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Sacramento, CA 95814

November 21, 2013

Sonke Mastrup
Executive Director
California Fish and Game Commission
1416 Ninth Street, Suite 1320
Sacramento, CA 95814

**PETITION FOR ADOPTION OF EMERGENCY REGULATION:
AUTHORIZATION TO TAKE A CANDIDATE SPECIES UNDER THE
CALIFORNIA ENDANGERED SPECIES ACT (NORTHERN SPOTTED OWL)**

Dear Mr. Mastrup:

Pursuant to Section 11340.6 of the California Government Code, the California Forestry Association (Calforests) hereby petitions the California Fish and Game Commission to adopt an emergency regulation under Section 2084 of the California Fish and Game Code authorizing incidental take of the Northern spotted owl (*Strix occidentalis caurina*) (NSO) in compliance with the existing NSO program established by the California Forest Practice Rules (FPR), and administered by the California Department of Forestry and Fire Protection (CAL FIRE) and the U.S. Fish and Wildlife Service (USFWS), during such time as the NSO is designated as a candidate species under the California Endangered Species Act (CESA).

This is an emergency for the timber industry, the local communities and economies dependent on timber harvesting and milling, and the NSO itself. If a 2084 rule is not adopted for incidental take of NSO during the candidacy period, timber harvesting activities may be at risk of potentially crippling litigation challenges to continued approval of Timber Harvesting Plans (THP) by CAL FIRE. Moreover, adoption of this proposed rule will ensure that CAL FIRE does not delay processing and approval of THPs because of any alleged uncertainties about whether the current NSO program under the FPR achieves take avoidance under CESA. In addition, adoption of this regulation is necessary to enable on-going NSO survey activities and scientific research critical to management of the owl for its conservation and recovery to continue without interruption.

Should there be a disruption of timber harvest resulting from crippling lawsuits or a failure to retain effective NSO options for forest owners of all sizes, the grave impact of such situations on timber companies, their employees, and timber-dependent local economies would be enormous.

Of the approximate 4.5 million acres of industrial timberland in California, nearly 2.4 million acres fall within the range of the NSO. Of equal importance, there is more than twice the acreage of small private owners (approximately 5.3 million acres) that fall within the range of the NSO. There are also 815,000 acres within the NSO range currently covered by federal Habitat Conservation Plans (HCP) which include federal incidental take permits, and another 669,000 acres that are in varying states of HCP development (see Attachments).

Of the 1.3 billion board feet of timber harvested sustainably from private forestlands in 2012, approximately 850 million board feet were produced from private forests within the range of the NSO. Should the forest industry timber activities be negatively impacted in any significant way, the net impact on statewide timber production could be up to \$194 million (see Attachments). Moreover, direct and indirect rural communities' jobs associated with primary wood processing and renewable biomass energy production, which are dependent upon a sustainable supply of wood resources within the NSO range, could reach 12,500 rural jobs (see Attachments), with dozens of rural communities and hundreds of forest businesses being devastated; this, at a time when the industry is just beginning to recover from the worst economic recession in modern times.

For all and each of these reasons, the Commission should utilize its emergency rulemaking authority.

Authority of the Commission

As summarized above and as will be detailed below, Calforests member companies –and the communities in which they operate – will suffer immediate and severe operational and economic impacts if the Commission accepts the NSO petition and thereby designates the NSO as a candidate species under CESA.

The Commission has express statutory authority to prevent these severe adverse impacts. Section 2084 of the Fish and Game Code provides: “The commission may authorize, subject to terms and conditions it prescribes, the taking of any candidate species....” In crafting CESA, the Legislature recognized that the Commission’s designation of a species as a candidate could result in both substantial hardships to affected landowners and detriment to the species itself, even though candidate status is necessarily temporary. Thus, the Legislature provided the Commission with a tool—Section 2084—to prevent such outcomes. The Commission has

utilized that tool and adopted Section 2084 take authorization regulations on at least 10 prior occasions.¹

Of critical importance here, the Commission is also authorized to act immediately. Section 11346.1 of the Government Code authorizes state agencies to immediately adopt an emergency regulation under certain circumstances. “Emergency” is defined as “a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare.” Cal. Gov’t Code §11342.545.

Wholly apart from the Administrative Procedure Act’s emergency rulemaking provisions, which apply to all state agencies, the Legislature has also specifically authorized the Commission to adopt emergency regulations. Section 240(a) of the Fish and Game Code provides:

Notwithstanding any other provisions of this code, the commission, when promulgating regulations pursuant to any authority otherwise vested in it by this code, may, after at least one hearing, adopt an emergency regulation or order of repeal pursuant to Section 11346.1 of the Government Code if it makes either of the following findings:

(1) That the adoption of a regulation or order of repeal of a regulation is necessary for the immediate conservation, preservation, or protection of birds, mammals, reptiles, or fish, including, but not limited to, any nests or eggs thereof.

(2) That the adoption of a regulation or order of repeal of a regulation is necessary for the immediate preservation of the public peace, health and safety, or general welfare.

This additional, independent authority should be viewed in the context of the Commission’s special status as a body established by the California Constitution.

All of these authorities provide the Commission more than ample authority to adopt the proposed regulation in order to avert severe and needless harm to California’s timber industry, the communities dependent on it, and to the surveys essential to the effective management of the NSO for conservation and recovery.

Regulatory Background

The NSO has been listed as a threatened species under the federal Endangered Species Act (ESA) since 1990. As a result, take of NSO is prohibited unless authorized by the USFWS

¹ Southern torrent salamander (1994), coho salmon south of San Francisco (1994), spring-run chinook salmon (1997 and 1998), coho salmon throughout its range in California (2000), Xantus’s murrelet (2002), longfin smelt (2008), California tiger salamander (2009), Pacific fisher (2009), mountain yellow-legged frog (2010), black-backed woodpecker (2011) (subsequently repealed).

consistent with the ESA. The FPR contains a robust regime for conducting timber harvesting operations to avoid take of NSO.

The Forest Practice Rules require the Director to disapprove a THP if its implementation would result in a taking of a protected species. FPR § 898.2(d) (“The Director shall disapprove a plan as not conforming to the rules of the Board if ... [i]mplementation of the plan as proposed would result in either a ‘taking’ or finding of jeopardy of wildlife species listed as rare, threatened or endangered by the Fish and Game Commission, the National Marine Fisheries Service, of Fish and Wildlife Service....”). The FPR contain a more specific rule for NSO, requiring the Director to disapprove a THP if “[i]mplementation of the plan as proposed would result in the taking² of an individual Northern Spotted Owl prohibited by the Federal Endangered Species Act.” FPR § 898.2(f).

