

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

**AMERICAN FOREST RESOURCE
COUNCIL et al.,**

Plaintiffs,

v.

**UNITED STATES FISH AND WILDLIFE
SERVICE et al.,**

Defendants,

Case No. 1:25-cv-01048-RJL

CENTER FOR BIOLOGICAL DIVERSITY,
P.O. Box 11374, Portland, OR 97211; **BIRD
ALLIANCE OF OREGON,** 5151 NW Cornell
Road, Portland, OR 97210; **CASCADIA
WILDLANDS,** P.O. Box 10455, Eugene, OR
97440; **CONSERVATION NORTHWEST,**
1829 10th Ave W, Suite B, Seattle, WA 98119;
**ENVIRONMENTAL PROTECTION
INFORMATION CENTER,** 145 G Street,
Suite A, Arcata, CA 95521; **KLAMATH
FOREST ALLIANCE,** 145 G Street, Suite A
Arcata, CA 95521; **KLAMATH-SISKIYOU
WILDLANDS CENTER,** P.O. Box 102
Ashland, OR 97520; **OREGON WILD,** 5825 N.
Greeley Ave., Portland, OR 97217,

Defendant-Intervenor-Applicants.

MOTION TO INTERVENE

Pursuant to Federal Rules of Civil Procedure 24(a) and (b), and Local Rule 7(j) of this Court, Center for Biological Diversity, Bird Alliance of Oregon, Cascadia Wildlands, Conservation Northwest, Environmental Protection Information Center, Klamath Forest Alliance, Klamath-Siskiyou Wildlands Center, and Oregon Wild (collectively, “Applicants”) respectfully move to intervene as a matter of right as defendants in this action. As explained fully in the accompanying Memorandum in Support of the Applicants’ Motion to Intervene,

Applicants meet all four criteria for intervention as of right: (1) this motion is timely; (2) Applicants maintain a protectable interest in preserving the November 2021 critical habitat rule (“November 2021 Rule”) for the northern spotted owl; (3) Applicants’ ability to protect their interests in the November 2021 Rule will be impaired by the disposition of this action unless they are allowed to intervene; and (4) Applicants’ interests are not adequately represented by Federal Defendants. FED. R. CIV. P. 24(a)(2).

In the alternative, Applicants invoke the Court’s discretion to grant permissive intervention. Applicants’ defenses to Plaintiffs’ claims involve common questions of fact and law to the claims in this action, and their intervention will not unduly delay or prejudice the adjudication of the existing parties’ rights. FED. R. CIV. P. 24(b)(1), (3).

Pursuant to Local Rule 7(m), counsel for Applicants conferred with counsel for the existing parties. Plaintiffs’ and Federal Defendants’ respective counsel responded that they reserve their position until they have had an opportunity to review the motion.

Dated: May 21, 2025

Respectfully submitted,

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**MEMORANDUM IN
SUPPORT OF MOTION TO
INTERVENE**

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INTRODUCTION

This case is the latest chapter in the long-running battle over protection of the highly imperiled northern spotted owl, a species listed as threatened under the Endangered Species Act (“ESA”), 16 U.S.C. §§ 1531–1544. At risk in this litigation is the northern spotted owl’s critical habitat designation, which protects structurally complex habitat in Washington, Oregon, and California essential to the species’ conservation. *Revised Designation of Critical Habitat for the Northern Spotted Owl*, 86 Fed. Reg. 62,606 (Nov. 10, 2021). Applicants’ motion to intervene is timely, and Applicants have a direct interest in the subject matter of this action due to their members’ protectible interests in the conservation of the northern spotted owl and its habitat, as well as Applicants’ decades of effort working to prevent the species’ extinction and promote its recovery. Plaintiffs ask this Court to vacate the northern spotted owl’s critical habitat rule and to reinstate an earlier critical habitat rule that arbitrarily excluded from protection nearly 3.5 million acres of habitat deemed by the best available science essential to the northern spotted owl’s survival and recovery. See Complaint, ECF 1, at 36. If granted, Applicants’ interests in the northern spotted owl’s conservation and recovery would be impaired, and existing parties to this action do not adequately represent Applicants’ interests. Accordingly, this Court should grant Applicants’ motion to intervene.

BACKGROUND

A medium-sized, chestnut-brown owl mottled with white spots, northern spotted owls inhabit the structurally complex forests of northern California, western Oregon, western Washington, and southern British Columbia. The U.S. Fish and Wildlife Service (“Service”) listed the northern spotted owl as a threatened species in 1990, in large part due to the destruction of its habitat by historic and ongoing timber harvesting. *Determination of Threatened Status for*

the Northern Spotted Owl, 55 Fed. Reg. 26,114 (June 26, 1990) (codified at 50 C.F.R. § 17.11(h)). Recently, in 2020, the Service determined that the northern spotted owl warrants reclassification as an endangered species because it continues to decline towards extinction due to habitat loss, continued timber harvest, and impacts from invasive barred owls, among other threats. *12-Month Finding for the Northern Spotted Owl*, 85 Fed. Reg. 81,144, 81,145–46 (Dec. 15, 2020).

Recognizing that habitat loss is a primary threat to the northern spotted owl, the Service first designated critical habitat for it in 1992, protecting owl habitat on public forestland in California, Oregon, and Washington. *Determination of Critical Habitat for the Northern Spotted Owl*, 57 Fed. Reg. 1,796 (Jan. 15, 1992). Critical habitat are areas found to be essential to the northern spotted owl’s survival and recovery, based on the best available science and after taking account of economic and other relevant impacts. 16 U.S.C. § 1533(b)(2). These areas provide essential protections for the northern spotted owl and its habitat by preventing federal agencies from permitting, funding, or carrying out actions that “destroy” or “adversely modify” such habitat. 16 U.S.C. § 1536(a)(2). Because of the seriousness of the threat posed by habitat destruction, critical habitat is one of the most important protections provided by the ESA for the northern spotted owl.

Since the original designation, the northern spotted owl’s critical habitat has been a source of near-constant litigation. In 2008, a timber industry lawsuit between many of the Plaintiffs here and the Bush Administration led the Service to reduce the amount of protected habitat by 1,574,700 acres. *Revised Designation of Critical Habitat for the Northern Spotted Owl*, 73 Fed. Reg. 47,326 (Aug. 13, 2008). In 2008, claiming the owl still enjoyed *too much* habitat protection under the 2008 critical habitat designation, timber industry groups filed suit to

gain even further critical habitat reductions and open additional areas to logging of mature and old-growth trees. Conservation groups, including many of the Applicants here, intervened and challenged the Service's reduction, citing demonstrable political interference and the failure to comply with the ESA's best science mandate. *Carpenters Industrial Council v. Kempthorne*, No. 08-1409-EGS (D.D.C.). This Court subsequently granted the Government's request for a voluntary remand of the 2008 critical habitat designation. *Carpenters Indus. Council v. Salazar*, 734 F. Supp. 2d 126, 128 (D.D.C. 2010).

The Service then retracted the downward revision, issued a draft economic analysis for a new critical habitat rule, and in 2012 published a critical habitat rule based on the best available science that expanded the prior designation and protected approximately 9.5 million acres of federal and state forestland in California, Oregon, and Washington as essential to the northern spotted owl's survival and recovery. *Designation of Revised Critical Habitat for Northern Spotted Owl*, 77 Fed. Reg. 71,876, 71,876–77 (Dec. 4, 2012).

