

**Testimony to the U.S. House Committee on Natural Resources for the Hearing on
“Endangered Species Implementation: Science or Politics?”**

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Chairman Rahall and committee members - thank you for this opportunity to testify on scientific integrity and the Endangered Species Act. My name is Dominick DellaSala. I am Executive Director of the National Center for Conservation Science & Policy, a science-based conservation organization in Ashland, OR. Since last June, I have served as a member of the U.S. Fish & Wildlife Service (USFWS) appointed recovery team for the threatened Northern Spotted Owl.

There are three key points I will make today in my response to the draft recovery plan for the Northern Spotted Owl published in the Federal Register on April 26, 2007:

- (1) what was supposed to be a science-based plan was derailed by a pattern of political interference (see Exhibit A);
- (2) the recovery plan includes habitat provisions recommended for the owl that are considerably less than currently afforded the owl under the NWFP; and
- (3) while oversight of agency documents by department officials in itself is not unusual, in this case political interference clearly allowed the Forest Service and Bureau of Land Management (BLM) to have an inappropriate amount of influence that resulted in a recovery plan that is not based on the best available science.

Throughout my testimony I will be referring to options 1 and 2 of the draft plan. For simplicity, Option 1 is based, in part, on the fixed network of mapped habitat reserves – called Late-Successional Reserves or LSRs - initially established under the NWFP. Option 2 does not rely on fixed reserves but rather lets the Forest Service and BLM decide where blocks of habitat will be located according to a “rule set” detailed in the recovery plan (see Appendix B of the plan). Both options are inadequate to recover the owl.

(1) Spotted owl recovery plan and process was derailed by political interference

Distinguished Members, in 1991 one of the Northwest’s most famous judges, the Honorable William Dwyer said that the debate over the Northern Spotted Owl is about more than this one species. As he recognized, under the law, the owl was the indicator species of the remaining old-growth forest; all but a small fraction of which is now gone (Seattle Audubon v. Evans, 777 F. Supp. 1081, 1088 (1991). Judge Dwyer’s ruling set the stage for the adoption of the landmark Northwest Forest Plan.

In April 2006, under pressure of lawsuits by both the timber industry and conservation groups, the USFWS agreed to prepare an updated recovery plan for the threatened Northern Spotted Owl (an early draft was published in 1992 but it was never officially adopted because the Secretary of Interior assumed at the time that the NWFP would serve as a *de facto* recovery plan). The agency assembled a multi-stakeholder team consisting of representatives from federal and state agencies, timber industry, and conservation groups to develop an updated recovery plan. This team did not include *any* of the many well-recognized, independent scientists with expertise in owl biology. The USFWS charter document under which the recovery team made decisions emphasized that “*recommendations for recovery actions from the Team will be made in a collaborative manner, striving for the highest level of consensus possible.*”

In late September of 2006, the recovery team forwarded its draft plan to USFWS headquarters in Washington D.C. for internal review. The team recommended a recovery strategy that was anchored mostly in the existing LSR network. We reached consensus on this approach because it was the most scientifically credible way to recover the owl. The recovery team also agreed it was the most efficient way to integrate the NWFP and the recovery plan. The scientific rationale for using fixed reserves for conserving spotted owls and other old-growth dependent species has been repeatedly reaffirmed in the scientific literature (e.g., Courtney and Franklin 2004, Thomas et al. 2006, Noon and Blakesley 2006, Strittholt et al. 2006). For instance in a USFWS-commissioned five-year “status review” of the Northern Spotted Owl in 2004, two scientists, Drs. Steven Courtney and Jerry Franklin concluded that:

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- “*the Reserve and Matrix strategy of the NWFP has been successful and is performing as expected*” (Chapter 9, page 9); and
- *the NWFP has made important contributions to protect and recover the endangered owl and without the plan the situation of Northern Spotted Owls would be far bleaker*” (Chapter 9, page 15).

In addition, the latest analyses of demography of spotted owls (Anthony et al. 2006) has shown that owls are reproducing and surviving better on federal land managed under the NWFP than on non-federal lands where logging is much greater (i.e., the annual rate of owl population declines on nonfederal lands was more than twice that on federal lands).

Although the recovery team agreed that a network of protected LSRs would be the foundation of the spotted owl recovery strategy, we did not reach consensus on specific habitat provisions for the owl, particularly in the southern part of its range. The team agreed to forward our science-based recommendations to USFWS headquarters on the condition that the draft plan undergo rigorous scientific peer review, and that substantive revisions be made, if necessary, pending results of peer review. The USFWS initially rejected this request for peer review, citing insufficient time as a constraint, although more than five months elapsed during which the agency prepared the draft for publication. The recovery team was notified on April 24, 2007 (two days before public release of the draft plan) that the peer review process is finally underway.