The FPR have their own detailed provisions for the protection and conservation of NSO and their habitat. These rules have been updated to reflect changes in the procedures used by the involved federal and state agencies to ensure that take of NSO is not likely to result from timber operations. In addition, the rules have continuously been supplemented by guidance from USFWS and the other involved agencies as new information about NSO and their habitat has been generated and knowledge of NSO habitat needs has evolved. The whole purpose of these rules and the NSO program they establish is to ensure and enable compliance with the federal ESA’s take prohibition which, of course, is broader (and, thus, imposes greater restrictions) than the definition of “take” under CESA. Accordingly, the FPR rely upon federal ESA definitions and requirements with respect to NSO.

The FPR are replete with technical definitions concerning NSO and their habitat. *See* FPR §895.1 (definitions, including “activity center,” “functional foraging habitat,” “functional nesting habitat,” “functional roosting habitat,” “northern spotted owl breeding season,” “northern spotted owl evaluation area,” “owl habitat,” “spotted owl expert,” “spotted owl resource plan,” “type A owl habitat,” “type B owl habitat,” “type C owl habitat”). The FPR require the plan submitter to follow certain procedures and provide information for the Director to use in making the take determination. FPR §§ 919.9, 939.9. If a timber operator proposes operations within the range of the NSO or within 1.3 miles of a known NSO activity center, the proposed THP must include certain mandatory measures to ensure against any unlawful take of the species. FPR §§ 919.9, 939.9. The FPR provide the plan submitter a number of options for demonstrating compliance with the Endangered Species Act each specifying measures and requirements to ensure that the

² The FPR have adopted the ESA’s definition of “take.” FPR § 895.1 (“Take for Federally Listed Species means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct as stated in 16 United States Code 1532(19).”). CESA defines “take” more narrowly than does the federal ESA. Under CESA, “take” means “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.” *Cal. Fish & Game Code* § 86.

proposed operations will not result in unlawful take of NSO. FPR §§ 919.9(a)-(g), 939.9(a)-(g). These, too, were developed in collaboration with USFWS and the California Dept. of Fish & Wildlife (CDFW).

These different approaches for demonstrating that proposed operations will not result in unlawful take of NSO are known as options (a) through (g). They are all used, to varying degrees, by forest owners to conduct timber operations. Several of them require the involvement of a Spotted Owl Expert (SOE) to ensure that CAL FIRE has the information necessary to determine if proposed operations, as conditioned by numerous measures to avoid impacts to NSO and their habitat are likely to avoid take. As provided by FPR sections 919.9(a)-(g), 939.9(a)-(g):

(a) If the project proponent requests preliminary review of the proposed operation or Spotted Owl Resource Plan prior to filing, the proponent shall consult with an SOE to evaluate whether the proposed operation would result in the taking of an individual Northern spotted owl. This evaluation is preliminary to and separate from the final "take" determination to be made under 14 CCR § 919.10 [939.10]. In making that evaluation:

(1) The SOE shall apply the criteria set forth in 14 CCR § 919.10 [939.10].

(2) The SOE may request that the submitter provide additional information which the SOE finds necessary to evaluate if a "take" would occur, provided that the SOE states the type of information needed, the purpose of the information, and the level of accuracy necessary to meet the stated purpose.

(3) If the SOE concludes that no prohibited taking would occur, the SOE shall inform the submitter as soon as practicable and shall document the decision and the information which was relied upon by the SOE in the above evaluation. Reference data shall be readily available for the Director's review upon request;

(4) If the SOE concludes that the proposed timber operation or Spotted Owl Resource Plan would result in a taking, he or she shall inform the submitter as soon as practicable and shall comply with 14 CCR § 919.10(c) [939.10(c)] within 10 working days of making this determination.

(5) Requests for pre-filing consultation shall be handled in the order in which received.

(b) The RPF shall include the following information:

(1) On a planimetric or topographic map of a minimum scale of 1:24,000, provide the following:

(A) The location and acreage of owl habitat. This information shall be shown for the area within the boundary both as it exists before and after timber operations. The Director shall determine if timber typing maps may qualify as showing owl habitat.

(B) Identify any adjoining owl habitat by type within .7 miles of the boundary.

(C) When mapping functional owl nesting, roosting, and foraging habitat, include additional information which helps define those areas such as: location of topography features,

riparian vegetation, hardwood component, water, potential nest and roost sites, and potential suitable forage areas.

(D) All known owl observations, identified by location and visual or nonvisual confirmation within 1.3 miles of the boundary. This information shall be derived from the landowners and RPF's personal knowledge, and from the Department of Fish and Game's spotted owl data base.

(2) Discussion on how functional characteristics of owl habitat will be protected in terms of the criteria stated within 14 CCR § 919.10 subsections (a) and (b) [939.10 subsections (a) and (b)].

(3) As adjacent landowners permit and from other available information, a discussion of adjacent owl habitat up to .7 mile from the proposed boundary and its importance relative to the owl habitat within the boundary.

(4) Describe any proposals for monitoring owls or owl habitat which are necessary to insure their protection. Monitoring is not required for approval.

(5) Discussion of any known owl surveys that have been conducted within 1.3 miles of the THP boundary. Include the dates, results and methodologies used if known.

(6) A proposed route that will acquaint the SOE and other reviewers with the important owl habitat.

(7) Attach aerial photos of the area, if available. (Aerial photos are not required.)

(c) Where certification is made by the RPF and adequate records are kept showing that owl surveys were conducted sufficient to demonstrate the absence of owls from an area, the THP will be reviewed on a high priority basis. The THP shall contain verification that:

(1) The surveys have been conducted throughout the area within .7 miles of the boundary in accordance with the USFWS approved protocol ("Protocol For Surveying Proposed Management Activities That May Impact Northern Spotted Owls"; USFWS; March 17, 1992).

(2) The surveys were conducted during the current or immediately preceding survey period as prescribed by the previously cited USFWS approved protocol.

(3) The surveys reveal no nest sites, activity centers or owl observations in the area surveyed; and

(4) The surveys reveal no activity center or repeated observations indicating the presence of mates and/or young within 1.3 miles of the boundary based on a review of the landowner's and RPF's personal knowledge and the Department of Fish and Game's spotted owl data base.

(d) If the plan submitter proposes to proceed under an "incidental taking" permit or any other permit covering the northern spotted owl issued by the U.S. Fish and Wildlife Service or the Department of Fish and Wildlife, the submitter shall supply a copy of the permit upon the Department's request.

(e) If the submitter proposes to proceed pursuant to the outcome of a discussion with the U.S. Fish and Wildlife Service, the submitter shall submit a letter prepared by the RPF that the described or proposed management prescription is acceptable to the USFWS.

