proposed exclusions should be sent to the State Supervisor, U.S. Fish and Wildlife Service, 2105 Osuna NE, Albuquerque, New Mexico 87113. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jennifer Fowler-Propst, New Mexico State Supervisor, at the above address, telephone (505) 761–4525.

SUPPLEMENTARY INFORMATION:

Background

The Service listed the Mexican spotted owl as a threatened species on March 16, 1993 (58 FR 14248). At the time of the listing, the Service found that, although considerable knowledge of Mexican spotted owl habitat needs had been gathered in recent years, habitat maps in sufficient detail to accurately delineate these areas were not available. Subsequent to listing the owl, the Service began gathering the data necessary to develop the proposed rule to designate critical habitat. On February 14, 1994, several environmental groups and an individual filed a lawsuit in Federal District Court in Arizona against the Department of the Interior for failure to designate critical habitat for the Mexican spotted owl (Dr. Robin Silver, et al. v. Bruce Babbitt, et al., CIV-94-0337-PHX-CAM). On October 6, 1994, the Court ordered the Service to "publish a proposed designation of critical habitat, including economic exclusion pursuant to 16 U.S.C. Sec. 1533(b)(2), no later than December 1, 1994." The proposal was published on December 7, 1994 (59 FR 63162); since the Service had not yet completed an economic analysis on the potential effects of the designation, economic exclusions were not proposed at that time. A total of 4,770,223 acres was proposed for inclusion in critical habitat for the Mexican spotted owl.

The extent and trend of habitat loss and degradation was the basis for determining that protection under the Endangered Species Act (Act) was necessary. The vegetative communities and structural attributes used by the Mexican spotted owl vary across its range. In forested habitat types, the vegetative communities consist primarily of warm-temperate and coldtemperate forests, and, to a lesser extent, woodlands and riparian deciduous forests. Canyons, deep drainages, and other topographical features that influence vegetative associations are also essential components of owl habitat. Characteristics associated with forested Mexican spotted owl habitat

usually develop with increasing forest age, but their occurrence may vary by location, past forest management practices, forest type, and productivity. The attributes of nesting and roosting habitat typically include a moderate to high canopy closure; a multi-layered canopy with large overstory trees, often with various deformities; large snags; and accumulations of fallen trees and other woody debris on the ground.

Currently, land managing agencies characterize Mexican spotted owl habitat under the term "suitable." Suitable habitat is often only applied to habitat able to sustain the combined nesting, roosting, and foraging needs of the species' life history. Additional habitat utilized only for foraging frequently comprises the majority of the surrounding habitat base. The term "capable" is applied to habitat that was suitable some time in the past, but whose condition has changed through natural or human-caused structural modifications, and that retains the potential to return to suitable conditions at some time in the future.

The Service's determination of the extent and trend of habitat loss and degradation was based on the assessment of the impacts of timber management in forested owl habitat. Under presently approved forest management plans, timber on the majority of lands on which the owl occurs is managed primarily under a shelterwood harvest regime. The shelterwood harvest method results in even-aged stands, rather than the uneven-aged, multi-layered stands used by Mexican spotted owls. In addition, the shelterwood silvicultural system calls for even-aged conditions in perpetuity. Thus, stands already changed from suitable to capable would not be allowed to return to a suitable condition, and acreage slated for future harvest would be similarly rendered perpetually unsuitable for Mexican spotted owls. National Forest plans currently in place in the Southwest Region allow for up to 95 percent of commercial forest (59 percent of suitable owl habitat) to be managed under a shelterwood system. The Service also considered the various Federal and State laws and agency management policies, and concluded that existing regulatory mechanisms were inadequate to protect the Mexican spotted owl.

Proposed Revisions to Proposed Critical Habitat

In analyzing potential areas of critical habitat for the owl, the Service evaluated the known and primary threats to the species: even-aged timber harvest practices, steep-slope timber harvests, and inadequate regulatory mechanisms. Areas of known or suspected threats were compared to areas containing habitats that support or could support the nesting, roosting, and foraging requirements of the owl. This process resulted in the identification of the approximately 4.8 million acres that were included in the proposed rule to designate critical habitat.

After the Service identified areas to be proposed for designation as critical habitat, information was submitted to the Service by the Jicarilla Apache Tribe concerning the occurrence of the Mexican spotted owl on its Reservation and the Tribe's plan for protecting the species and managing timber resources. After reviewing this information, the Regional Director of the Southwest Region of the Service (Regional Director) is of the opinion that the Jicarilla Apache Reservation lands do not require special Federal management considerations or protection. Therefore, for reasons discussed in more detail below, the Service is proposing to delete the reservation lands described below from the area proposed for critical habitat designation in the **Federal**

Register on December 7, 1994. Approximately 101,923 acres of Jicarilla Apache Tribal lands, in five discrete units (NM-JAIR-1, NM-JAIR-2, NM-JAIR-3, NM-JAIR-4, and NM-JAIR-5), were included in the proposed designation of critical habitat for the Mexican spotted owl. These critical habitat units (CHUs) run north-south along a series of canyon-incised mesas, and lie between the proposed CHUs in the Santa Fe National Forest to the south and the Colorado-New Mexico state line. A parallel north-south series of proposed CHUs in the Jicarilla Ranger District of the Carson National Forest lie 5 to 18 kilometers to the west. The majority of the high-potential breeding habitat (steep slopes, mixed conifer) receives little or no timber management, and the surrounding foraging habitat is managed primarily under uneven-age silviculture. Furthermore, there are only two known records for the Mexican spotted owl on the Jicarilla Reservation. Both records were documented in the 1980's approximately 3 miles west of the Town of Dulce. Additional records exist for areas adjacent to the Reservation. Extensive surveys between 1990 and 1994 were unsuccessful in locating any owls, nests, or roost sites on the Jicarilla Reservation.

Informal discussions between staffs of the Service's New Mexico Ecological Services State Office and Jicarilla Game and Fish Department on owl related issues were initiated during the data