FINAL STATEMENT OF REASONS (FSOR), pursuant to GOV §11346.9(a)

“Northern Spotted Owl Take Avoidance and Habitat Updates, 2022”

Title 14 of the California Code of Regulations (14 CCR),

Division 1.5, Chapter 4,

Subchapter 1, Article 1; &

Subchapters 4, 5, & 6, Article 4

# UPDATE OF INFORMATION CONTAINED IN ISOR (pursuant to GOV §11346.9(a)(1))

All material relied upon was identified in the ISOR and made available for public review prior to the close of the public comment period.

# SUMMARY OF BOARD’S MODIFICATIONS TO 45-DAY NOTICED RULE TEXT AND INFORMATION REQUIRED PURSUANT TO GOV §11346.2(b)(1)) (pursuant to GOV §11346.9(a)(1))

There are no revisions to the 45-Day rule text as noticed.

# MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS (pursuant to GOV §11346.9(a)(2)):

The adopted regulation does not impose a mandate on local agencies or school districts.

# COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT WHICH MUST BE REIMBURSED IN ACCORDANCE WITH THE APPLICABLE GOVERNMENT CODE SECTIONS COMMENCING WITH GOV §17500 (pursuant to GOV §11346.9(a)(2)):

The adopted regulation does not impose a reimbursable cost to any local agency or school district.

# ALTERNATIVE 3, BOARD’S ADOPTED ALTERNATIVE (update, pursuant to GOV §11346.9(a)(1)), of information pursuant to GOV §11346.2(b)(4)): Adopt Rulemaking Proposal as Modified Through Formal Public Review and Comment Process

The Board selected Alternative #3 as proposed and modified through the formal public review and comment process. The Board adopted the rule text published with the 45-Day Notice.

The proposed action is the most cost-efficient, least burdensome alternative and is equally or more effective than the other options considered. Alternatives 1 and 2 would not be more effective or equally effective while being less burdensome or impact fewer small businesses than the proposed action. Specifically, alternatives 1 and 2 would not be less burdensome and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the authorizing statute or other law being implemented or made specific by the proposed regulation than the proposed action. Additionally, alternatives 1 and 2 would not be more effective in carrying out the purpose for which the action is proposed and would not be as effective and less burdensome to affected private persons than the proposed action or would not be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action. Further, none of the alternatives would have any adverse impact on small business. Small business means independently owned and operated, not dominant in their field of operations and having less than 100 employees.

# ALTERNATIVES DETERMINATION (pursuant to GOV §11346.9(a)(4) and (5))

No other alternatives have been proposed or otherwise brought to the Board's attention, except as set forth in the ISOR and provided herein in the summary and responses to comments. Based upon the findings below and a review of alternatives the Board has determined the following:

* No alternative considered would be more effective in carrying out the purpose for which the regulation was intended.
* No alternative would be as effective and less burdensome to affected private persons than the adopted regulation.
* No alternative would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.
* No alternative considered would lessen any adverse economic impact on small business.

# FINDINGS (BASED ON INFORMATION, FACTS, EVIDENCE AND EXPERT OPINION) TO SUPPORT THE ALTERNATIVES DETERMINATION

* The Board finds these regulations provide environmental protection measures for the Northern Spotted Owl. The adopted regulation does not reduce the protective measures to avoid take of Northern Spotted Owl.
* The Board finds that these regulations reflect the habitat definitions and standards for take avoidance provided in the USFWS guidance from the 2012 “Protocol For Surveying Proposed Management Activities That May Impact Northern Spotted Owls”, the 2019 “Northern Spotted Owl Take Avoidance Analysis and Guidance for Private lands in California Attachment A: Take Avoidance Analysis- Coast Redwood Region” and the 2019 “Northern Spotted Owl Take Avoidance Analysis and Guidance for Private lands in California, Attachment B: Take Avoidance Analysis-Interior).”
* The Board finds that the changes in approved pathways for take avoidance reflect current information from listing agencies.

# BRIEF SYNOPSIS OF ADDITIONAL ALTERNATIVES CONSIDERED AND REJECTED (update, pursuant to GOV §11346.9(a)(1)), of information pursuant to GOV §11346.2(b)(4))

## Alternative #1: No Action

The Board considered taking no action, but the “No Action” alternative was rejected because it would not address the problems as described within the ISOR.

## Alternative #2: Make Existing Regulation Less Prescriptive

# This action would replace the prescriptive standards in the Northern Spotted Owl regulations with performance-based regulations. This alternative may not meet take avoidance standards and would reduce clarity and consistency with other portions of the rules.

# SUMMARY AND RESPONSE TO COMMENTS (pursuant to GOV 11346.9(a)(3))

The comments below are identified in the following format: The letter S or W followed by a series of numbers separated by a hyphen, followed by the name and affiliation (if any) of the commenter (e.g. W1-8: John Doe, Healthy Forest Association).

S: Indicates the comment was received from a speaker during the Board hearing associated with the Notices of Proposed Action.

W: Indicates the comment was received in a written format.

1st number: Identifies the comments in the order in which it was received.