In late September, the Pacific Regional Director of the Fish & Wildlife Service, Ren Lohoefer, notified the recovery team of the existence of a “Washington [DC] Oversight Committee,” consisting of high-ranking officials from the departments of Agriculture and Interior, who would scrutinize the draft recovery plan (detailed in attached Exhibit A). At the time, the oversight committee included Julie MacDonald, who was under investigation for political interference in other ESA matters and recently resigned from her position. On October 17, the recovery team was told that the Oversight Committee rejected the September draft recovery plan, in part, because it was based on the NWFP’s network of LSRs and therefore did not provide enough “flexibility.” The Oversight Committee instead directed the recovery team and federal agency staff to rewrite the plan, and to include a second alternative – Option 2 – that does not rely on fixed habitat reserves.

I want to emphasize that Option 2 is not a product of the recovery team. In fact, on February 7, Mr. Ren Lohoefer, Pacific Regional Director of USFWS, gave direction to the team to “*don’t spend any more time on Option 1, the majority opinion of the Washington oversight committee is they prefer Option 2.*” This new direction was not based on sound science but was designed to give the Forest Service and the BLM the discretion to exempt public forests from the NWFP in response to “friendly” lawsuits filed by the timber industry (known as the “global settlement agreement” – see attached Exhibit B) to triple the amount of logging in the region. The USFWS also received direction from the Oversight Committee to do the following.

- *De-emphasize past science and rely on “new science”* – we were told to base habitat recommendations on a handful of studies in the southern part of the owl’s range. Two of those studies point to the owl’s reliance on a mixture of forest age classes (Franklin et al. 2000 – northern California Klamath province, Olson et al. 2004 – Oregon Coast Range). However, the authors of both of the studies specifically cautioned against using the results to guide forest management actions for spotted owls. A third study, also in the southern range near Roseburg, Oregon did not conclusively confirm spotted owl use of younger forests. Unfortunately, the USFWS ignored these warnings and wrote a draft plan that inappropriately recommended region-wide habitat criteria that significantly underestimate the old growth habitat needs of the owl. The clear intent of this directive was to downplay the importance of old growth habitat to allow additional old growth logging on federal lands (detailed below).
- *“Flip and switch” the presentation of threats to the spotted owl in the draft plan by minimizing the importance of habitat loss and placing more emphasis on Barred Owls* – An October 25 memo directed the recovery team to “*indicate [the Barred Owl] was [the] only threat given priority number 1...and summarize the habitat threats discussion into less than a page.*” An untitled document dated October 27 and distributed to the team at a meeting in Portland by Dave Wesley, recovery team leader, contained instructions from Lynn Scarlett, Deputy Director of Interior, directing the recovery team to make the new option (Option 2) “*less focused on habitat preservation.*” Although Barred Owls have emerged as a

recent threat to spotted owls (Kelly et al. 2003, Crozier et al. 2006), the science of conservation biology and endangered species management is clear on this point – when a species is faced with multiple threats it is best to conserve more habitat for it, not less.

- *“De-link the recovery plan from the Northwest Forest Plan”* – On October 18, we received notice from the USFWS to *“de-link the owl plan from the Northwest Forest Plan”* to provide the Forest Service and BLM with more *“flexibility”* (see attached Exhibit A). On October 26, Mr. Lohofener admitted that the Forest Service and BLM were driving the recovery plan revisions demanded by the Oversight Committee, and stated that the end product would have to be flexible enough *“to be acceptable to the Forest Service and BLM.”* Under intense questioning from recovery team members, both Dave Wesley, USFWS recovery team leader, and Cal Joyner, the Forest Service representative on the recovery team, explained that *“flexibility”* meant giving the Forest Service and BLM discretion to alter or eliminate Managed Owl Conservation Areas (or MOCAs as in Option 1 of the draft recovery plan) from the recovery plan. Notably, the BLM is currently revising its forest plans on ~2.4 million acres in western Oregon and is considering alternatives that do not include fixed reserves (see Exhibit B) and the Forest Service recently excluded from NEPA its forest plan revisions (Federal Register Vol. 71, No. 241, Friday, December 15, 2006, pp 75481-75495.). It should be noted that one of the primary reasons why the owl was listed in 1990 was *“inadequacy of regulatory mechanisms.”*

2) The recovery plan includes habitat provisions recommended for the owl that are considerably less than currently afforded the owl under the NWFP

Option 1 vs. NWFP – a comparison of the habitat provisions in Option 1 vs. the habitat provisions in the NWFP for the LSRs (Tables F1 and F2 in Appendix F (errata copy) of the draft recovery plan vs Table F1 and Table 3-8 in Lint 2005) indicates that Option 1 could reduce the estimated amount of habitat capable for owls by ~27%.