Timber industry groups and several sympathetic counties challenged the 2012 critical habitat rule in 2013. *Pacific Nw. Regional Council of Carpenters et al. v. Bernhardt et al.*, No. 13-361-RJL (D.D.C.). Plaintiffs in that case and the Service ultimately settled again, with the Service agreeing to propose a revised critical habitat rule that identified proposed exclusions under ESA Section 4(b)(2) by July 15, 2020, and then submit a final revised critical habitat rule or withdraw the proposed rule by the end of December 2020. *Id.* at ECF 126, ¶ 2.

The Service first proposed to exclude 184,476 acres of Bureau of Land Management ("BLM") lands in southwest Oregon "where programmed timber harvest is planned to occur" under the BLM's 2016 Resource Management Plans ("RMPs"). *Proposed Rule, Revised Designation of Critical Habitat for the Northern Spotted Owl*, 85 Fed. Reg. 48,487 (Aug. 11,

2020). Conservation groups, including many of the Applicants here, submitted comments on the proposed revisions, opposing the elimination of critical habitat on this set of BLM lands as contrary to the best available science and arbitrary and capricious given the uncertain status of BLM's 2016 RMPs (which were challenged by the same timber groups in separate litigation also before this Court) and the Service's own past statements that the areas proposed for exclusion were essential to the northern spotted owl's survival and recovery. *See* Declaration of Noah Greenwald, ¶ 10.

Following this proposed revision but before the Service issued a final rule, the agency responded to a petition from one of the Applicants here to "uplist" the northern spotted owl from threatened to endangered. *12-Month Finding for the Northern Spotted Owl*, 85 Fed. Reg. 81,144 (Dec. 15, 2020); *see* Declaration of Thomas Wheeler, ¶ 7. The Service found the northern spotted owl warranted listing as an endangered species, but that this "uplisting" was "precluded by higher priority actions. . . ." 85 Fed. Reg. at 81,144. Even while declining to act, the Service emphasized the continuing threat habitat loss poses to the species, stating:

Habitat loss was the primary factor leading to the listing of the northern spotted owl as a threatened species, and it continues to be a stressor on the subspecies due to the lag effects of past habitat loss, continued timber harvest, wildfire, and a minor amount from insect and forest disease outbreaks. . . . Populations of northern spotted owls in several long-term demographic monitoring areas have declined more than 70 percent since the early 1990s, and the extinction risk for northern spotted owl populations has increased, particularly in Washington and Oregon.

Id. at 81,145. The agency also found the owl to be highly threatened by the invasive barred owl due to competition for resources, including habitat. *Id.* Consequently, according to the agency, the northern spotted owl continues to decline across its range with habitat loss remaining a primary threat to the species.

A month after recognizing the northern spotted owl's dire status, on January 15, 2021, the Service published a final rule reducing the species' protected critical habitat. *Final Rule, Revised Designation of Critical Habitat for the Northern Spotted Owl*, 86 Fed. Reg. 4,820 (Jan. 15, 2021) ("January 2021 Rule"). The January 2021 Rule dramatically increased the narrow exclusions in the proposed rule: instead of excluding 204,653 acres, the final rule excluded nearly 3.5 million acres of habitat previously deemed critical to the conservation of the owl. *Id.* at 4831.

The final rule not only increased the number of acres of critical habitat excluded by nearly 17-fold, but also, for the first time, excluded federal lands managed by the U.S. Forest Service and BLM lands that did not fall under the Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act of 1937, Pub. L. No. 75-405, 50 Stat. 874 (Aug. 28, 1937) (codified as 43 U.S.C. §§ 2601 *et seq.*). Only the Tribal lands exclusion remained the same from the proposed to final rule. The Service received numerous comments—including from Applicants and state natural resource agencies in Washington and California—expressing surprise and opposing the exclusions as well as the Service's rationale, asserting they had not had the opportunity to meaningfully comment on them.¹

In slashing nearly 3.5 million acres of northern spotted owl critical habitat, the Service relied solely on the exclusion process under ESA § 4(b)(2), 16 U.S.C. § 1533(b)(2). As justification, the Service asserted without meaningful support that the exclusions could lead to increased timber production, possibly decrease the risk of catastrophic wildfire, and protect

¹ For instance, the Washington Department of Fish and Wildlife expressed surprise at the 765,175 acres excluded in their state under the January 2021 final rule, and the California Department of Fish and Wildlife commented that the proposed rule "did not identify lands excluded in their state with enough specificity to provide a meaningful analysis and comment." *Revised Designation of Critical Habitat for the Northern Spotted Owl*, 86 Fed. Reg. 62,606, 62,610 (Nov. 10, 2021).

“local custom and culture.” 86 Fed. Reg. 4,839–40. The Service also noted that the exclusions were in line with the Trump administration’s deregulatory agenda. *Id.* at 4,840.

The January 2021 Rule had an effective date of March 16, 2021. On March 1, 2021, before the rule went into effect, the Service issued a rule changing the effective date to April 30, 2021. *Revised Designation of Critical Habitat for the Northern Spotted Owl; Delay of Effective Date*, 86 Fed. Reg. 11,892 (March 1, 2021) (“Delay Rule”). The Delay Rule was accompanied by a 30-day comment period to allow the public to comment on the January 2021 Rule and on whether further delay of the effective date was appropriate. *Id.* The Service explained that delay of the January 2021 Rule’s effective date was necessary because of the substantial differences between the proposed and final rules, and the significant defects raised about the January 2021 Rule in multiple notices of intent to sue that the Service had received. *Id.* at 11,893. The Service further noted that members of Congress sought review of the rule and expressed concerns regarding its additional and unexpected critical habitat exclusions in a letter to the Department of the Interior Inspector General. *Id.* Based on comments received in response to the Delay Rule, the Service further delayed the effective date of the January 2021 Rule to December 15, 2021. *Revised Designation of Critical Habitat for the Northern Spotted Owl; Delay of Effective Date*, 86 Fed. Reg. 22,876 (April 30, 2021).

Conservation groups, including several of the Applicants here, sued the Service on March 23, 2021 over its issuance of the January 2021 Rule, alleging ESA and APA violations. *Audubon Society of Portland et al v. U.S. Fish and Wildlife Service*, No. 3:21-cv-00443-JR (D. Or.).

