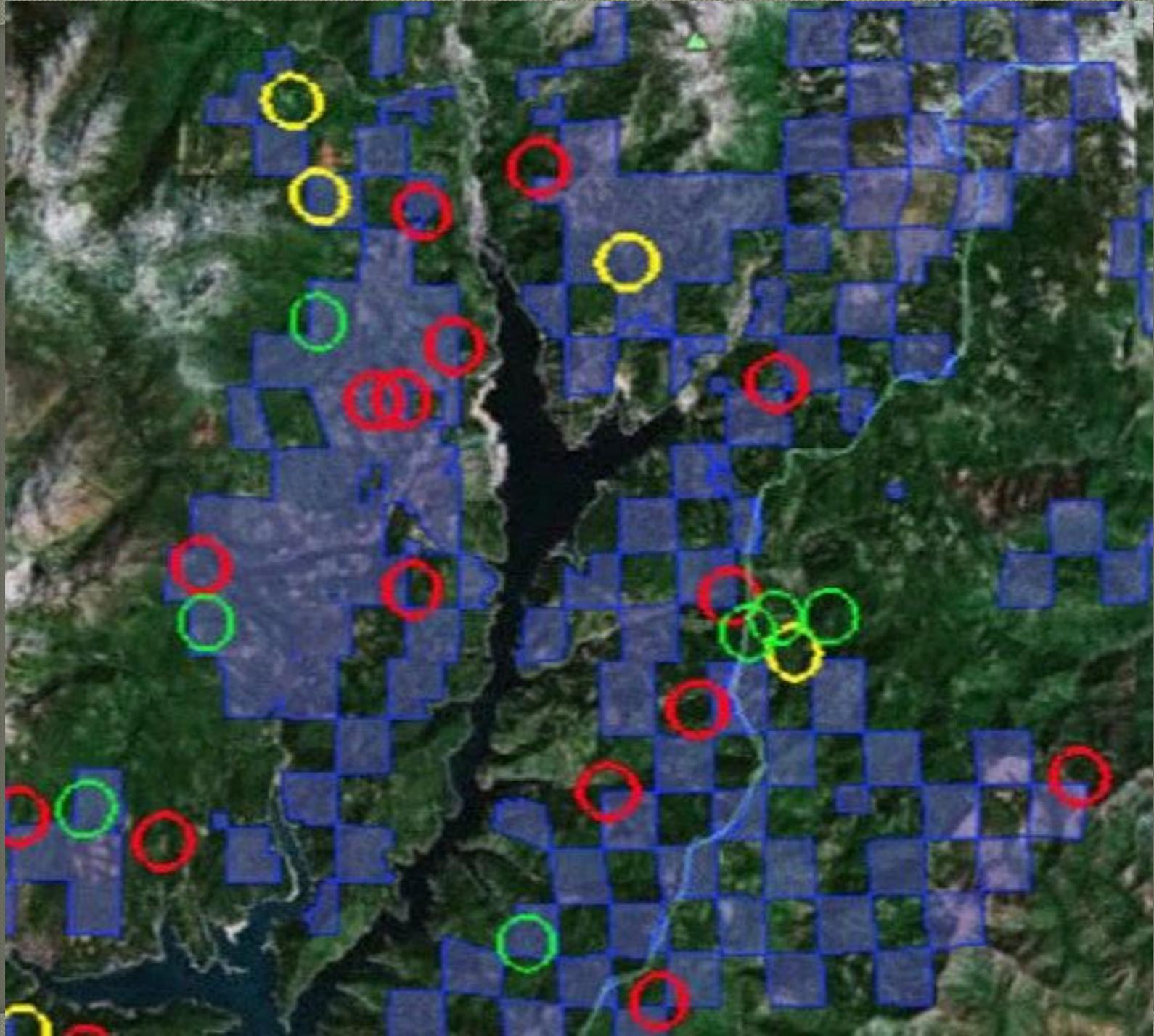


- Pair and single owl activity centers that have recently given no response (NR) or been abandoned.
- Activity centers that maintained their highest occupancy status during the study period.
- Pair owl activity centers that have recently given only a single owl response.
- SPI ownership.

