

advisable for owl conservation in certain parts of the range of the owl.

Based upon the possibility that the preferred alternative of FEMAT (Option 9) would eventually be adopted, the Service published a Notice of Intent (NOI) in the **Federal Register** (58 FR 69132) on December 29, 1993, and sent out a mailer advising the public of its intention to prepare an Environmental Impact Statement (EIS) for a proposed special rule that would ease restrictions for the spotted owl on certain non-Federal forest lands. In response, the Service received and evaluated more than 8,500 public comments. Taking these comments into consideration, and based upon additional analyses, the Service now proposes a special rule that would reduce the prohibition against incidental take of spotted owls in the course of timber harvest and related activities on specified non-Federal forest lands in Washington and California.

For reasons discussed in more detail later, the Service is not including Oregon, at this time, within the geographic scope of this proposed special rule. The Service is aware of ongoing efforts within Oregon between the Governor's office and large and small landowners to fashion an "Oregon Alternative" to the Service's proposed action for the State, as set out in the December 29, 1993, NOI. The Service is supportive of this effort and will maintain the regulatory status quo for spotted owls in Oregon in anticipation that an "Oregon Alternative" approach to owl conservation will be developed. Thus, by excluding Oregon altogether from this proposed special rule, the Service retains for Oregon the original level of protection against take for the owl established when the species was listed on June 26, 1990.

In assessing the conservation needs of the northern spotted owl on non-Federal lands, the Service was particularly mindful of—(1) The level of protection to be provided the owl under the Federal reserve and riparian buffer systems established under the Forest Plan, as well as the matrix and adaptive management area prescriptions under the Plan; (2) the range, location, and number of spotted owls on non-Federal and Federal lands; (3) recently developed State programs to regulate forest practices to benefit the spotted owl; and (4) emerging non-Federal landowner habitat management and owl conservation strategies such as Habitat Conservation Plans and agreements to avoid the incidental take of owls.

This special rule proposes to replace the currently applicable blanket prohibition against incidental take on

non-Federal lands throughout the owls' range with a more particularized set of prohibitions for Washington and California. For the State of Washington, incidental take restrictions would be relaxed for approximately 5.24 million acres of non-Federal land in conifer forests. While only a considerably smaller acreage figure of non-Federal forest land is presently affected by incidental take prohibitions for the spotted owl, the fear of future owl restrictions is a significant concern of forest landowners throughout the range of the spotted owl. This proposed rule would ease incidental take restrictions on designated non-Federal lands by limiting the incidental take prohibition for timber harvest activities to actions that fail to maintain the 70 acres of suitable owl habitat closest to a site center for a spotted owl. By proposing this action, the Service is not implying that incidental take cannot occur until harvest activities approach and actually invade an owl's activity center. Rather, the Service is proposing that, in certain portions of the owl's range, the incidental take of an owl will no longer be a prohibited activity unless it involves harvest activities within an activity center.

Current incidental take restrictions would be retained for those spotted owls whose site centers are located within six designated zones or "Special Emphasis Areas" (SEAs) in the State of Washington. The six SEAs include the western portion of the Olympic Peninsula, the Finney Block area, the I-90 Corridor, the Mineral Block area, the Siouxeon Creek area and the Columbia Gorge/White Salmon areas. These areas were generally chosen to fill in gaps in protection under the Forest Plan where the Federal land base alone appears currently to be inadequate to provide for the conservation of the owl.

In addition, the Service proposes to implement a "Local Option Conservation Planning" program in Washington to provide an opportunity for additional relief from incidental take prohibitions for non-Federal landowners who own between 80 and 5,000 acres of forest lands within an SEA. The Local Option process is envisioned to be the equivalent of a "short form" Habitat Conservation Plan. The local option conservation planning process would not apply to those areas where the Service determines that suitable owl habitat (nesting, roosting or foraging habitat) on non-Federal lands within SEAs can reasonably be expected to provide important demographic support for Federal owl reserves. These "Local Option" conservation plans would provide non-Federal landowners

with the flexibility to develop alternative prescriptions or restrictions for their lands which could achieve a level of protection comparable to the conservation objectives set forth for the owl in this rule.

For the State of California, this proposed rule would recognize the significant conservation benefits accorded the northern spotted owl under California law by easing the Federal prohibition against incidental take from timber harvest activities in most of the Klamath province of that State. The zone in which this would occur would be called the Klamath Province Relief Area. The incidental take prohibition for timber harvests in this Relief Area would be limited to actions which fail to maintain the 70 acres of suitable owl habitat closest to a site center for a spotted owl. Additional relief could be provided to non-Federal landowners in four potential "California Conservation Planning Areas" (CCPAs) referred to as the California Coastal Area, Hardwood Region, Wells Mountain-Bully Choop area, and the California Cascades pursuant to the planning process under the California Natural Communities Conservation Planning (NCCP) Act or through completion of a Habitat Conservation Plan (HCP) under Section 10(a)(1)(B) of the Act (Figure 1 to § 17.41(c)).

Except for acreage actually located within owl activity centers, the Service also proposes that small landowners who own no more than 80 acres of forest lands within a given SEA in Washington or one of the four potential CCPAs in California, as of the publication date of this proposed rule in the **Federal Register**, would be relieved of the general prohibition against incidental take. The only exception to this proposal would be for any small landowner who owns any or all of the 70 acres of forested lands closest to an owl site center. The incidental take restriction would continue to apply within such 70 acres.

The Service also proposes to provide landowners within SEAs in Washington or potential CCPAs in California additional flexibility for avoiding incidental take liability if their lands are intermingled with Federal matrix or Adaptive Management Area (AMA) lands. In such situations, non-Federal landowners would be provided the alternative option at their choosing of adopting the final harvest prescriptions delineated for the surrounding Federal matrix or AMA lands, in lieu of management practices which comply with current incidental take restrictions. The one exception to this policy would