The Service then withdrew the January 2021 Rule and issued a revised critical habitat designation for the owl on November 10, 2021, which is now at issue in the present lawsuit. *Revised Designation of Critical Habitat for the Northern Spotted Owl*, 86 Fed. Reg. 62,606

(Nov. 10, 2021). The November 2021 Rule, using the best available scientific and commercial data, revised the sweeping exclusions contained in the January 2021 Rule, excluding approximately 204,294 acres rather than nearly 3.5 million acres. *Id.*

APPLICANTS

Applicants are environmental conservation organizations that have actively worked to protect the northern spotted owl and its critical habitat in Washington, Oregon, and California for several decades, and each has an interest in the outcome of this case. *See generally* Greenwald Decl.; Wheeler Decl.; Declaration of George Sexton; Declaration of Josh Laughlin; Declaration of David Werntz; Declaration of Doug Heiken; Declaration of Joe Liebezeit; and Declaration of Kimberly Baker. Each of the Applicants has commented on various iterations of proposed critical habitat revisions and/or the draft northern spotted owl recovery plan, and all have been parties in litigation concerning protections for northern spotted owls and their critical habitat under the ESA. *See* Greenwald Decl. ¶¶ 4, 6–11; Wheeler Decl. ¶¶ 7–10; Sexton Decl. ¶¶ 5–9, 14; Laughlin Decl. ¶¶ 4, 6–9, 15; Werntz Decl. ¶¶ 5–9; Heiken Decl. ¶¶ 6–8; Liebezeit Decl. ¶¶ 4–7; Baker Decl. ¶¶ 2–5, 7. Applicants have members who enjoy the existence of the northern spotted owl in its complex forest habitat in Washington, Oregon, and California for recreational, scientific, aesthetic, and professional purposes. *See generally* Greenwald Decl., Wheeler Decl., Sexton Decl., Laughlin Decl., Werntz Decl., Heiken Decl. ¶¶ 9–13; Liebezeit Decl. ¶¶ 8, 12–14; Baker Decl. ¶¶ 5–6. As a result, the interests of Applicants and their members will be harmed if the November 2021 Rule is remanded and/or vacated and the January 2021 Rule is reinstated, removing vital habitat protections from millions of acres essential to the northern spotted owl’s survival and recovery. *See* Greenwald Decl. ¶¶ 22–23; Wheeler Decl. ¶¶ 12–14; Sexton Decl. ¶¶

9–15; Laughlin Decl. ¶¶ 12–15; Werntz Decl. ¶¶ 13–16; Heiken Decl. ¶¶ 11–13, 16–19; Liebezeit Decl. ¶¶ 14–17; Baker Decl. ¶¶ 6, 13–17.

CENTER FOR BIOLOGICAL DIVERSITY (“Center”), a non-profit 501(c)(3) organization with field offices throughout the United States, including in California, Oregon, and Washington, D.C. Greenwald Decl. ¶¶ 2–3. The Center works through science, law, and creative media to secure a future for all species, great or small, hovering on the brink of extinction. *Id.* ¶ 2. The Center has over 93,000 members. *Id.* ¶ 3. The Center and its members are concerned with the conservation of imperiled species, including the northern spotted owl, and the effective implementation of the ESA. *Id.* ¶¶ 2–3. The Center has commented on several iterations of the northern spotted owl’s critical habitat designation, *Id.* ¶¶ 8, 10, 13, and was a plaintiff-intervenor and defendant-intervenor in *Carpenters Indus. Council*, 734 F. Supp. 2d 126, the case that ultimately led to the adoption of the January 2021 Rule, as well as a plaintiff in *Audubon Society of Portland et al v. U.S. Fish and Wildlife Service*, No. 3:21-cv-00443-JR (D. Or.), which challenged the January 2021 Rule. *Id.* ¶¶ 7, 11.

BIRD ALLIANCE OF OREGON (“BAO”) is an Oregon nonprofit organization with 12,000 members that has worked to inspire all people to love and protect birds, wildlife, and the natural environment upon which life depends since its founding in 1902. Liebezeit Decl. ¶¶ 2–3. BAO works to protect imperiled species, reduce threats to birds across the Oregon landscape, and preserve high-priority habitat through science-based advocacy, environmental education, and wildlife rehabilitation. *Id.* ¶ 3. BAO has a long history of working to protect northern spotted owls, including petitioning the Service to list the northern spotted owl under the Endangered Species Act in August 1987. *Id.* ¶ 4. Over the ensuing four decades, BAO has continued to work for the conservation and recovery of the northern spotted owl through advocacy for stronger

protections, educating the public on issues related to the species, and rehabilitating northern spotted owls at BAO's Wildlife Care Center. *Id.* ¶¶ 3–8, 14.

CASCADIA WILDLANDS (“Cascadia”) is a nonprofit organization incorporated in Oregon with an office in Eugene, Oregon. Laughlin Decl. ¶ 1. Cascadia has approximately 15,000 members and supporters throughout the Cascadia bioregion, many of whom use federal forests and waterways for recreational, scientific, and aesthetic purposes. *Id.* ¶ 2. Cascadia's members are interested in and support the organization's work to protect and restore the ecosystems and species of the Cascadia bioregion. *Id.* Cascadia's members derive substantial benefits from the existence of older forest habitat and the myriad species that habitat supports, including threatened northern spotted owls, through observation, study, photography, and recreation. *Id.* Some of Cascadia's members live adjacent to public lands and utilize the areas for hunting, fishing, birding, hiking, and other recreational opportunities. *Id.*

CONSERVATION NORTHWEST (“CNW”) is a non-profit regional conservation organization founded in 1989 and based in Seattle, Washington. CNW's mission is to protect and connect habitat and restore imperiled wildlife from the Pacific Coast to the Canadian Rockies. Werntz Decl. ¶ 1, 4. CNW has over 17,000 members and supporters and engages in science-based advocacy through collaboration on projects that protect wildlife habitat and restore forest and watershed ecological resilience. CNW is an active voice strongly advocating for imperiled species such as the northern spotted owl, marbled murrelet, Canada lynx, grizzly bear, wolf, wolverine, Pacific fisher, Columbia basin sage grouse, Columbia basin pygmy rabbit, and woodland caribou. CNW and its members use, enjoy, recreate, and engage in other pursuits on public lands within the range of the northern spotted owl. *Id.* ¶ 3.

ENVIRONMENTAL PROTECTION INFORMATION CENTER (“EPIC”) is a 501(c)(3) nonprofit environmental organization that advocates for the science-based protection and restoration of Northwest California’s forests, rivers, and wildlife with an integrated approach combining public education, citizen advocacy, and strategic litigation. The northern spotted owl is one of the focal species for the organization and EPIC has led efforts to better protect the owl, including petitioning to “uplist” the owl from “threatened” to “endangered” and advocating for the designation of critical habitat for the owl under the Endangered Species Act. Wheeler Decl. ¶ 3, 12.

KLAMATH FOREST ALLIANCE (“KFA”) is a nonprofit organization dedicated to protecting mature and old-growth forests, biodiversity, habitat connectivity and the ecological integrity of public lands and rivers in the Klamath Siskiyou Mountains. Baker Decl. ¶ 2. Founded on the Wild and Scenic Salmon River by residents concerned with logging on the Klamath National Forest, and incorporated in 1989, KFA has a long history of defending the wildlife and wild places surrounding the rural river communities of the region, including advocating extensively for the northern spotted owl. *Id.* ¶¶ 2–3. With over 500 members and supporters, and offices in Arcata, California, and the Applegate Valley of southern Oregon, KFA promotes sustainable ecosystems and communities through a combination of place-based comments, science, environmental law, public outreach, collaboration and, as a last resort, litigation. *Id.*

KLAMATH-SISKIYOU WILDLANDS CENTER (“KS Wild”) is a non-profit organization incorporated in Oregon with offices in Ashland, Oregon. Sexton Decl. ¶ 2. KS Wild has approximately 7,000 members, with most members concentrated in southern Oregon and northern California. *Id.* KS Wild is dedicated to preserving the unique biological diversity of the

Klamath-Siskiyou region in southwest Oregon and northwest California. *Id.* ¶¶ 2–3. KS Wild monitors federal public lands to ensure that management activities comply with relevant federal laws, including environmental laws. *Id.* ¶¶ 3–5. Over the past two and a half decades, KS Wild has sought to protect spotted owl populations and old-growth habitat on five National Forests and two BLM Districts. *Id.* ¶ 6.