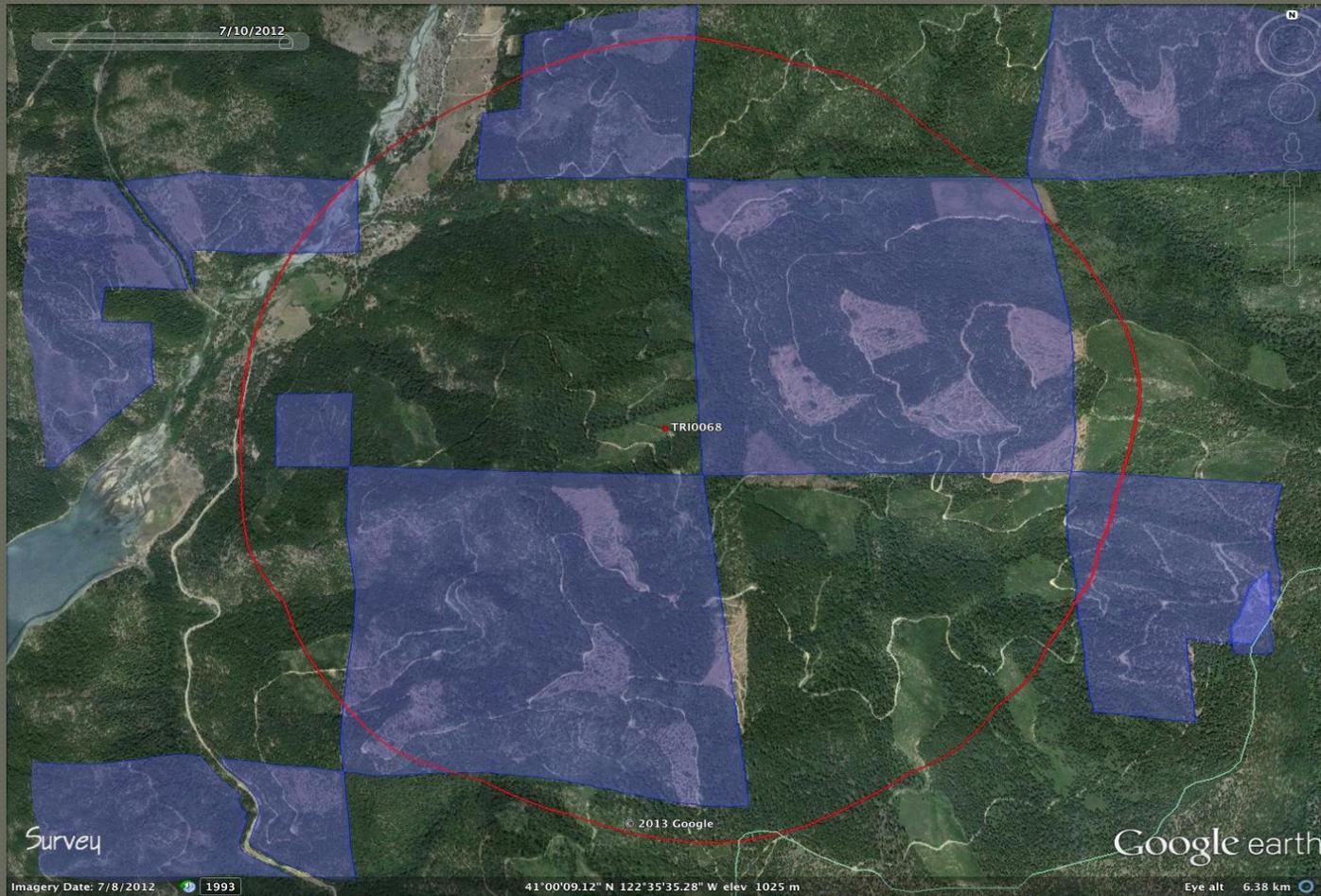
Data sources: CNDDB spotted owl observations database (updated July 28, 2012) along with USFWS spotted owl metadata (2009), technical assistance letters and other THP information. Satellite imagery from Google Earth, image date 8/23/2012.