(f) If:

(1) the submitter's proposed operations were reviewed by a SOE under 14 CCR § 919.9, subsection(a) [939.9, subsection(a)]; and

(2) the SOE recommended minimum modifications to the proposed operations which would be necessary to bring the impacts to a level at which no "take" would occur and the submitter has adopted those recommendations; and

(3) the proposed operations remain substantially the same as the operations which the SOE reviewed, the submitter shall provide a copy of the recommendations made by the SOE and the submitter shall explain how the proposed operations comply with those recommendations.

(g) Where an activity center has been located within the plan boundary or within 1.3 miles of that boundary, the RPF shall determine and document in the plan: (i) activity center-specific protection measures to be applied during timber operations and (ii) owl habitat, including habitat described in (1)-(5) below, that will be retained after the proposed operations are completed:

(1) Within 500 feet of the activity center the characteristics of functional nesting habitat must be maintained. No timber operations shall be conducted in this area during the northern spotted owl breeding season unless reviewed and approved by the Director as not constituting a take. Timber operations may be conducted in this area outside the breeding season if appropriate measures are adopted to protect nesting habitat.

(2) Within 500-1000 feet of the activity center, retain sufficient functional characteristics to support roosting and provide protection from predation and storms. No timber operations shall be conducted in this area during the breeding season unless reviewed and approved by the Director as not constituting a take.

(3) 500 acres of owl habitat must be provided within a .7 mile radius of the activity center, unless an alternative is reviewed and approved by the Director as not constituting a take. The 500 acres includes the habitat retained in subsections (1) and (2) above and should be as contiguous as possible. Less than 50% of the retained habitat should be under operation in any one year, unless reviewed and approved by the Director as not constituting a take.

(4) 1336 total acres of owl habitat must be provided within 1.3 miles of each activity center, unless an alternative is reviewed and approved by the Director as not constituting a take. The 1336 acres includes the habitat retained within subsections (1)-(3) above.

(5) The shape of the areas established pursuant to subsections (1) and (2) shall be adjusted to conform to natural landscape attributes such as draws and streamcourses while retaining the total area required within subsections (1) and (2) above.

Examples of Regulatory Approaches used by Forest Owners

For example, one of the prescribed approaches used in THPs submitted to CAL FIRE—the “option (g)” procedure, refers to subsection (g) of section 919.9, 939.9 of the FPR, which applies when “an activity center has been located within the plan boundary or within 1.3 miles of that boundary.” FPR §§ 919.9(g), 939.9(g). Subsection (g) requires the Registered Professional Forester (RPF) to determine and document in the THP those activity center-specific protection measures to be applied during timber operations and the owl habitat that will be retained after operations are completed. FPR § 919.9(g). These standards are intended to ensure that modification of NSO habitat by timber operations does not result in *take* by requiring the creation and maintenance of “owl habitat circles” around known NSO sites within which habitat of sufficient quality and quantity will be retained so that take does not occur.

In regards to evaluating the use of option (g), and pursuant to a USFWS request, a forest owner in Trinity County conducted a long-term NSO population density study on 170,000 acres of their ownership over the 5-year period from 2003-2007; the survey effort has now been extended to include the period 2011-2013. The study results (currently in review) indicated that over the 23 years of total survey to date since 1989, the study area started with 42 NSO occupied activity centers, in 2003-2007 there were 47 occupied activity centers, and the latest estimate is that there are 48 NSO occupied activity centers, demonstrating a stable/increasing population while using option (g) pursuant to the current FPR options. The net increase of occupied activities centers is six from 1989 and an additional one from 2003-2007 period (net of the loss of one NSO occupied activity center that was attributed to wildfire). In 2011, 2012, and 2013 while most other study areas in California showed very poor reproductive success due to bad spring weather, of these 48 occupied activity centers, 25 were determined to have successful reproduction (producing a minimum observed count of 52 young). Remarkably, 7 of these 25 reproduced twice in this three year period and 3 nests reproduced 2 years in a row, so there were 32 individual known nesting efforts with a minimum observed count of 52 young.

Another example of prescribed approaches used in THPs submitted to CAL FIRE is the “option (e)” procedure, which refers to subsection (e) of section 919.9, 939.9 of the FPR, which applies when the THP submitter proposes to proceed pursuant to the outcome of a discussion with the USFWS; the submitter shall submit a letter prepared by the RPF that the described or proposed management prescription is acceptable to the USFWS. A 114,700-acre forest owner in Siskiyou County operates under this option via a USFWS-approved Spotted Owl Management Plan (SOMP). This forest ownership has been operating successfully pursuant to their SOMP since 1995. They have been involved in a

number of collaborative research projects and published papers regarding NSO. Their estimate of owls recorded on and within 0.5 miles of their ownership in the year 2000 was 21, while the recorded owls on their ownership in 2012 were 22. As they indicate, “we have concluded that our owl population is dynamic, yet stable.”

Another example of prescribed approaches used in THPs submitted to CAL FIRE is the “option (d)” procedure, which refers to subsection (d) of section 919.9, 939.9 of the FPR, which applies when the THP submitter proposes to proceed pursuant to an “*incidental take*” permit. There are currently three forest owners with a combined ownership of 815,000 acres operating pursuant to “option [d].” These forest owners have federal HCPs approved by the USFWS that provide measures intended for long-term conservation of the NSO on their ownerships.

Forest owners provided these and other population density estimates to the Fish and Game Commission (Commission), which are already a part of the record.

All of the FPR sections 919.9(a)-(g), 939.9(a)-(g) approaches and standards are intended to ensure that timber operations do not result in unauthorized take.

The Director does not exercise unfettered discretion in determining if a plan will cause “*take*.” The FPR require the Director to find that proposed habitat modification would result in “harm” if feeding, breeding, nesting, or sheltering would be “significantly impaired.” FPR §§ 919(a), 939.10(a). The FPR require the Director to find that “an individual northern spotted owl would be ‘harassed’ by the proposed timber operations if there is likelihood that feeding, breeding, nesting, or sheltering would be ‘significantly disrupted.’” FPR §§ 919.10(b), 939.10(b). If the Director concludes that proposed operations will result in a “*taking*” of the owl, he will provide recommendations for modifications to the THP necessary to reduce impacts to a level at which take would not occur. FPR §§ 919.10(c), 939.10(c). It is important to note that the FPRs’ use of the federal ESA’s “*take*” standard – which encompasses habitat modification and harassment – means the FPRs’ NSO program goes beyond what would be necessary to comply with CESA’s take prohibition and, thereby, already affords the NSO greater protection than it would enjoy if advanced to candidacy or, ultimately, listed under CESA.

Of course, the FPR requirements only function as a floor. Through the site-specific, multi-agency THP review and approval process, including field inspections, habitat retention and other measures are considered and (if deemed necessary) required before THPs are approved. The USFWS continues to be involved in this process by providing technical assistance when requested by CAL FIRE or the public, when unique circumstances arise.