OREGON WILD is a nonprofit organization with approximately 20,000 members and supporters throughout Oregon and the Pacific Northwest. Heiken Decl. ¶ 2. Oregon Wild is headquartered in Portland, Oregon, with satellite offices in Eugene, Bend, and Enterprise, Oregon. *Id.* Oregon Wild’s mission is to protect and restore Oregon’s wildlands, wildlife, and waters as an enduring legacy for future generations. *Id.* ¶¶ 2, 19. Oregon Wild’s wilderness, old-growth forest, and clean rivers/watersheds programs protect pristine drinking water, unparalleled recreation opportunities, and fish and wildlife habitat across Oregon. Oregon Wild’s members hike, recreate, bird watch, appreciate nature, and recreate throughout the range of the northern spotted owl, and the organization and its members have a long history of advocating for the northern spotted owl and the mature and old-growth forests it needs to survive. *Id.* ¶¶ 5–8.

ARGUMENT

I. Applicants Have Article III Standing

An organization has standing if: (1) at least one of their members would have standing to sue in their own right; (2) the interests they seek to protect are germane to their purpose; and (3) “neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Hunt v. Wash. State Apple Advert. Comm’n*, 432 U.S. 333, 343 (1977).²

² Applicants easily satisfy the second and third *Hunt* factors. *See, e.g.*, Greenwald Decl. ¶ 4 (stating that the “loss of the old-growth forest habitat on which the northern spotted owl depends is a detriment to the [Center for Biological Diversity’s] goal of protecting and restoring

An organization's members have standing, in turn, if: (1) they are under threat of suffering 'injury-in-fact' that is actual, imminent, concrete, and particularized; (2) the alleged harm is fairly traceable to the challenged action of the defendant; and (3) it is likely that a favorable judicial decision will prevent or redress the injury. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992).

Applicants and their members use and enjoy northern spotted owl habitat in Washington, Oregon, and California for recreational, scientific, aesthetic, and professional purposes, including the particular areas that could be excluded from protection should Plaintiffs prevail in this lawsuit. Wheeler Decl. ¶¶ 3–6, 10–14; Sexton Decl. ¶¶ 2–7, 9–15; Laughlin Decl. ¶¶ 2–3, 8–17; Wertz Decl. ¶¶ 8–16; Heiken Decl. ¶¶ 10–15; Liebezeit Decl. ¶¶ 8–15; Baker Decl. ¶¶ 6–11, 16; Greenwald Decl. ¶¶ 19–21. Applicants have members who reside near, visit, or otherwise use and enjoy areas that are home to northern spotted owls in a variety of ways, including for hiking, camping, backpacking, horseback riding, bird watching, wildlife photography, study, and whitewater rafting. *Id.* Applicants and their members derive scientific, professional, recreational, and aesthetic enjoyment from the existence of northern spotted owls in the wild, as well as the conservation benefit provided to the species by the critical habitat designation in the November 2021 Rule.³

populations of imperiled species and their habitat” and explaining that the organization “has been actively and significantly involved in the fight to protect the northern spotted owl and its critical habitat for more than 25 years.”).

³ Applicants have filed eight declarations—the declarations of Noah Greenwald, Thomas Wheeler, George Sexton, Josh Laughlin, David Wertz, Doug Heiken, Joe Liebezeit, and Kimberly Baker—establishing their standing. *See generally* Greenwald Decl., Wheeler Decl., Sexton Decl., Laughlin Decl., Wertz Decl., Heiken Decl., Liebezeit Decl., Baker Decl. Ultimately, only one of the Applicants needs to demonstrate Article III standing for the motion to intervene to be granted. *See Mass. v. EPA*, 549 U.S. 497, 518 (2007) (“Only one of the petitioners needs to have standing to permit us to consider the petition for review.”).

For example, Noah Greenwald, a member of the Center for Biological Diversity for nearly 28 years, regularly visits northern spotted owl habitat for study, recreation, and solace. Greenwald Decl. ¶ 20. Mr. Greenwald studied the old-growth forest habitats that northern spotted owls live in when obtaining his master's degree in forest ecology and conservation, and through his later role as a spotted owl surveyor for the Oregon Cooperative Wildlife Research Unit developed "a keen scientific interest in and deep appreciation for the plight of the northern spotted owl and the serious threat logging presents to its survival." *Id.* ¶¶ 17–18.

A Pacific Northwest resident, Mr. Greenwald frequently visits mature and old-growth forests that are habitat for the northern spotted owl, including areas within the November 2021 critical habitat designation, for recreation, scientific, and spiritual reasons. *Id.* ¶¶ 19–20. He regularly hikes in Oregon's forests in hopes of hearing or seeing a northern spotted owl, and has specific plans to visit the upper Salmon River Trail, Burnt Lake Trail, Zig Zag Mountain Trail and other areas on the Mt. Hood National Forest that have habitat for the northern spotted owl in May or June of this year. *Id.* ¶ 21. When hiking, Mr. Greenwald looks for birds, including the northern spotted owl, and finds that connecting with the outdoors in this way "is essential for appreciating what we have in the Northwest and to gain a sense of a past that has so quickly faded." *Id.*

Mr. Greenwald has personal and scientific interests in seeing northern spotted owl habitat because he knows that adequate, structurally complex habitat is essential to the northern spotted owl's survival and recovery, and to his ability to see owls now and in the future. *Id.* ¶ 20. If the November 2021 critical habitat rule is vacated and is replaced by the January 2021 rule, as Plaintiffs seek in this case, Mr. Greenwald's interests in the northern spotted owl would be significantly harmed "because the loss of the protections . . . would result in fewer places for

[him] to go to visit in order to attempt to see or hear northern spotted owls, and put them even further on the path to extinction, making it less likely that [he] will be able to visit these areas and view northern spotted owls in the future.” *Id.* ¶¶ 22–23. This harm would be redressed, however, if this Court upholds the November 2021 critical habitat rule because the areas Mr. Greenwald enjoys visiting “would retain protections, making it more likely that [he] can visit them and view northern spotted owls in the future.” *Id.* ¶ 24.