Shasta

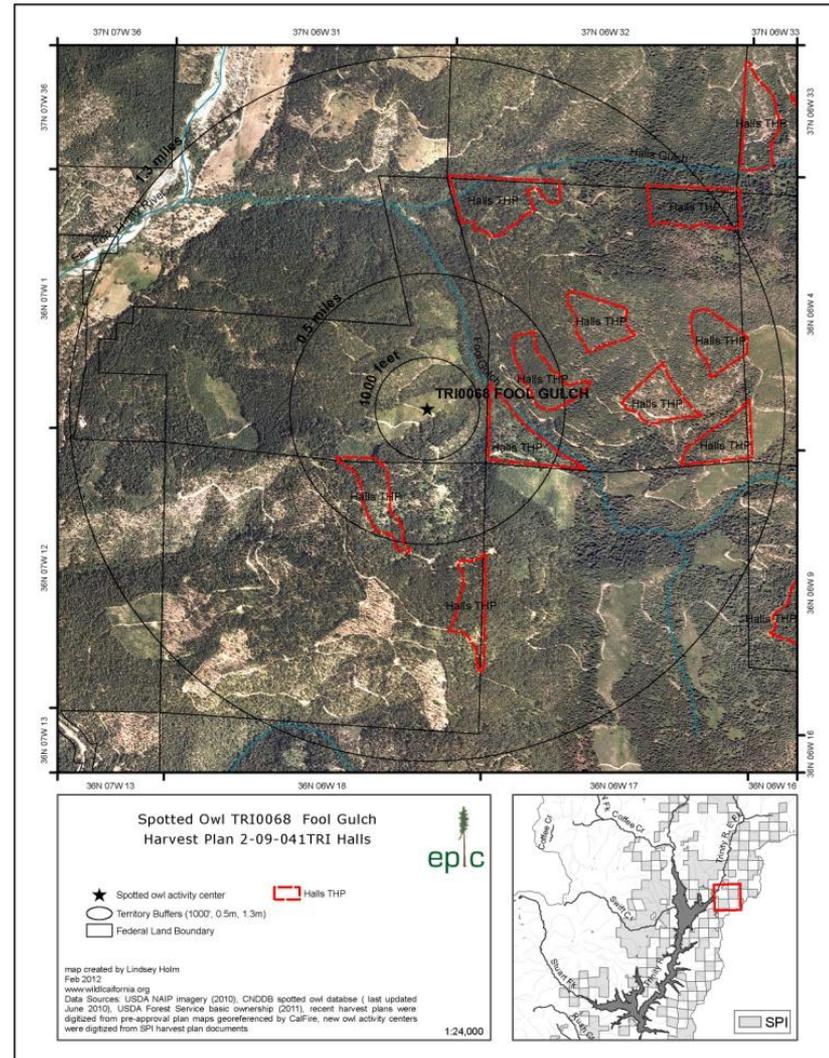


# Examples of “take” under Option “g”

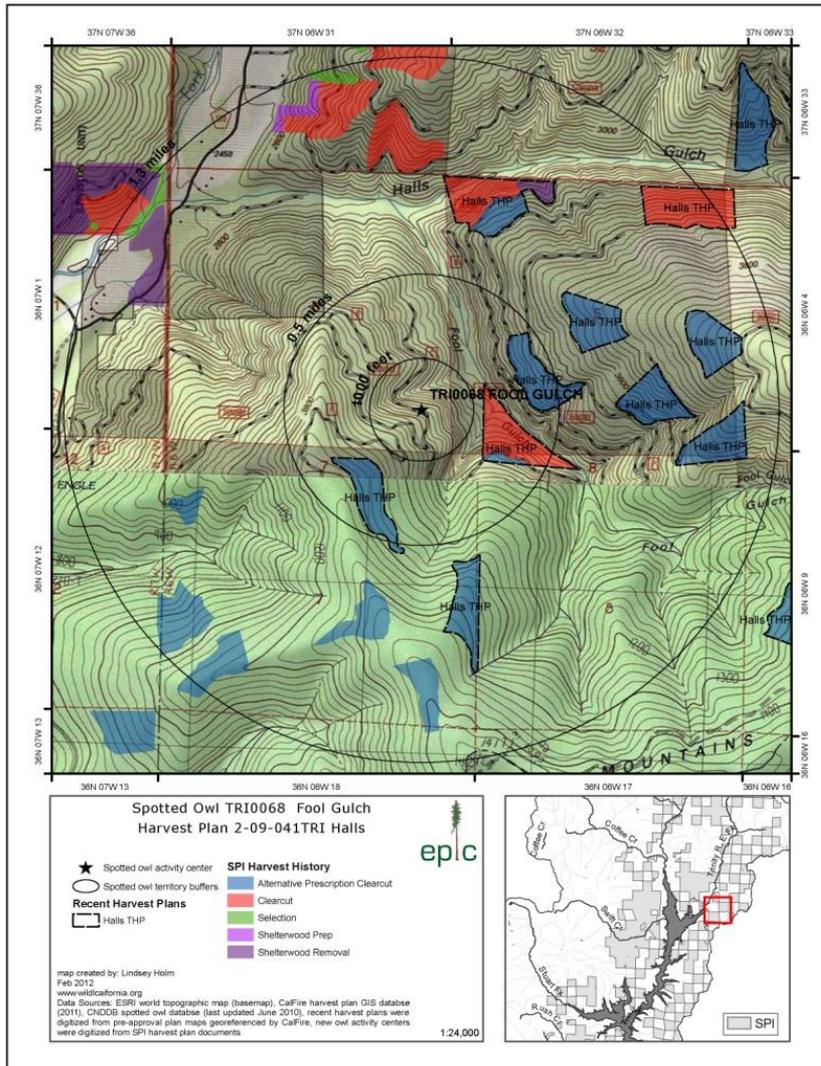


# Activity Center TRI0068 “Fool Gulch”

- First known detection in CNDDDB from 1980
- Last CNDDDB record of detection by SPI in 1992
- Pair with young detected in 2002 during surveys by SPI pursuant to the “Hay Nelson” THP (2-02-165TRI)
- 2009-2010 surveys elicited no response



# SPI Harvest History (1999 – present)



- 2-99-070TRI “Whipple” (1999)
- 2-02-165TRI “Hay Nelson” (2002)
  - Removed 3 acres ‘foraging’ habitat from 0.7 mile radius.
  - Removed total of 80 acres suitable habitat from within 1.3 miles
  - Operated in 2007, 2011
- 2-09-041TRI “Halls” (2009)
  - Removed 82 acres of ‘roosting’ habitat, and 7 acres of foraging habitat from within 0.7 miles. (Including portions of three units within 0.5 miles.
  - Removed total of 227 acres of suitable habitat from within 1.3 miles.
  - Operated 2011, 2012

8/25/1993

• TRI0068

1993

Survey

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Image U.S. Geological Survey

Google earth

Imagery Date: 8/25/1993 1993

41°00'08.52" N 122°35'24.18" W elev 902 m

Eye alt 6.23 km

8/13/1998  
1993 2012

TR10068

1998

Survey

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Image U.S. Geological Survey

