

of circumstances where such an amount in contract awards would result, on a consistent basis, in insignificant depreciation and/or cost of money charges.

*Comment:* Some commenters believed that the term "generated costs chargeable" was too ambiguous.

*Response:* The word "chargeable" has been replaced by "charged either as direct cost or as indirect cost".

*Comment:* Several commenters were concerned about the perceived potential recordkeeping burden including massive studies and protracted audits.

*Response:* When CAS has been applied continuously, the proposed amendments do not create any need for new or additional data regarding tangible capital assets. The only requirement is that records regarding the net book values that were maintained prior to the business combination should be retained and kept up to date after the business combination.

It is only when the contractor believes that the historical costs used for CAS purposes do not represent the fair value to be used for financial reporting purposes that the creation of additional records (or at least additional entries on existing records) becomes necessary.

*Comment:* One commenter stated that an adequate definition of "business combination" is required.

*Response:* "Business combination" and "purchase method" are financial accounting terms that are already used in the current version of CAS 9904.404. CAS uses these terms in a derivative sense, i.e., it prescribes certain courses of action when events so described have been recognized for financial reporting purposes. The CASB is not an originator of these terms.

*Comment:* One commenter suggested that issues dealt with in the proposed amendment also apply to intangible assets and that these should also be addressed in this proposal.

*Response:* The proposed amendments are necessarily a part of CAS 9904.404 and 9904.409. Since the application of these two Standards is limited to tangible capital assets, the proposed amendment is not a suitable vehicle for extending the coverage to intangible assets. A separate project on intangible assets would be necessary for such a purpose.

*Comment:* One commenter in particular offered extensive editorial comments on the proposed amendments.

*Response:* Most of these editorial comments were accepted.

## List of Subjects in 48 CFR Part 9904

Cost accounting standards,  
Government procurement.

**Richard C. Loeb,**

*Executive Secretary, Cost Accounting  
Standards Board.*

For the reasons set forth in this preamble, chapter 99 of title 48 of the Code of Federal Regulations is proposed to be amended as set forth below:

1. The authority citation for part 9904 continues to read as follows:

**Authority:** Public Law 100-679, 102 Stat. 4056, 41 U.S.C. 422.

## PART 9904—COST ACCOUNTING STANDARDS

### 9904.404 Capitalization of tangible assets.

2. Section 9904.404-50 is proposed to be amended by revising paragraph (d) to read as follows:

### 9904.404-50 Techniques for application.

\* \* \* \* \*

(d) For Federal Government contract costing purposes, acquisition costs of tangible capital assets acquired in a business combination and accounted for under the "purchase method" of accounting shall be assigned to these assets as follows:

(1) Tangible capital assets that generated costs charged either as direct costs or as indirect costs to Federal Government contracts prior to a business combination shall retain the same net book value(s) subsequent to a business combination as if the business combination had not taken place.

(2) Where acquired tangible capital asset(s) did not generate costs that were charged to Federal contracts subject to CAS at the time of the business combination, the asset(s) shall be assigned a portion of the cost of the acquired company not to exceed their fair value(s) at the date of acquisition. When the fair value of identifiable acquired assets less liabilities assumed exceeds the purchase price of the acquired company in an acquisition under the "purchase method," the value otherwise assignable to tangible capital assets shall be reduced by a proportionate part of the excess.

\* \* \* \* \*

3. Section 9904.404-63 is proposed to be amended by designating the existing paragraph as (a) and by adding a new paragraph (b) to read as follows:

### 9904.404-63 Effective date.

(a) \* \* \*

(b) The effective date of 9904.404-50(d) is [30 days after date of publication of the final rule in the **Federal Register**].

4. Section 9904.409-50 is proposed to be amended by adding a new paragraph (j)(5) to read as follows:

### 9904.409-50 Techniques for application.

\* \* \* \* \*

(j) \* \* \*

(5) The provisions of this subsection 9904.409-50(j) do not apply to business combinations. The carrying values of tangible capital assets subsequent to a business combination shall be established in accordance with the provisions of 9904.404-50(d).

\* \* \* \* \*

6. Section 9904.409-63 is proposed to be amended by designating the existing paragraph as (a) and by adding a new paragraph (b) to read as follows:

### 9904.409-63 Effective date.

(a) \* \* \*

(b) The effective date of 9904.409-50(j)(5), is [30 days after date of publication of the final rule in the **Federal Register**].

[FR Doc. 95-5566 Filed 3-7-95; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

RIN 1018-AD02

### Endangered and Threatened Wildlife and Plants; Proposed Revisions for Proposed Designation of Critical Habitat for the Mexican Spotted Owl

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Supplemental proposed rule, proposed revisions to proposed designation of critical habitat.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces proposed exclusions from its previously published proposal to designate critical habitat for the Mexican spotted owl. The draft economic analysis upon which the exclusions are partly based has also been made available.

**DATES:** The original comment period on the proposed rule to designate critical habitat extended from December 7, 1994, to March 7, 1995. The comment period on the proposal and the proposed exclusions extends through May 8, 1995.