Similarly, George Sexton, conservation director for Applicant KS Wild, explains that “[a]t every opportunity over the past 25 years, KS Wild has availed itself of the opportunity to attempt to influence federal land management to retain and restore northern spotted owl habitat rather than log and remove it” by participating in numerous land management planning processes that implicate the northern spotted owl and its habitat. Sexton Decl. ¶ 6. A focus of KS Wild’s conservation efforts are the federal public lands managed by the Bureau of Land Management. *Id.* ¶ 4. Based on his personal and professional experience, Mr. Sexton notes that “the Medford District BLM logs more old-growth northern spotted owl habitat than all of the other federal forest management entities combined. The Medford District BLM attempts to meet its 37 MMBF annual timber target almost exclusively through timber sale prescriptions that target and remove old-growth forests providing northern spotted owl Nesting, Roosting, and Foraging habitat.” *Id.* ¶ 8. Moreover, “[t]he January 2021 critical habitat rule specifically removed critical habitat designation from Medford District BLM forests located in the Harvest Land Base regardless of the presence or occupancy of spotted owls in those locations and irrespective of habitat connectivity concerns for the species due to the checkerboard land ownership pattern in southern Oregon. This removal of critical habitat designation from the BLM Harvest Land Base, which was retained in the November 2021 rule, has led to the acceleration of old-growth habitat

removal on BLM forest lands. Following the January 2021 critical habitat revision, the Medford District BLM has targeted old-growth forest habitat for removal regardless of long-term spotted owl occupancy history, past owl reproductive success, evidence of site-fidelity, or the presence of dispersing “floater” owls.” *Id.* ¶ 9. This past experience has compelled KS Wild to seek intervention in this case to prevent a similar outcome with respect to the November 2021 Rule challenged by Plaintiffs here. *Id.* ¶¶ 13–15.

If this Court vacates the November 2021 Rule and reinstates the January 2021 Rule, as Plaintiffs request, Complaint at 36, Applicants’ members’ interests in the northern spotted owl would be injured because the species’ habitat would enjoy significantly less protection from the harmful effects of logging on lands stripped of the November 2021 critical habitat designation. *See* Greenwald Decl. ¶¶ 22–23; Wheeler Decl. ¶¶ 12–14; Sexton Decl. ¶¶ 9–15; Laughlin Decl. ¶¶ 12–15; Werntz Decl. ¶¶ 13–16; Heiken Decl. ¶¶ 11–17, 19; Liebezeit Decl. ¶¶ 15–17; Baker Decl. ¶¶ 14–17. This harm to Applicants’ members would be avoided by a ruling from this Court upholding the November 2021 Rule, for such a ruling would keep in place protections for roughly 9.3 million acres of northern spotted owl habitat deemed essential to the species’ conservation and recovery. *See* Greenwald Decl. ¶¶ 20, 22; Wheeler Decl. ¶¶ 12–14; Sexton Decl. ¶¶ 13–15; Laughlin Decl. ¶ 17; Werntz Decl. ¶¶ 13–16; Heiken Decl. ¶ 14; Liebezeit Decl. ¶¶ 15–17; Baker Decl. ¶¶ 18.

II. Applicants Are Entitled to Intervene as of Right

The Court uses a four-part test to evaluate motions to intervene:

(1) the application to intervene must be timely; (2) the applicant must demonstrate a legally protected interest in the action; (3) the action must threaten to impair that interest; and (4) no party to the action can be an adequate representative of the applicant’s interests.

SEC v. Prudential Sec. Inc., 136 F.3d 153, 156 (D.C. Cir. 1998); *see also* Fed. R. Civ. P. 24(a). Practical considerations guide courts in applying this test. *See* Fed. R. Civ. P. 24, advisory committee's note. Here, Applicants satisfy each of these elements for intervention: (1) Applicants' motion is timely; (2) Applicants have a protectible interest in the northern spotted owl and its critical habitat, the subject matter of this litigation; (3) their interest in protecting the northern spotted owl from extinction may be impaired by the disposition of this action, which seeks to eliminate protections for northern spotted owl critical habitat; and (4) no existing party to the action adequately represents Applicants' interests.

A. Applicants' Motion to Intervene is Timely.

Because this litigation is in its earliest stages, having been filed only six weeks ago, there can be no question that Applicants' motion to intervene is timely. *Cf. County of San Miguel, Colo. v. MacDonald*, 244 F.R.D. 36, 38, 46 (D.D.C. 2007) (granting motion to intervene filed more than 90 days after the complaint). Federal defendants have not yet answered; no merits issue of any kind, much less a core issue, has yet been scheduled, briefed, or decided; and Applicants' participation will not delay any deadline set by this Court. *Cf. Appleton v. FDA*, 310 F. Supp. 2d 194, 195, 197 (D.D.C. 2004) (intervention timely when sought after the answer, and within two months of notification of suit).

B. Applicants Have a Protectable Interest in the Subject Matter of This Action.

As shown above, Applicants' and their members' strong interests in enjoying and protecting the northern spotted owl and the habitat on which it depends will be harmed if the November 2021 Rule is vacated and the January 2021 Rule is reinstated, as Plaintiffs seek. As such, Applicants have a clear, protectible interest in preservation of the November 2021 Rule, and this Court should grant Applicants' motion to intervene. *See Friends of Animals v. Kempthorne*, 452 F. Supp. 2d 64, 69 (D.D.C. 2006) (“[P]roposed intervenors of right need only an interest in the litigation—not a cause of action or permission to sue.”) (citation omitted);

Smith v. Pangilinan, 651 F.2d 1320, 1324 (9th Cir. 1981) (finding that a proposed intervenor need not have a specific legal or equitable interest but simply a “‘protectable interest’ in the outcome of the litigation of sufficient magnitude to warrant inclusion in the action”).

Rule 24(a)’s interests test is not a rigid standard, but rather “a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.” *Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967). It “has been interpreted in broad terms[,]” *Nat. Res. Def. Council v. EPA*, 99 F.R.D. 607, 609 (D.D.C. 1983), and this Circuit has observed that “[t]he right of intervention conferred by Rule 24 implements the basic jurisprudential assumption that the interest of justice is best served when all parties with a real stake in a controversy are afforded an opportunity to be heard.” *Hodgson v. United Mine Workers of Am.*, 473 F.2d 118, 130 (D.C. Cir. 1972).

There can be no doubt that Applicants have a stake in this case and the relief Plaintiffs seek. Applicants’ protectible interest is adequately demonstrated by the fact that they have constitutional standing, as established above. *See Supra* Section I; *Mova Pharm. Corp. v. Shalala*, 140 F.3d 1060, 1076 (D.C. Cir. 1998) (“That the [putative intervenor] has constitutional standing is alone sufficient to establish that [it] has ‘an interest relating to the property or transaction which is the subject of the action.’”). In addition, critical habitat is essential to the survival and recovery of the northern spotted owl, *Gifford Pinchot Task Force v. U.S. Fish & Wildlife Serv.*, 378 F.3d 1059, 1069–70 (9th Cir. 2004), and is the primary way in which the ESA works to conserve “the ecosystems upon which endangered species and threatened species depend” 16 U.S.C. § 1531(b). Critical habitat consists of the areas “within the geographical area occupied by the species, at the time it is listed . . . ,” which have features “essential to the conservation of the species[.]” *id.* § 1532(5)(i), as well as “specific areas outside the

geographical area occupied by the species at the time it is listed ..., upon a determination by the Secretary that such areas are essential for the conservation of the species.” *Id.* § 1532(5)(ii).

“Conservation,” in turn, means “the use of all methods and procedures which are necessary to bring any endangered or threatened species to the point at which the measures provided [by the ESA] are no longer necessary.” *Id.* § 1532(3).