Listing Status

Notwithstanding the fact that the NSO is already protected under federal law, in September 2012, the Commission received a petition to also list the NSO as threatened or endangered under CESA. As required by CESA, the Commission referred the petition to CDFW for evaluation. In February 2013, CDFW completed its petition evaluation report, which concluded that the petitioned action may be warranted and that the petition should be accepted. The Commission received the CDFW evaluation report at its March 2013 meeting. The Commission considered the listing petition at its April 17-18, 2013 meeting, and decided to postpone the decision until its August meeting to allow further time to review the data submitted by forest owners and forestry professionals. The issue was taken-up at the August Commission meeting, with a 3-2 vote to accept the petition for listing as a *Candidate* species. It is anticipated that the Commission will vote on formal findings at its November meeting.

It is important to note that a parallel and related petition was submitted to the Board of Forestry proposing to eliminate key Forest Practice Rules related to NSO protections by Environmental Protection Information Center (EPIC), the same petitioner in the action before the FGC proposing to list the NSO under the California Endangered Species Act. On July 8, 2013, after a thorough review of the effectiveness of the existing NSO rules, the Board of Forestry rejected the petition and reaffirmed the effectiveness of the existing regulatory program.

Acceptance by the FGC of the listing petition and adopting findings with formal noticing will confer “candidate” status on the NSO under CESA until such time as CDFW completes a full status review of the species and the Commission determines whether to list the species as threatened or endangered. *See* Cal. Fish & Game Code §§ 2070-2079. The CESA take prohibition (section 2080) applies fully to a candidate species, even though the Commission has yet to determine whether that species should be listed as threatened or endangered. *Id.* § 2085. Under CESA, the “*taking*” of a candidate species is prohibited unless authorized consistent with CESA. *Id.*

Interest of the Petitioner

Petitioner Calforests is the statewide, non-profit trade association dedicated to advancing the interests of Californians involved in timber harvesting. Calforests members, which comprise approximately ninety percent of the primary manufacturers of forest products in California, include biomass energy producers, environmental consultants, financial institutions, forest landowners, forest products producers, loggers, registered professional foresters, wholesalers and retailers, wood products manufacturers and others who are interested in responsible forest

policies. Calforests members own more than 4 million acres of private industrial forestland, and produce approximately one and a half percent of the state's electricity needs through renewable biomass energy. Calforests declared mission statement is to assure an adequate and sustainable supply of forest products at an affordable cost while enhancing forest health and safety. Overall, the value of California's wood products shipments generates more than \$7.5 billion annually, and employs approximately 42,000 workers; thus, the forest products industry plays an important role in the state economy. The industry, therefore, represents a substantial component of the statewide economy and Petitioner is an interested person under the California Administrative Procedures Act.

The Requested Regulation

Calforests is seeking a 2084 regulation that authorizes incidental take of NSO during the candidacy period for NSO surveys and timber harvesting by timberland owners in California. To accomplish this objective, the 2084 would authorize incidental take for (1) scientific, educational, or management activities (including necessary scientific surveys to provide protection to NSOs) and (2) timber harvesting activities.

Impacts Constituting an Emergency

The risks of serious harm to public health, safety, and general welfare detailed below, justify emergency rulemaking pursuant to California Government Code section 11346.1 and Fish and Game Code section 240(a).

Timber Harvesting Plan Approval

As the Commission is well aware, EPIC, Center for Biological Diversity (CBD) and other groups look for every opportunity to challenge CAL FIRE's approvals of THPs in the superior courts of California. In so doing, they invariably seek preliminary injunctive relief or a stay to prevent the approved harvesting from going forward pending resolution of their suit. If such preliminary relief is granted, timber harvesting may not go forward. The grave impact of such situations on timber companies, their employees and timber-dependent local economies is obvious. In the absence of the requested 2084 regulation, there is an unacceptable risk of such crippling lawsuits. Of the 4.5 million acres of industrial forestland in California, approximately 2.4 million acres falls within the range of the NSO. Moreover, 815,000 of those private forest acres are covered by federal HCPs which includes a federal *incidental take* authority that would require parallel state *incidental take*, which could potentially delay timber operations in those areas for much if not all of the candidacy period if there are new CDFW state-mandated provisions or litigation. Potential activist litigants have already filed California Public Records Act (CPRA) requests concerning HCP discussions between forest owners and CDFW. Additionally, there are 669,000

acres of private forest within the NSO range that are in various stages of HCP development that are potentially subject to delay/litigation should the requested 2084 permit not be granted.

Of the 1.3 billion board feet of timber produced sustainably from private forestlands in 2012, approximately 850 million board feet were produced from private forests in 13 counties that are within the range of the NSO. Should the forest industry timber activities be negatively impacted in any significant way, the net impact on statewide wood production would be up to \$194 million, more than 12,000 rural jobs, dozens of rural communities and hundreds of forest businesses could be devastated. (See Attachment)

Even if lawsuits are not filed, CAL FIRE's aversion to litigation and the normal agency process of determining what implications NSO candidacy has, if any, for the long-standing NSO program under the FPR could result in delay in the processing and approval of THPs. This scenario recently occurred following the remand in the Pacific fisher case, which resulted in the reinstatement of the fisher as a candidate species. From December 2012 through February 2013, CAL FIRE refused to approve any THPs in the fisher's range because it had not developed fisher take avoidance guidance for THPs. The timber industry and the communities dependent on it cannot afford for this to happen again if the Commission advances the NSO to candidacy.

NSO Surveys

Conferral of candidate status on the NSO could immediately and directly impact NSO surveys currently being conducted by Calforests members on their timberlands. Current survey protocol requires 2 years of survey prior to operations and continuing surveys during operations if the plan extends beyond 1 year into the next breeding season.

Not only would inability to conduct NSO surveys undermine management of the species for its conservation and recovery, but it would negatively impact timber harvesting. Calforests members have invested millions of dollars in NSO survey work. This survey information is needed to ensure that timber harvesting proceeds on a no-take basis in compliance with the Forest Practice Rules. Moreover, if timberland owners are unable to collect such data, their lands risk being "locked down" by assumptions of NSO presence, regardless of what the on-the-ground reality is; this "lock down" effect could be rolling and cumulative, effectively taking a ballooning number of productive timber tracts off line.

Without a 2084 regulation providing incidental take authorization, take of NSO for scientific, educational, and management purposes would require authorization by the Department through an individual permit or authorization which is often a lengthy, complicated process. Additional complications are obviously presented by the fact that the NSO survey season runs from March 15th to August 31st. Even if the NSO surveys could be authorized pursuant to Fish and Game Code section 2081(a), its requirement for permits or memorandums of understanding [to]

authorize individuals ... and scientific and educational institutions” to take would likely result in unacceptable delay. And it goes without saying that a standard Incidental Take Permit (ITP) under Fish and Game Code section 2081(b) could not be issued in time for on-going NSO surveys (or likely even future NSO surveys).