## WRITTEN COMMENTS RECEIEVED DURING THE 45-DAY NOTIFICATION PERIOD FROM NOVEMBER 4, 2022 THROUGH JANUARY 18, 2023

### Comment W1-1: Matthew Reischman, Deputy Director Resource Management, CALFIRE

Subject: Comments on the “Northern Spotted Owl Take Avoidance Pathways and Habitat Definition Updates, 2023”

Dear Ms. Van Susteren:

The California Department of Forestry and Fire Protection (CAL FIRE) reviewed the Board of Forestry and Fire Protection’s (Board) proposed rule change entitled “Northern Spotted Owl Take Avoidance Pathways and Habitat Definition Updates, 2023.” CAL FIRE appreciates the opportunity to provide comments on the proposed rule package.

CAL FIRE provided a presentation to the Board of Forestry’s Forest Practice Committee (FPC) on March 1, 2022 pertaining to the current Northern Spotted Owl (NSO) definitions and rules. The presentation included a summary of how the rules are being utilized, interpreted, and applied among the various types of timber harvesting plans. The presentation also provided a list of recommendations for modification of certain rules.

One of CAL FIRE’s recommendations was to modify certain subsections of 14 CCR §919.9 [§939.9] to reflect how they are being applied in practice as well as those subsections that are not being used along with associated NSO habitat definitions pertaining to those specific subsections. The Board’s rule package reflects the recommendations CAL FIRE provided as well as the edits discussed during FPC meetings over the year.

CAL FIRE supports the rule change and appreciates the opportunity to comment on the proposed subject NSO rule package change and looks forward to engaging in further NSO discussions. If you have any questions or comments regarding this letter, please contact CAL FIRE Forest Practice Biologist Stacy Stanish (Anastasia.Stanish@fire.ca.gov or 916-616-8643).

Sincerely,

MATTHEW REISCHMAN

Deputy Director

Resource Management

**Board Response:** The Board appreciates the support of the Department.

**Rule Text Change:** No.

### Comment W2-1: Josh Hull, Deputy Assistant Regional Director - Ecological Services, USFWS

Hello, Edith and Jane.,

Thank you for your e-mail below and the opportunity to comment on the Board of Forestry and Fire Protection’s (BoF) updates to the Northern Spotted Owl Take Avoidance Pathways and Habitat Definition Updates. The U.S. Fish and Wildlife Service (Service) appreciates your interest in our input and values our relationship and coordination on this topic. We, at the Service have reviewed BoF’s proposed updates. As discussed during the call with both of you on January 11, the Service has a few questions regarding the proposed updates. Does the Board of Forestry and Fire Protection intend to continue to implement the 2019 Take Avoidance and Analysis and Guidance for Northern Spotted Owl, commonly referred to as Attachments A and B (Coast Redwood Region and Interior, respectively) from the Service (see attachment)? Do you anticipate an increase in requests for Technical Assistance to the Service from the project proponents? Your clarifications to these questions will be helpful.

Thank you again for reaching out to us in this process, and we would be happy to discuss it further with you or your staff.

Josh Hull

Deputy Assistant Regional Director - Ecological Services

U.S. Fish & Wildlife Service

California-Great Basin Region

2800 Cottage Way, Suite W2606

Sacramento, CA 95825

916-468-2960

**Board Response:** Based on conversations with CALFIRE; as the lead agency for timber harvesting plan review, they anticipate continuing the use of USFWS guidance documents, including Attachments A & B, as take avoidance considerations of Northern Spotted Owl. They do not anticipate the proposed rule (14 CCR 919.9(c) or 939.9(c)) to change how the existing rules are implemented under 14 CCR 919.9(e) or 939.9(e).

The take avoidance pathway was retained so that CALFIRE review teams would have the option to request Technical Assistance with USFWS should a situation arise outside of CAL FIRE’s technical expertise to make a take avoidance determination. CALFIRE affirms that the proposed rule package contemporizes and aligns the existing implementation of the rules.

**Rule Text Change:** No.

## VERBAL COMMENTS RECEIVED DURING THE PUBLIC HEARING CONDUCTED JANUARY 18, 2023

### Comment S1-1: Eric Huff, Staff Chief, Sacramento Headquarters Forest Practice, CAL FIRE:

He appreciates input of Forest Practice Committee and CDFW’s collaboration. Extends thanks to Forest Practice Biologist Stacy Stanish for her information and support on the topic. CALFIRE believes that this rulemaking brings the FPRs for take avoidance into the contemporary era. It reflects where we currently are and reflects what can and can’t be used for a take avoidance pathway. They appreciate this path forward on Northern Spotted Owl.

**Board Response:** The Board appreciates the support of the Department.

**Rule Text Change:** No.

### Comment S2-1: Tim Ryan, Timberland Conservation and Fire Resiliency Program, CDFW

He thanks the Forest Practice Committee for leading the way on this new regulation package, appreciates the collaboration on the topic, and extends thanks to Forest Practice Biologist Stacy Stanish for her insight and expertise. CDFW appreciates the update on how to get to take avoidance and how to accurately describe habitat.

**Board Response:** The Board appreciates the support of CDFW.

**Rule Text Change:** No.