This is mainly because the Option 1 reserve network (MOCAs) does not include all of the existing LSRs. Option 1 also lowers the habitat bar for owls in two additional ways: (1) setting delisting thresholds for suitable owl habitat at 50-70% within the reserve network (instead of the 100% late-successional goal for LSRs under the NWFP), and (2) allowing delisting to be considered when an arbitrary 80% of the MOCAs in the Option 1 reserve network meet the low regional habitat criterion. Both of these provisions could result in premature delisting of the owl if habitat is judged to be sufficient based on this standard.

Option 1 vs. Option 2 – Option 2 could result in even greater reductions than Option 1 because the rule set allows the Forest Service and BLM to consider smaller reserves by limiting the size of owl habitat blocks relative to Option 1. When applying the rule set for Option 2, the recovery team estimated that ~823,000 acres of old-growth habitat could be left out of the network of habitat blocks compared to Option 1 (unpublished recovery team exercise). In particular, because Option 2 does not include fixed habitat reserves,

only includes an “example” of possible habitat block locations (Appendix B), and does not include total acreage figures, it may not meet the requirements of the Endangered Species Act regarding “*measurable, objective*” standards for delisting criteria.

I would like to point out that only about 7 million acres of the 24.4 million acres of public forests in the PNW is currently old growth (Strittholt et al. 2006) and not all of this is protected (e.g., ~1 million acres of old forest can be logged in the “matrix”). This represents but a fraction (15%) of historic conditions (all ownerships) and therefore every acre of old growth is important. Conversely, the vast majority of public and non-federal lands include younger forest age classes.

I would also like to point out that recent demography studies of spotted owls found that that 9 of 13 study areas across the range of the owl had declining populations and the rate of decline was accelerating (Anthony et al. 2006). The bottom line here is that the owl is declining from multiple causes at a time when the USFWS is proposing a recovery plan that lowers the bar on habitat protections under both options.

The *flexibility* the administration desires cuts both ways – in fact – there is an even stronger scientific case to be made for *enlarging* reserves for the spotted owl due to the increased threats posed by Barred Owls and loss of habitat from fire. I and other team members mentioned this repeatedly during recovery team meetings, yet this science-based recommendation was rejected by the USFWS. Unfortunately, the habitat provisions in both options could result in the need to up-list the owl to endangered status in the future should populations continue to decline and habitat be further reduced by logging facilitated by inadequate regulatory mechanisms. This could eventually result in less flexibility not more.

3). While oversight of agency documents by department officials in itself is not unusual, in this case political interference clearly allowed the Forest Service and BLM to have an inappropriate amount of influence that resulted in a recovery plan based more on the timber objectives of land managers than on the best available science.

In closing, I want to underscore the unusual makeup of the recovery team and the change in process under which it operated when the Oversight Committee took charge late in the process. Typically, recovery plans are developed by recognized experts in the ecology and management of the listed species to ensure that recovery objectives and delisting criteria are based on best available science (Department of Interior and Department of Commerce 1994). Under the ESA, the purpose of recovery plans is to get listed species to recover to the point where delisting is warranted and protection under the ESA is no longer needed. In order for a listed species to move from the “intensive care unit” to a viable population, recovery plans must be based on best available science. Obviously, that was not the case here as the USFWS did not include the highly recognized owl experts on the recovery team whose seminal work was cited and, in some cases, misrepresented.

The political interference documented in this case led to misapplication of habitat provisions under both options and the creation of Option 2, which is by no means a recovery team product nor was it generated out of consensus. In fact, according to a news story in the *Land Letter* on May 3, Dave Wesley, leader of the agency's spotted owl recovery team, stated “*the less-defined second option was requested by Interior Department political appointees and other high-level officials in Washington, D.C.*”

Therefore, in spite of nearly a year of participation as a recovery team member, I cannot stand by this document. The agency, however, did eventually and only recently agree to conduct peer review of the plan. Should peer review confirm the scientific flaws noted in my testimony, the recovery plan should be rewritten by working closely with recognized owl scientists to ensure it is based on the best available science without further political interference. Clearly, in the case of the draft spotted owl recovery plan science took a back seat to politics.

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