Moreover, management, educational, and scientific activities (including research and monitoring) should, in fact, be promoted and facilitated during the candidacy period for the NSO, so as to provide the most current and best available scientific information on the NSO to the Department to inform its status review of the species. Indeed, any failure of the Commission or the Department to facilitate the generation of such scientific information and its timely transmittal to the Department for consideration in preparing its status review could call into question the conclusions of the status review.

Conclusion

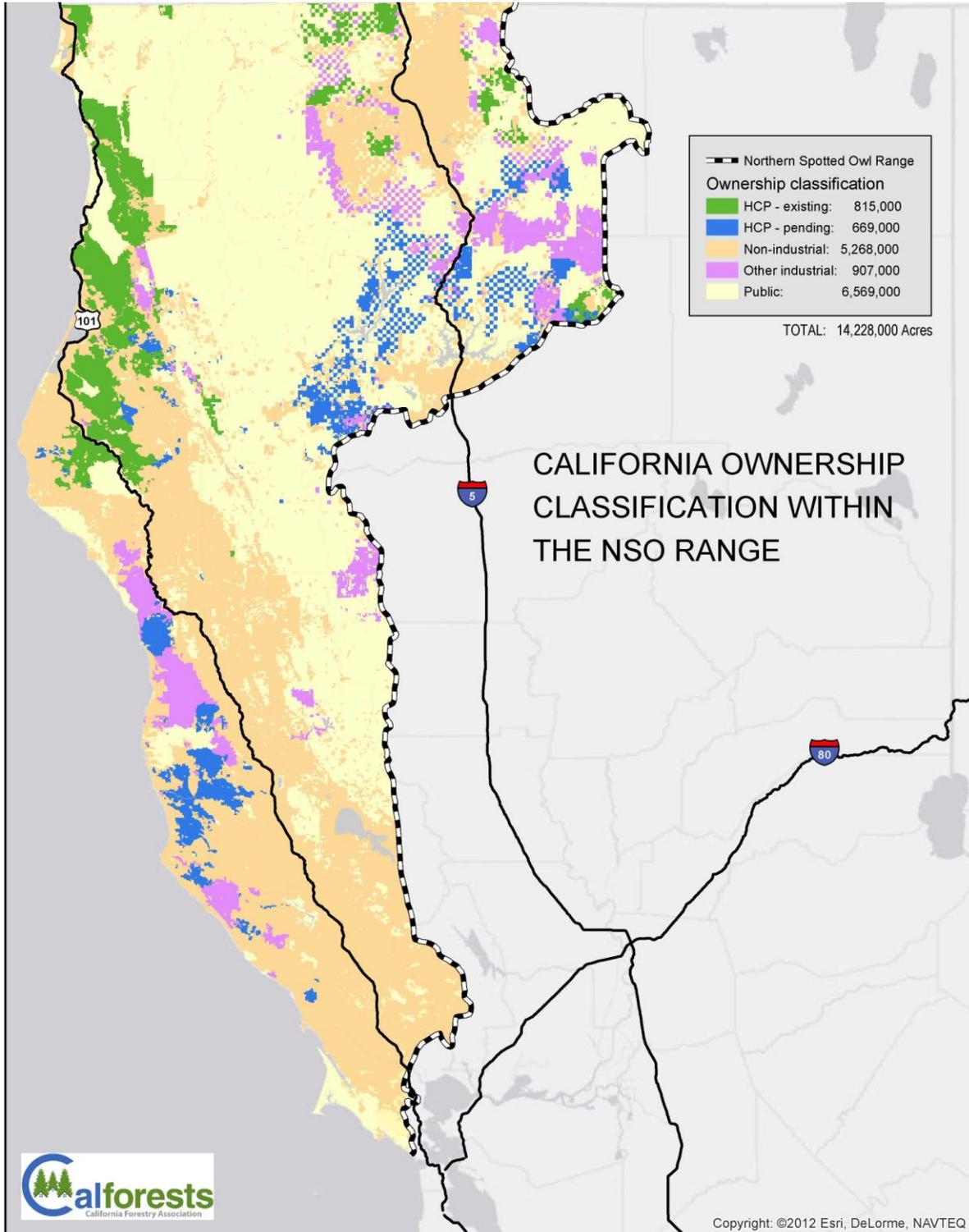
For all the reasons set forth above, Calforests respectfully request that the Commission adopt the proposed emergency regulation at its November meeting if the NSO is advanced to candidacy at that time.

Sincerely,



David A. Bischel
President
CALIFORNIA FORESTRY ASSOCIATION

ATTACHMENTS





American Forest & Paper Association
 www.afandpa.org

FOREST & PAPER INDUSTRY AT A GLANCE

California

The American Forest & Paper Association (AF&PA) is the national trade association of the forest products industry and advances public policies that promote a strong and sustainable U.S. forest products industry in the global marketplace. The industry is an integral part of our nation's green job base and generates approximately 6 percent of the total annual U.S. manufacturing GDP.

AF&PA's member companies make pulp, paper, packaging and wood products, and own forest land. Our companies make essential products from renewable and recyclable resources that sustain the environment. Nationwide, the U.S. forest products industry:

- Employs more than one million workers — on par with the nation's automotive and plastics industries.
- Provides green jobs that reduce greenhouse gases by sustaining the forests that absorb carbon dioxide; making the paper and wood products that store it indefinitely; generating and using more renewable energy than anyone else—28.5 million megawatts annually, enough to power 2.7 million homes; and recycling paper to avoid methane emissions and reduce waste.
- Is among the top ten manufacturing sector employers in 48 states.
- Is a significant taxpayer, paying approximately \$7 billion annually in federal, state, and local taxes.