Indeed, conservation of northern spotted owl habitat through critical habitat designation is necessary for the species’ continued existence. While the northern spotted owl once ranged widely from northern California to British Columbia, its range and abundance has been severely reduced by timber harvesting and widespread habitat loss. 2011 Revised Recovery Plan, at vi.⁴ This impact continues today and is likely to persist because it will take decades to repair the devastation wrought on the once-abundant old-growth forests the owls need to survive and recover. *Id.* at B-7–B-8 (“The habitat complexity that most definitions project as suitable habitat develops over multiple decades”). Increased wildfire in the owl’s range further necessitates the protection of existing habitat, as well as the protection of fire-affected forests, which are used by northern spotted owls for foraging, nesting, and roosting. *Revised Designation of Critical Habitat for the Northern Spotted Owl*, 86 Fed. Reg. 62,606, 62,631 (Nov. 10, 2021); *see also id.* at 62,636 (“Spotted owls use all burn severities and fire-created edges at different spatial scales, although the use may change over time and be dependent on proximity to existing high-quality nesting, roosting, and foraging habitat where protective cover and structural complexity were not as affected by fire”). The expansion of the invasive barred owl, which competes with the northern spotted owl for habitat, means that more acres must be protected to reduce resource

⁴ Available at https://ecos.fws.gov/docs/recovery_plan/RevisedNSORecPlan2011_1.pdf (Last visited May 15, 2025).

competition between the species. *Id.* at 62,633 (“a successful barred owl management strategy will be possible only if sufficient habitat for the northern spotted owl remains available for recovery”). Because habitat loss is one of the primary threats to northern spotted owls, habitat protections afforded to the species through critical habitat under the ESA are essential to its conservation. *See id.* at 62,637–38.

As detailed in Section I, conservation of the northern spotted owl and the structurally complex forest habitats on which it depends is core to Applicants’ missions. *See* Greenwald Decl. ¶¶ 4–14; Wheeler Decl. ¶¶ 12–14, Sexton Decl. ¶¶ 5–6, 9–10, 13–15, Laughlin Decl. ¶¶ 2–3, 6–9, 12–17, Werntz Decl. ¶¶ 5–8; Heiken Decl. ¶¶ 3–4; Liebezeit Decl. ¶¶ 3, 8–9, 12; Baker Decl. ¶¶ 2–7. Applicants include organizations that petitioned for the species’ listing under the ESA nearly 40 years ago, and they have worked tirelessly over the ensuing decades to protect, preserve, rehabilitate, and defend the species and the habitat necessary for its survival. *See, e.g.,* Heiken Decl. ¶¶ 3–8; Liebezeit Decl. ¶¶ 4–9; Baker Decl. ¶¶ 2–7. Many of these groups formed specifically to protect the native wildlife and ecological communities of late-successional forests in the Pacific Northwest and Northern California and in direct response to threats to these resources. *See, e.g.,* Heiken Decl. ¶¶ 2–4; Liebezeit Decl. ¶¶ 2–4; Baker Decl. ¶¶ 2–3. Their sustained efforts to protect northern spotted owl habitat reflects both their own organizational interests and the profound interest of their members, who live, work, and recreate in these areas, in preventing the northern spotted owl from sliding into extinction. *See, e.g.,* Heiken Decl. ¶¶ 14–15; Liebezeit Decl. ¶¶ 3, 8, 9–14 ; Baker Decl. ¶¶ 2–7.

C. Applicants’ Interests in the Northern Spotted Owl Will be Impaired if Plaintiffs Prevail.

Applicants’ interest in the conservation of the northern spotted owl, and the protections provided to the owl by the November 2021 Rule, will be impaired if Plaintiffs are successful in

reinstating the January 2021 Rule, which would eliminate millions of acres from the protections provided by the November 2021 Rule. As such, Applicants’ interest is “so situated that the disposition of the action may *as a practical matter* impair or impede the applicant’s ability to protect that interest.” Fed. R. Civ. P. 24(a) (emphasis added). When considering this impairment requirement, the Court should “‘look[] to the ‘practical consequences’ of denying intervention” *Fund for Animals v. Norton*, 322 F.3d 728, 735 (D.C. Cir. 2003). Intervention is warranted where, as here, “the task of reestablishing the status quo” if the plaintiff succeeds in its case “will be difficult and burdensome.” *Id.*

Plaintiffs ask this court to vacate the November 2021 Rule for the northern spotted owl and reinstate the January 2021 Rule. *See* Complaint at 36. If successful, Applicants’ interests would be harmed because years of effort that Applicants have spent working to protect the species and its habitat would be frustrated, *see, e.g.*, Greenwald Decl. ¶¶ 4–14; Wheeler Decl. ¶¶ 12–14; Sexton Decl. ¶¶ 5–6, 9–10, 13–15; Laughlin Decl. ¶¶ 2–3, 6–9, 12–17; Werntz Decl. ¶¶ 14–16; Heiken Decl. ¶¶ 6–8; Liebezeit Decl. ¶¶ 4–7, 15–17; Baker Decl. ¶¶ 14–17, as the November 2021 Rule follows the best available science while the January Rule excludes over 3.4 million acres of habitat that is essential to the conservation of the species. *Compare* 86 Fed. Reg. 4820 (January 2021 Rule) *with* 86 Fed. Reg. 62,606 (November 2021 Rule); *see also, e.g., Nat. Res. Def. Council*, 99 F.R.D. at 609 (finding pesticide manufacturers had a sufficient interest for the purposes of intervention because they received a benefit from the agency action being challenged).

Indeed, any reduction or elimination of critical habitat that will cause northern spotted owls to suffer further declines in abundance, productivity, and diversity would impair Applicants’ organizational and their members’ recreational, aesthetic, scientific, and professional

interests in the species. *See supra* at I; *see also, e.g., Idaho Farm Bureau Fed’n v. Babbitt*, 58 F.3d 1392, 1398 (9th Cir. 1995) (decision to remove species from endangered species list impairs conservation groups’ interest in its preservation); *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 528 (9th Cir. 1983) (“An adverse decision in this suit would impair the society’s interest in the preservation of birds and their habitats”). Accordingly, Plaintiffs’ success in this action would clearly impair Applicants’ interests in conserving the northern spotted owl and its critical habitat.

Moreover, Applicants’ interests would not be adequately protected through their participation in any future administrative processes or lawsuit that may result if Plaintiffs are successful in this case. *See Nat. Res. Def. Council v. Costle*, 561 F.2d 904, 910–11 (D.C. Cir. 1977) (granting intervention where the involvement of proposed intervenors “may lessen the need for future litigation to protect their interests”) (citing *Nuesse*, 385 F.2d at 698); *see also Atl. Sea Island Grp. LLC v. Connaughton*, 592 F. Supp. 2d 1, 7 (D.D.C. 2008) (finding that “[w]here the relief sought is to set aside agency action that affects a proposed intervenor, such relief could practically impair the proposed intervenor’s interest since the proposed intervenor could no longer rely on the agency’s announced decision and would need to restart the administrative process”). As such, and because this action seriously threatens Applicants’ interests in the northern spotted owl, this Court should grant Applicants’ motion to intervene.