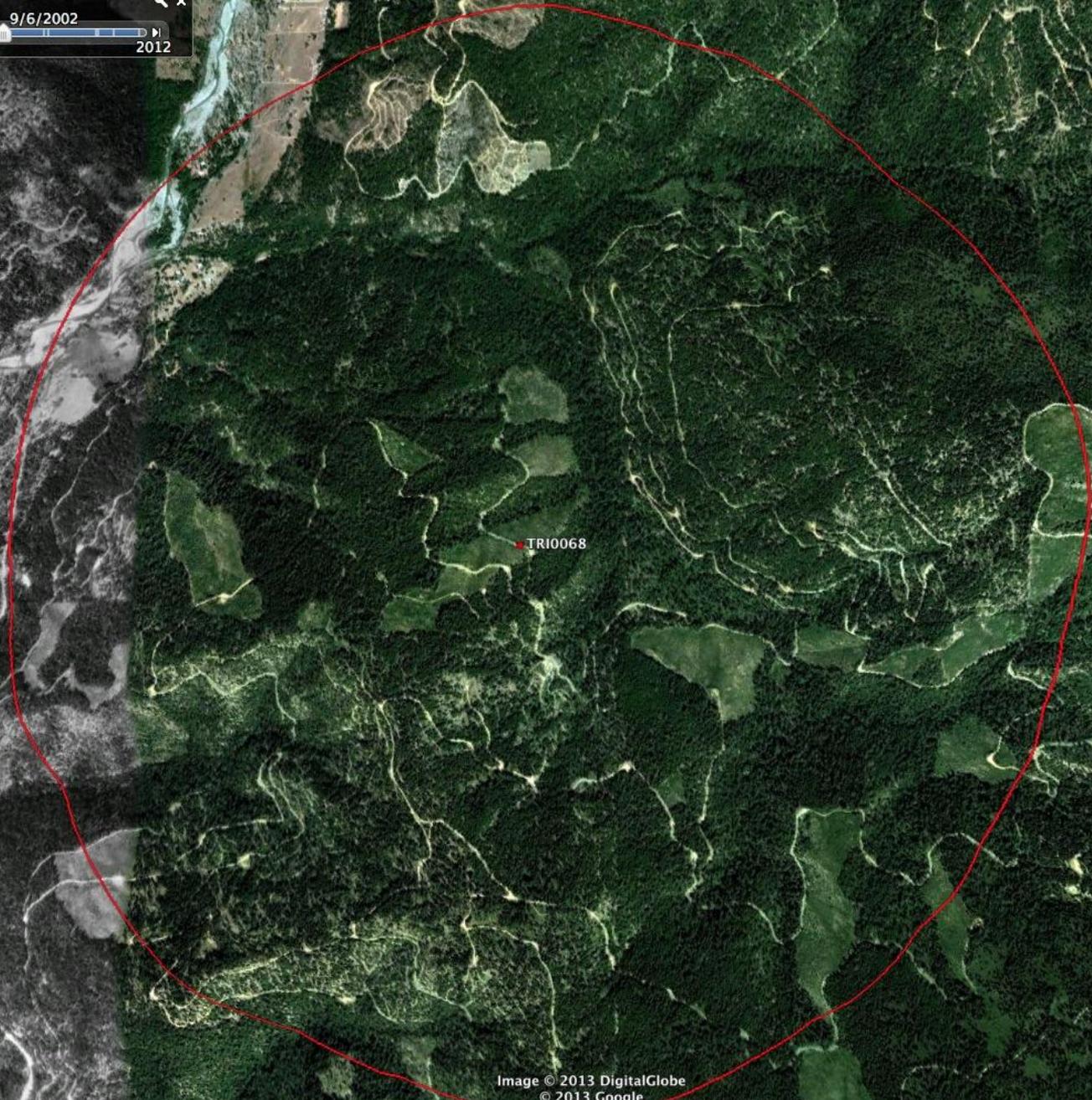
Google earth

Imagery Date: 8/13/1998 1993

41°00'08.52" N 122°35'24.18" W elev 902 m

Eye alt 6.23 km

9/6/2002  
1993 2012



TRI0068

2002

Survey

Image © 2013 DigitalGlobe  
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Image U.S. Geological Survey

Google earth

Imagery Date: 9/6/2002 1993

41°00'08.52" N 122°35'24.18" W elev 902 m

Eye alt 6.23 km

8/26/2005  
1993 2012

Click to open the time options dialog.

Navigation controls including a north arrow, a circular zoom-in/out button, and a vertical slider for map height.



TRI0068

2005

Survey

Image USDA Farm Service Agency  
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Google earth

Imagery Date: 6/11/2005 1993

41°00'08.52" N 122°35'24.18" W elev 902 m

Eye alt 6.23 km

6/5/2009  
1993 2012



TRI0068

2009

Survey

Image USDA Farm Service Agency  
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Google earth

Imagery Date: 5/24/2009 1993

41°00'08.52" N 122°35'24.18" W elev 902 m

Eye alt 6.23 km

9/15/2010



TRI0068

2010

Survey

Image USDA Farm Service Agency  
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Google earth

Imagery Date: 4/24/2010 1993

41°00'08.52" N 122°35'24.18" W elev 902 m

Eye alt 6.23 km

7/10/2012



TRI0068

2012

Survey

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Google earth

Imagery Date: 7/8/2012

1993

41°00'08.52" N 122°35'24.18" W elev 902 m

Eye alt 6.23 km

# Benefits of deleting 14 CCR 919.9(g)[939.9(g)]

- Bring state regulations into line with best available science and regulatory guidance
- Relieve CAL FIRE and Board of liability for “take” determinations
- Streamline THP review
- Save agency staff review time and public funds