EMPLOYMENT

Forestry & Logging	4,940
Wood Products	36,864
Pulp & Paper	26,240
Total Employment	68,044

ANNUAL PAYROLL INCOME (in millions of dollars)

Forestry & Logging	\$244
Wood Products	\$1,768
Pulp & Paper	\$2,119
Total Compensation	\$4,131

NUMBER OF MANUFACTURING FACILITIES

Sawmills, Millwork, Treating	54
Engineered Wood and Panel Products	11
Other Wood Products	13
Total Wood Products	78
Pulp, Paper & Paperboard Mills	19
Converted Paper Products	526
Total Paper Manufacturing	545
Total All Segments	623

VALUE OF INDUSTRY SHIPMENTS (in thousands of dollars)

Wood Manufacturing	\$7,532,275
Paper Manufacturing	\$9,247,852
Total Value of Industry Shipments	\$16,780,127

TAX PAYMENTS (in thousands of dollars)

Estimated State & Local Taxes	\$353,000
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LAND AREA (in thousands of acres)

Total Land Area	99,599
Forests	32,817
Forests as Percent of Total	32.95%
Federal Lands	18,409
National Forest System	14,906

TIMBERLAND (in thousands of acres)

National Forest System	9,275
Other Federal	632
State, County and Municipal	291
Private Corporate	4,294
Private non-Corporate	4,652
Total Timberland	19,144

REPORT YT-36
 YTHR2

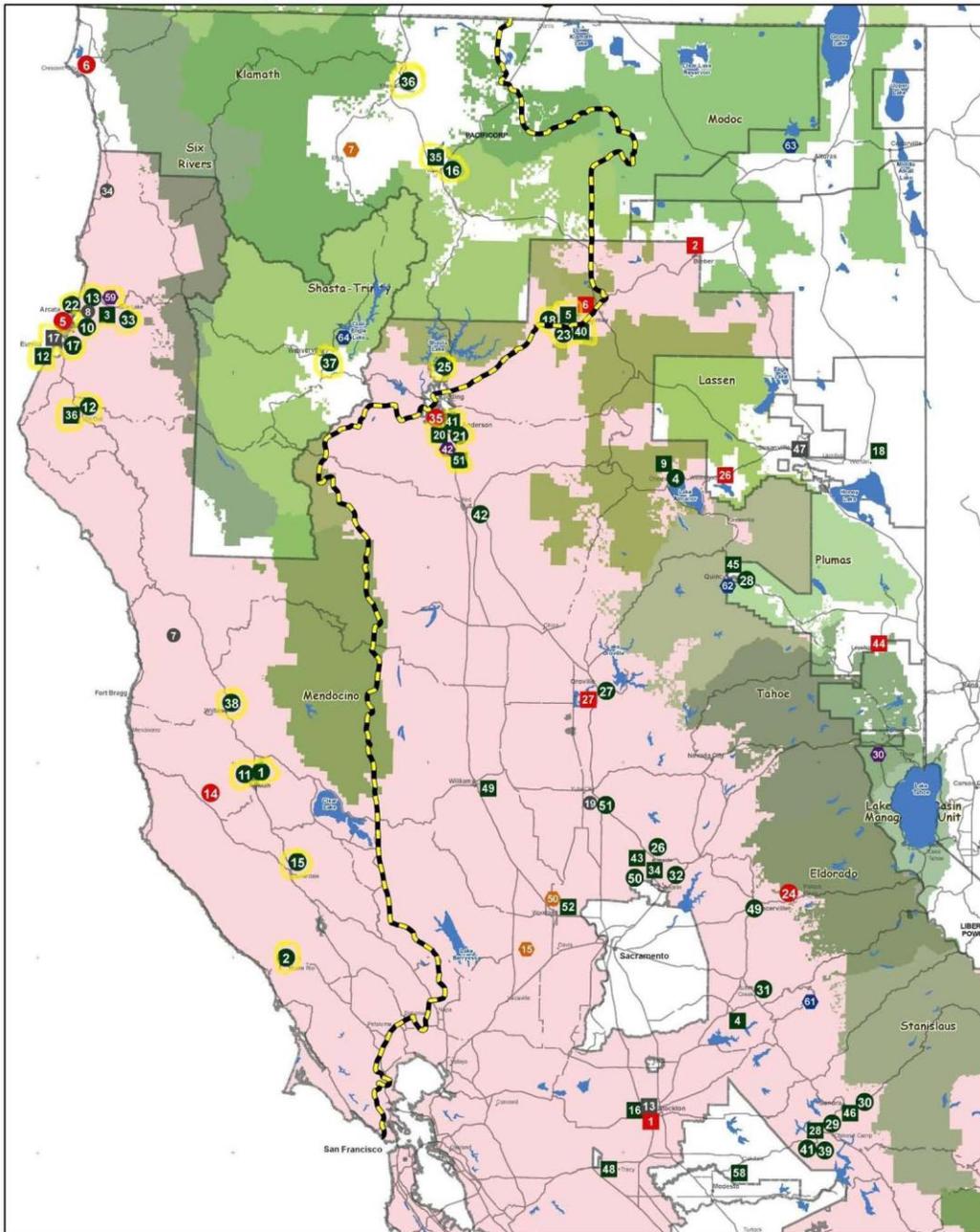
CALIFORNIA TIMBER HARVEST BY COUNTY
 YEAR 2012 QUARTER 1 TO 4
 (Highlighted Counties Within Northern Spotted Owl Range)