D. The Existing Parties Do Not Adequately Represent Applicants’ Interests.

This final element is satisfied if there is *any* doubt that the existing parties will not adequately represent Applicants’ interests, as is the case here. *See Fund for Animals*, 322 F.3d at 735 (finding representation is inadequate “‘unless it is clear that the part[ies] will provide adequate representation for the absentee’”) (quoting *United States v. Am. Tel. & Tel. Co.*, 642

F.2d 1285, 1293 (D.C. Cir. 1980)); *see also Nuesse*, 385 F.2d at 703 (noting that the interests asserted by the applicant “need not be wholly ‘adverse’ before there is a basis for concluding that existing representation of a ‘different’ interest *may* be inadequate”). A party seeking to intervene as of right need only make a “minimal” showing that the representation of its interests “‘may be’ inadequate.” *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972). Once a party has met this minimal burden, “the burden is on those opposing intervention to show the representation for the absentee will be adequate.” *Am. Tel. & Tel. Co.*, 642 F.2d at 1293.⁵

The existing parties do not adequately represent Applicants’ interests because they are either directly opposed to their interests or are unlikely to adequately represent Applicants’ specific interests in protecting the northern spotted owl and its critical habitat. Plaintiffs’ interests are obviously directly opposed to Applicants’ interests as Plaintiffs seek to reduce critical habitat for the northern spotted owl, while Applicants would like to see habitat protections for the northern spotted owl increased, if changed at all. *See, e.g.*, Wheeler Decl. ¶ 14, Sexton Decl. ¶¶ 14–15, Laughlin Decl. ¶ 17, Werntz Decl. ¶¶ 13–15, Heiken Decl. ¶ 8; Baker Decl. ¶ 18.

And the Service may not adequately represent Applicants’ interests either. The D.C. Circuit has “often concluded that governmental entities do not adequately represent the interest of aspiring intervenors.” *Fund for Animals*, 322 F.3d at 736; *see also Friends of Animals*, 452 F. Supp. 2d 64.

⁵ Although the D.C. Circuit has been “inconsistent as to who bears the burden with respect to this factor,” *Fund for Animals*, 322 F.3d at 736 n.7, it most recently indicated that the burden “rests on those resisting intervention.” *In re Brewer*, 863 F.3d 861, 872 (D.C. Cir. 2017) (quoting *SEC v. Dresser Indus., Inc.*, 628 F.2d 1368, 1390 (D.C. Cir. 1980)). “In any event, *Trbovich* makes clear that the standard for measuring inadequacy of representation is low, and in this case it is satisfied regardless of who bears the burden.” *Fund for Animals*, 322 F.3d at 736 n.7.

Applicants are non-profit, public interest groups focused specifically on protecting the environment, the northern spotted owl, and its critical habitat. Protecting these interests is both germane and an important aspect of applicants' organizational missions. *See* Greenwald Decl. ¶¶ 2–13; Wheeler Decl. ¶ 14; Sexton Decl. ¶¶ 14–15; Laughlin Decl. ¶ 17; Werntz Decl. ¶¶ 3–5; Heiken Decl. ¶¶ 3, 8; Liebezeit Decl. ¶¶ 2–9, 11–12; Baker Decl. ¶¶ 2–3. Federal Defendants, by contrast, include executive branch agencies of the President of the United States whose “obligation is to represent the interests of the American people,” *Fund for Animals*, 322 F.3d at 736, a vastly broader interest than that held by Applicants. “It is, therefore, not hard to imagine how the interests of [proposed intervenors and federal defendants] might diverge during the course of litigation.” *Id.* The mere fact that the government may defend the same agency action that proposed intervenors seek to protect does not imply adequate representation because “a doubtful friend is worse than a certain enemy.” *Crossroads*, 788 F.3d at 314 (adding that the D.C. Circuit has “often concluded that governmental entities do not adequately represent the interests of aspiring intervenors” (quoting *Fund for Animals*, 322 F.3d at 736)).

Further, the government's mandate to design and enforce an entire regulatory system precludes it from adequately representing one party's interest in it. *People for the Ethical Treatment of Animals v. Babbitt*, 151 F.R.D. 6, 8 (D.D.C. 1993). Indeed, Federal Defendants are limited in their ability to adequately represent Applicants by their duty to represent the broader public interest. *See Safari Club Int'l v. Salazar*, 281 F.R.D. 32, 42 (D.D.C. 2012) (“[P]roposed intervenors' interests may be ‘more narrow and parochial’ than that of Federal Defendants, whose perspective is necessarily on the broader public interest.”) (citation omitted); *see also Dimond v. D.C.*, 792 F.2d 179, 192–93 (D.C. Cir. 1986) (finding an agency “would be shirking

its duty were it to advance [an individual's] narrower interest at the expense of its representation of the general public interest").⁶

The recent change in presidential administration raises doubts that the Service will vigorously defend against Plaintiffs' claims as policy priorities regularly shift with a new administration. *See Kleissler v. U.S. Forest Service*, 157 F.3d 964, 974 (3rd Cir. 1998) (granting

⁶ Applicants have been forced to protect their interests in the northern spotted owl and its habitat in court on numerous occasions. *See, e.g., W. Council of Industrial Workers*, No. 02-6100-AA (D. Or.); *Or. Nat. Res. Council v. Forest Service*, 59 F. Supp. 2d 1085 (W.D. Wash. 1999); *Nw. Ecosystem Alliance v. Rey*, 380 F. Supp. 2d 1175 (W.D. Wash. 2005); *Klamath-Siskiyou Wildlands Center v. Boody*, 468 F.3d 549, 553 (9th Cir. 2006); *Conservation Nw. v. Rey*, 674 F. Supp. 2d 1232, 1257 (W.D. Wash. 2009); *Conservation Nw. v. Rey*, No. C08-1067-JCC, 2011 WL 13193275 (W.D. Wash. July 6, 2011), *rev'd and remanded sub nom. Conservation Nw. v. Sherman*, 715 F.3d 1181 (9th Cir. 2013); *Pac. Coast Fed'n of Fishermen's Ass'n v. Nat'l Marine Fisheries Serv.*, 71 F. Supp. 2d 1063 (W.D. Wash. 1999), *aff'd in part, vacated in part sub nom. Pac. Coast Fed'n of Fishermen's Associations, Inc. v. Nat'l Marine Fisheries Serv.*, 253 F.3d 1137 (9th Cir. 2001), *opinion amended and superseded on denial of reh'g sub nom. Pac. Coast Fed'n of Fishermen's Ass'n, Inc. v. Nat'l Marine Fisheries Serv.*, 265 F.3d 1028 (9th Cir. 2001); *PCFFA v. NMFS*, 482 F. Supp. 2d 1248 (W.D. Wash. 2007); *Seattle Audubon Society v. Robertson*, 1991 U.S. Dist. LEXIS 10131 (W.D. Wash. 1991); *Seattle Audubon Society v. Evans*, 771 F. Supp. 1081 (W.D. Wash. 1991); *Lane County Audubon Society v. Jamison*, 958 F.2d 290 (9th Cir. 1992); *Seattle Audubon Society v. Moseley*, 798 F. Supp. 1473 (W.D. Wash. 1992); *Seattle Audubon Society v. Lyons*, 871 F. Supp. 1291 (W.D. Wash. 1994); *Seattle Audubon Society v. Moseley*, 80 F.3d 1401 (9th Cir. 1996); *Am. Forest Res. Council v. Hall*, 533 F. Supp. 2d 84 (D.D.C. 2008); *Carpenters Industrial Council, et al. v. Salazar*, 734 F. Supp. 2d 126 (D.D.C. 2010); *Am. Forest Res. Council v. Ashe*, 946 F. Supp. 2d 1 (D.D.C. 2013); *Carpenters Industrial Council, et al. v. Jewell, et al.*, No. 13-361 (D.D.C. filed March 21, 2013); *Am. Forest Res. Council v. Jewell*, 133 F. Supp. 3d 43, 44 (D.D.C. 2015); *Portland Audubon Society, et al. v. Hodel*, 866 F.2d 302 (9th Cir. 1989); *Portland Audubon Society v. Lujan*, 884 F.2d 1233 (9th Cir. 1989); *Northern Spotted Owl, et al. v. Hodel, et al.*, 716 F. Supp. 479 (W.D. Wash. 1988); *Northern Spotted Owl, et al. v. Lujan, et al.*, 758 F. Supp. 621 (W.D. Wash. 1991); *Portland Audubon Society v. Lujan*, 712 F. Supp. 1456 (D. Or. 1989), 795 F. Supp. 1489 (D. Or. 1992), *consolidated with Seattle Audubon Society v. Robertson*, 914 F.2d 1311 (9th Cir. 1990); *Marbled Murrelet, et al. v. Lujan*; *Portland Audubon Society, et al. v. Endangered Species Committee*, 984 F.2d 1534 (9th Cir. 1993); *CLR Timber Holdings, et al. v. Babbitt, et al.*, No. 94-6403-TC (D. Or. 1994); *Nw. Forest Resource v. Pilchuck Audubon Soc.*, 97 F.3d 1161 (9th Cir. 1996); *Douglas Timber Operators, Inc. v. Salazar*, 774 F. Supp. 2d 245 (D.D.C. 2011); *Pacific Rivers Council v. Shepard*, No. 11-CV-00442-HU (D. Or. filed April 8, 2011); *Swanson v. Salazar*, 951 F. Supp. 2d 75 (D.D.C. 2013); *Pacific Rivers Council v. United States Bureau of Land Management*, No.16-01598-JR (filed August 18, 2016).