**ADDRESSES:** Requests for copies of the Service's Economic Analysis and comments concerning that document and the proposal to designate critical habitat for the Mexican spotted owl or

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 cold-temperate 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

collection period for critical habitat development in early summer 1993. Continued discussions led to a mutual recognition of the significant differences between resource management and habitat conditions on federally administered lands and Jicarilla Apache Reservation lands. These differences afforded an opportunity to address the threats identified in the listing proposal through the development of a tribal management plan for the owl. Working independently, the Jicarilla Game and Fish Department developed a draft "Conservation Plan for the Mexican Spotted Owl on the Jicarilla Apache Reservation, New Mexico" and requested review of the document by the New Mexico Ecological Services State Office at a meeting on November 21, 1994. Reviews were conducted and recommendations provided by the Service at that meeting and during subsequent telephone conversations with representatives of the Tribe. On December 16, 1994, the Jicarilla Apache Tribal Council approved the plan and formally submitted it to the Service.

The plan addresses the identified threats to owl habitat by maintaining sufficient suitable habitat across the landscape and the site-specific retention of complex forest structure following timber harvest. Nest/roost habitats, primarily in mixed conifer and steep slope areas, are not managed for timber extraction and are to remain in suitable nest-roost condition. Foraging habitat consisting of ponderosa pine is to be managed almost entirely by uneven-aged methods. Timber harvest may lower the quality of a fraction of the foraging habitat base, but adequate residual structure remains so that the habitat may rapidly reattain suitable condition. At any point in time the majority of foraging habitat remains in suitable foraging condition across the landscape. Site-specific management of territories address both habitat conditions and behavioral disturbance within owl territories. Territorial management includes the establishment of 300-acre protected activity centers (PAC) around nest-roost sites. No timber, or oil and gas development is to occur within these areas, and no behaviorally disturbing activities are permitted within 1/4 mile of any nest or roost site during the breeding season. Habitat in the areas surrounding the PACs are to be managed as described above.

The plan fully incorporates the Service's criteria for management of critical habitat. These criteria were adopted, in part, from the recommended guidelines outlined in the Draft Recovery Plan prepared by the Mexican

Spotted Owl Recovery Team. In addition, the Jicarilla plan has increased protection in ponderosa pine foraging habitat above those levels identified in the Draft Recovery Plan.

Based on information provided during the initial public comment period by the Jicarilla Apache Indian Tribe, the Service has determined that identified threats to the species over the majority of its range have been removed on the Jicarilla Apache Indian Reservation through the establishment and enforcement of the Tribe's Mexican Spotted Owl Conservation Plan.

Therefore, the Service proposes to delete the 101,923 acres in Critical Habitat Units NM-JAIR-1, NM-JAIR-2, NM-JAIR-3, NM-JAIR-4, and NM-JAIR-5, on the Jicarilla Apache Indian Reservation from the proposed rule to designate critical habitat based on the new information provided by the Tribe.

Section 4(b)(2) of the Act (16 U.S.C. 1533 (b)(2)) requires the Service to consider economic and other impacts of designating a particular area as critical habitat. In a final designation of critical habitat, the Service is required to balance the benefits of excluding a significantly impacted area against the benefits of including that area within the boundaries of critical habitat. In fulfillment of that requirement, the Service has prepared a draft economic analysis of the effects that may be caused by the designation of critical habitat. The Service will provide a copy of the Economic Analysis to interested parties upon request. Based on the data provided for the draft economic analysis, and the assessment of identified economic impacts, the lands of the Navajo Nation, and the Southern Ute, Mescalero Apache, and San Carlos Apache tribes are being proposed for exclusion under section 4(b)(2), contingent upon Service receipt and review of specific economic information for each of those tribes, and biological data concerning the presence, distribution, and habitat use of Mexican spotted owls on those tribal lands. Information provided for the draft economic analysis indicates that significant economic impacts may occur on lands of these tribes due to the designation of critical habitat. However, the information was not conclusive. In one instance, data were grouped together for three of the tribes: Jicarilla Apache, Mescalero Apache, and Southern Ute. Such aggregation does not allow specific impacts to be delineated for individual tribes. In another instance, information provided on economic impacts on the Navajo Reservation was contradictory and may require further review and analysis.

While information is available regarding economic effects, biological information is lacking concerning the abundance, distribution and management of Mexican spotted owls on the Navajo, Southern Ute, Mescalero Apache, and San Carlos Apache reservation lands. Therefore, the Service is inviting submission of information and comment on these and any other relevant issues. A more detailed discussion of economic impacts is provided in the Economic Analysis. The Service will consider the critical habitat designation in light of all additional relevant information obtained during the comment period before making a final decision with respect to the proposed rule.

A series of public hearings have been scheduled in connection with the announcement of availability of the draft economic analysis; notice of the times and locations of the hearings appears elsewhere in today's issue of the **Federal Register**. Comments regarding the proposed exclusions described above will also be accepted at these hearings or in writing through the end of the comment period on May 8, 1995.

#### Author

The primary author of this notice is Jennifer Fowler-Propst, New Mexico State Supervisor, at the above address.

#### Authority

Authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*)

Dated: March 6, 1995.

**George T. Frampton Jr.,**

*Assistant Secretary for Fish and Wildlife and Parks.*

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#### 50 CFR Part 17

RIN 1018-AD02

#### Endangered and Threatened Wildlife and Plants; Notice of Document Availability, Notice of Public Hearings, and Reopening of Public Comment Period

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability, reopening of public comment period, notice of public hearings.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces availability of a draft economic analysis of its proposal to designate critical habitat for the Mexican spotted owl. A comment period is opened and public hearings