COMPILED ON 4/23/2013

TIMBER TAX SECTION

COUNTY	VOLUME (NET MBF)	VOLUME PERCENT	PERCENT PUBLIC	VALUE	VALUE PERCENT	PERCENT PUBLIC
ALAMEDA	0	0.00	0.00	\$0	0.00	0.00
ALPINE	0	0.00	0.00	\$0	0.00	0.00
AMADOR	10,594	0.81	9.35	\$2,121,645	0.79	4.20
BUTTE	45,198	3.46	4.54	\$9,573,425	3.58	1.93
CALAVERAS	39,458	3.02	7.67	\$6,755,461	2.53	6.55
COLUSA	0	0.00	0.00	\$0	0.00	0.00
CONTRA COSTA	0	0.00	0.00	\$0	0.00	0.00
DEL NORTE	5,203	0.40	0.00	\$1,290,905	0.48	0.00
EL DORADO	48,547	3.71	24.10	\$7,075,521	2.65	18.09
FRESNO	13,129	1.00	56.40	\$1,271,349	0.48	46.81
GLENN	4,520	0.35	100.00	\$765,057	0.29	100.00
HUMBOLDT	221,617	16.95	1.50	\$62,557,351	23.39	1.10
IMPERIAL	0	0.00	0.00	\$0	0.00	0.00
INYO	0	0.00	0.00	\$0	0.00	0.00
KERN	3,943	0.30	49.71	\$375,045	0.14	57.46
KINGS	0	0.00	0.00	\$0	0.00	0.00
LAKE	56	0.00	46.43	\$7,900	0.00	41.14
LASSEN	74,433	5.69	18.06	\$12,997,465	4.86	13.44
LOS ANGELES	0	0.00	0.00	\$0	0.00	0.00
MADERA	9,900	0.76	89.91	\$810,301	0.30	88.90
MARIN	0	0.00	0.00	\$0	0.00	0.00
MARIPOSA	3,031	0.23	0.00	\$370,270	0.14	0.00
MENDOCINO	121,850	9.32	0.00	\$28,940,454	10.82	0.00
MERCED	0	0.00	0.00	\$8,295	0.00	0.00
MODOC	40,006	3.06	21.94	\$4,568,740	1.71	20.81
MONO	2,349	0.18	100.00	\$201,590	0.08	96.72
MONTEREY	0	0.00	0.00	\$3,003	0.00	0.00
NAPA	0	0.00	0.00	\$0	0.00	0.00
NEVADA	14,531	1.11	3.72	\$2,647,665	0.99	3.60
ORANGE	0	0.00	0.00	\$25,804	0.01	0.00
PLACER	20,951	1.60	43.88	\$3,300,234	1.23	28.76
PLUMAS	84,652	6.48	14.81	\$13,669,163	5.11	13.58
RIVERSIDE	0	0.00	0.00	\$0	0.00	0.00
SACRAMENTO	0	0.00	0.00	\$40,374	0.01	0.00
SAN BENITO	0	0.00	0.00	\$0	0.00	0.00
SAN BERNARDINO	0	0.00	0.00	\$0	0.00	0.00
SAN DIEGO	0	0.00	0.00	\$10,189	0.00	0.00
SAN FRANCISCO	0	0.00	0.00	\$0	0.00	0.00
SAN JOAQUIN	0	0.00	0.00	\$0	0.00	0.00
SAN LUIS OBISPO	0	0.00	0.00	\$0	0.00	0.00
SAN MATEO	5,547	0.42	0.00	\$1,979,488	0.74	0.00
SANTA BARBARA	0	0.00	0.00	\$0	0.00	0.00
SANTA CLARA	1,209	0.09	0.00	\$429,172	0.16	0.00
SANTA CRUZ	6,559	0.50	0.00	\$2,363,485	0.88	0.00
SHASTA	185,799	14.21	3.05	\$36,930,938	13.81	1.07
SIERRA	30,748	2.35	32.82	\$4,115,291	1.54	27.88
SISKIYOU	144,874	11.08	18.68	\$30,767,666	11.51	17.16
SOLANO	0	0.00	0.00	\$23,929	0.01	0.00
SONOMA	4,426	0.34	0.00	\$770,936	0.29	0.00
STANISLAUS	0	0.00	0.00	\$0	0.00	0.00
SUTTER	0	0.00	0.00	\$0	0.00	0.00
TEHAMA (50% 33,397 NSO)	66,795	5.11	0.00	\$11,611,657	4.34	0.00
TRINITY	37,868	2.90	11.91	\$7,785,690	2.91	8.51
TULARE	2,433	0.19	0.00	\$214,647	0.08	0.00
TUOLUMNE	35,359	2.70	19.88	\$6,073,861	2.27	15.33
VENTURA	0	0.00	0.00	\$12,316	0.00	0.00
YOLO	0	0.00	0.00	\$0	0.00	0.00
YUBA	21,752	1.66	20.36	\$4,950,991	1.85	19.57
ALL COUNTIES	1,307,337	100.00	11.44	\$267,417,273	100.00	7.54
TOTAL WITHIN NSO RANGE	851,284			\$193,999,229		

CALIFORNIA PRIMARY WOOD PRODUCTS AND BIOMASS ENERGY FACILITIES
(Within Northern Spotted Owl Range Highlighted)



California Primary Wood Products and Biomass Energy Facilities

(Within Northern Spotted Owl Range Highlighted)

Last Update: Aug 30, 2013

Wood Products Processing Facilities:

RecID	MapLabel	Status
1	Agwood Mill & Lbr.	Open
2	Berry's Sawmill	Open
3	Big Creek Lbr. Co. Sawmill	Open
4	Collins Pine Co. Sawmill	Open
5	Evergreen Pulp	Closed
6	Hambro Forest Products Particle Bd.	Closed
7	Harwood Products Sawmill	Liquidated
8	Humboldt Flakeboard Particle Bd.	Liquidated
9	JH Baxter Wood Preservation	Other Type
10	Mad River Lbr. Sawmill	Open
11	Mendocino Forest Products Sawmill	Open
12	Humboldt Redwood Co. Sawmill	Open
13	Arcata Forest Products Sawmill	Open
14	Redwood Empire Philo Sawmill	Closed
15	Redwood Empire Cloverdale Sawmill	Open
16	Roseburg Forest Products Veneer Mill	Open
17	Schmidbauer Lbr. Co. Sawmill	Open
18	Shasta Green Sawmill	Open
19	Sierra Cedar Products Sawmill	Liquidated
20	Sierra Forest Products Sawmill	Open
21	SPI Anderson Sawmill	Open
22	SPI Arcata Sawmill	Open
23	SPI Burney Sawmill	Open
24	SPI Camino Sawmill	Closed
25	SPI Shasta Lk. Sawmill	Open
26	SPI Lincoln Sawmill	Open
27	SPI Oroville Cedar Sawmill	Open
28	SPI Quincy Sawmill	Open
29	SPI Chinese Camp Sawmill	Open
30	SPI Sonora Standard Sawmill	Open
31	Sierra Pine Martell Particle Bd.	Open
32	Sierra Pine Rocklin MDF	Closed
33	Calif. Redwood Co., Korbelt Sawmill	Open
34	Calif. Redwood Co., Orick Sawmill	Liquidated
35	Sound Stud Sawmill	Closed

RecID	MapLabel	Status
36	Timber Products Veneer Mill	Open
37	Trinity River Lbr Co. Sawmill	Open
38	Willits Redwood Sawmill	Open
39	California Wood Shavings	Open
40	Priority Pallets Sawmill	Open
41	SPI Keystone Bark Plant	Open
42	Lassen Forest Products	Open
43		
44		
45		
46		
47		
48		
49		Open
50	Mallard Creek Shavings/Pellets	Open
51	American Wood Fiber	Open
52		
53		
54		
55		
56		
57		
58		
59		
60		

	* Direct and Indirect	
	<u>MBF</u>	<u>Employment</u>
Total Processing Capacity	2,044,000	24,528
Total Processing Capacity within NSO Range	964,000	11,568

*6.4 direct jobs/mmbf + 2.1 economic multiplier for indirect and induced jobs (12.8 jobs/mmbf). Jobs per million board feet calculated for California sawmill and logging sectors (SIC 241 and 242) from 1996 Annual Survey of Manufacturers website <http://www.census.gov/epcd/ec97sic/E97SCAD.HTM>. \$ values are in constant dollars for the year 2000. Employment multiplier: 2.1 calculated for California from USDA Forest Service FEMAT report, July 1993.