intervention noting “it is not realistic to assume that the agency’s programs will remain static”); *Nat’l Parks Conservation Ass’n v. EPA*, 759 F.3d 969, 977 (8th Cir. 2014) (same); *Utah Ass’n of Counties v. Clinton*, 255 F.3d 1246, 1256 (10th Cir. 2001) (same). That is particularly the case here considering successive administrations have regularly changed northern spotted owl designated critical habitat. In fact, the previous iteration of this administration settled a lawsuit brought by many of these same plaintiffs challenging the 2012 critical habitat rule, agreeing to revise the 2012 rule and ultimately publishing the January 2021 Rule Plaintiffs seek to reinstate here. *Pacific Nw. Regional Council of Carpenters et al. v. Bernhardt et al.*, No. 13-361-RJL (D.D.C.). This administration may prefer to reinstate its own January 2021 Rule, impacting its position in this litigation.

As further evidence of this, on March 1, 2025 the current administration issued an Executive Order titled “Immediate Expansion of American Timber Production,” directing agencies to “suspend, revise, or rescind all existing regulations . . . and other agency actions that impose an undue burden on timber production.” Exec. Order No. 14,225, *reprinted in Immediate Expansion of American Timber Production*, 90 Fed. Reg. 11,365 (Mar. 6, 2025). The Order also calls on members of the Endangered Species Committee to “identif[y] obstacles to domestic timber production infrastructure specifically deriving from implementation of the ESA and recommend[] procedural, regulatory, and interagency” changes that would reduce hurdles to logging. *Id.* at 11,366. The northern spotted owl is frequently cited by the timber industry and its sympathizers as impeding timber harvest on federal lands, *see, e.g.*, Complaint ¶ 1, thus it is not mere conjecture that the northern spotted owl’s current critical habitat designation would be identified as one such “obstacle.”

Finally, Applicants have specific knowledge and expertise about the ESA and northern spotted owl critical habitat from their decades-long engagement on northern spotted owl issues. As such, even if the Service defend the November 2021 Rule—which is unlikely—Applicants would complement the Government’s briefing of the claims presented. *See Costle*, 561 F.2d at 912–13 (granting intervention for movant to protect its own interests and where it “may also be likely to serve as a vigorous and helpful supplement to [the agency’s] defense”). Accordingly, given the minimal showing necessary to find inadequate representation, the Court should grant the Applicants’ motion to intervene as intervenor-defendants as of right.

III. In the Alternative, Applicants Satisfy the Standard for Permissive Intervention

Applicants satisfy the criteria for intervention as of right under Rule 24(a)(2). However, if this Court decides they do not have a right to intervene, it should nonetheless grant permissive intervention. *See* FED. R. CIV. P. 24(b)(1)(B) (“On timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact.”). When addressing permissive intervention the court considers whether “the intervention will unduly delay or prejudice the adjudication of the case of the original parties.” *Env’t Def. Fund, Inc. v. Costle*, 79 F.R.D. 235, 244 (D.D.C. 1978). Courts also consider the “willingness and ability” of the prospective intervenor “to contribute to the full development of the factual and legal issues presented.” *Humane Soc’y of the United States v. Clark*, 109 F.R.D. 518, 521 (D.C. Cir. 1985). Intervention may also be granted “for [a] movant to protect its own interests and where it may also serve as a vigorous and helpful supplement to [the government]’s defense.” *Costle*, 561 F.2d at 912–13. Permissive intervention is discretionary, and district courts have “wide latitude” in determining whether to grant such status. *Equal Emp’t Opp. Comm’n v. Nat’l Children’s Ctr., Inc.*, 146 F.3d 1042, 1046 (D.C. Cir. 1998).

Applicants merit, at a minimum, permissive intervention in this case. As evidenced by (1) Applicants' prior litigation seeking to protect the northern spotted owl and its critical habitat, (2) Applicants' long history of working to protect imperiled forest-dependent species in the Pacific Northwest, and (3) this motion, Applicants have a unique perspective on, and a "willingness and ability" to contribute to the full development of this Court's consideration of Plaintiffs' claims. *Humane Soc'y*, 109 F.R.D. at 521. Based on their past advocacy and litigation efforts, Applicants have developed substantial organizational expertise on applying the ESA to the owl and its habitat. See Greenwald Decl. ¶¶ 2–13; Wheeler Decl. ¶¶ 3–14; Sexton Decl. ¶¶ 3–15; Laughlin Decl. ¶¶ 2–17; Werntz Decl. ¶¶ 3–16; Heiken Decl. ¶¶ 3–8; Liebezeit Decl. ¶¶ 4–17; Baker Decl. ¶¶ 2–14. Applicants will thus likely augment and supplement the defenses Federal Defendants may assert. Staggered briefing would support the efficient adjudication of the case and minimize any duplication of arguments. Finally, given the early stage of the litigation, the present parties will not suffer delay or prejudice by a grant of intervention.

CONCLUSION

For the foregoing reasons, Applicants respectfully request leave to intervene as defendants in this case as of right pursuant to Fed. R. Civ. P. 24(a)(2), or, in the alternative, by permission pursuant to Fed. R. Civ. P. 24(b)(1)(B).

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Respectfully submitted,

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