Biomass Energy Facilities:

RecID	Status	MapLabel	Name	MW_Gross	ST
1	Idle	Air Products Stockton Biomass Power	AIR PRODUCTS STOCKTON	45.000	CA
2	Idle	Big Valley Biomass Power	BIG VALLEY BIOMASS POWER	7.500	CA
3	Operational	Blue Lake Biomass Power	BLUE LAKE POWER	11.000	CA
4	Operational	Buena Vista Biomass Power	BUENA VISTA BIOMASS POWER	18.500	CA
5	Operational	Burney Forest Power	BURNEY FOREST POWER	31.000	CA
6	Idle	Covanta Burney Mtn. Power	BURNEY MOUNTAIN POWER	11.000	CA
7	Pilot	Cal Forest Nursery Gasifier Pilot	CAL FOREST NURSERY	0.041	CA
8	Operational	Chowchilla Biomass Power	CHOWCHILLA	12.500	CA
9	Operational	Collins Pine Biomass Power	COLLINS PINE CO. PROJECT	12.000	CA
10	Operational	Greenleaf Desert View Power	DESERT VIEW	47.000	CA
11	Operational	Covanta Delano Power	DELANO ENERGY CO. INC.	50.000	CA
12	Operational	Korea East West Power Fairhaven	DG FAIRHAVEN	18.000	CA
13	Non-operational	Diamond Walnut Biomass Power	DIAMOND WALNUT	4.500	CA
14	Operational	Dinuba Energy	DINUBA ENERGY INC.	12.000	CA
15	Operational	Dixon Ridge Farms Gasifier Power Pilot	DIXON RIDGE FARMS	0.100	CA
16	Operational	DTE Stockton Biomass Power	DTE STOCKTON (POSDEF)	45.000	CA
17	Non-operational	Freshwater Pulp Biomass Power	FRESHWATER PULP	50.000	CA
18	Operational	Greenleaf Honey Lake Power	HONEY LAKE POWER	32.000	CA
19	Idle	Imperial Valley Resource Recovery Power	IMPERIAL VALLEY RESOURCE RECOVERY PROJECT	18.000	CA
20	Operational	Shasta Renewables	KIARA SOLAR (WHEELABRATOR HUDSON)	7.200	CA
21	Idle	Madera Power	MADERA POWER LLC	28.000	CA
22	Operational	Covanta Mendota Power	MENDOTA BIOMASS POWER LTD	25.000	CA
23	Operational	Merced Power	MERCED POWER (EL NIDO)	12.500	CA
24	Non-operational	Mesquite Lake Resource Recovery Power	MESQUITE LAKE RESOURCE RECOVERY	18.500	CA
25	Operational	Mt. Poso Cogen	MT. POSO COGENERATION	44.000	CA
26	Idle	Covanta Mt. Lassen Power	MT. LASSEN POWER	11.500	CA
27	Idle	Covanta Pacific Oroville Power	PACIFIC OROVILLE POWER INC.	18.000	CA
28	Operational	Covanta Pacific Ultrapower Chinese Station	PACIFIC ULTRAPOWER CHINESE STATION	22.000	CA

29	Operational	Phoenix Energy	PHOENIX ENERGY	0.500	CA
30	Active Project	Placer County Biomass Power Project	PLACER COUNTY	3.000	CA
31	Operational	Rio Bravo Fresno Biomass Power	RIO BRAVO FRESNO	25.000	CA
32	Proposal	Rio Bravo Jasmin Proposed Conversion	RIO BRAVO JASMIN	40.000	CA
33	Proposal	Rio Bravo Poso Proposed Conversion	RIO BRAVO POSO	40.000	CA
34	Operational	Rio Bravo Rocklin Biomass Power	RIO BRAVO ROCKLIN	25.000	CA
35	Operational	Roseburg Forest Products Biomass Power	ROSEBURG FOREST PRODUCTS	12.000	CA
36	Operational	Greenleaf Eel River Power	EEL RIVER	28.000	CA
37	Non-operational	Sierra Biomass Power	SIERRA BIOMASS (AUBERRY)	7.500	CA
38	Operational	Sierra Biomass Power Corp.	SIERRA POWER CORP.	9.500	CA
39	Non-operational	Soledad Energy	SOLEDAD ENERGY	13.400	CA
40	Operational	SPI Burney Biomass Power	SPI BURNEY	20.000	CA
41	Operational	SPI Anderson Biomass Power	SPI ANDERSON	4.000	CA
42	Active Project	SPI Anderson Biomass Power Project	SPI ANDERSON PROJECT	31.000	CA
43	Operational	SPI Lincoln Biomass Power	SPI LINCOLN	18.000	CA
44	Idle	SPI Loyalton Biomass Power	SPI LOYALTON	20.000	CA
45	Operational	SPI Quincy Biomass Power	SPI QUINCY	25.000	CA
46	Operational	SPI Sonora Standard Biomass Power	SPI STANDARD	8.000	CA
47	Non-operational	Susanville Biomass Power Project	SUSANVILLE	12.500	CA
48	Operational	Greenleaf Tracy Biomass Power	TRACY BIOMASS PLANT	19.400	CA
49	Operational	Wadham Biomass Power	WADHAM	26.500	CA
50	Pilot	West Biofuels Gasifier Pilot	WEST BIOFUELS	0.200	CA
51	Operational	Wheelabrator Shasta Biomass Energy	WHEELABRATOR SHASTA	50.000	CA
52	Operational	DTE Woodland Biomass Power	WOODLAND BIOMASS POWER LTD	25.000	CA
53					
54					
55					
56					
57					
58	Operational	Central Valley Ag Grinding	PHOENIX ENERGY	1.000	CA
59	Active Project	Blue Lake Rancheria	BLUELAKE RANCHERIA	0.750	CA

60	Active Project	North Fork Project	North Fork Project	3.000	CA
61	Proposal	Wilseyville Proposed Project	Wilseyville Proposed Project	3.000	CA
62	Proposal	Quincy Proposed Project	Quincy Proposed Project	0.000	CA
63	Proposal	Devils Garden Conservation Camp Proposed Project	Devils Garden Conservation Camp Proposed Project	0.000	CA
64	Proposal	Trinity River Conservation Camp Proposed Project	Trinity Conservation Camp Proposed Project	0.000	CA
100	Operational	Dixon Ridge Farms Gasifier Power Pilot	DIXON RIDGE FARMS	0.100	CA
101	Cancelled	N/A	VALLEY BIO-ENERGY	33.000	CA
102					
103	Operational	Timber Products Veneer (Yreka)	TIMBER PRODUCTS	0.000	CA
104	Operational	Columbia Plywood	COLUMBIA PLYWOOD	0.000	CA

	<u>Gross MW</u>	<u>* Employees</u>
Total Operational:	697	3,415
Total Idle/Planned:	0	0
Total within NSO Range:	181.2	888

*4.9 direct, indirect, and induced jobs/MW

G. Morris, National Renewable Energy Lab (Nov. 1999). *The Value of the Benefits of U.S. Biomass Power*, Sec. 2.3.1, SR-570-27541, <http://www.nrel.gov/docs/fy00osti/27541.pdf>

USDA Forest Service, Region 5, State & Private Forestry Program