

Nov. 14, 2002

Mary Klee's Notes of 2:00 Conference Call In Ann Klee's Office

Attendees FWS: Pete Raynor, Wendi Weber, Sarah Hall, Mary Klee  
DOI: Ann Klee, Matt McCowan, Lynn Johnson  
USDA: Catherine Balsmitti, Ann Poli  
DOJ: Ilene Sobec, Jean Williams  
BLM : (did not catch their name)

(1) Plaintiff's Proposed Settlement Agreement: Marbled Murrelet & N. Spotted Owl  
Jean Williams faxed the proposed settlement to Gary Frazer, who in turn faxed it to TE yesterday.

Due dates are unrealistic. By Mon. Nov. 18, Gary Frazer, in consultation with R1 TE, will change the due dates to dates we can actually meet.

Critical habitat: Don't deal with CH until after the 5-year review issues are settled. We can't make any modifications to CH until 2005, and we can address CH issues in the matrix. We can do the same process that we did for the pygmy owl. Reassess CH and do an economic analysis. Removal of CH is not an option. We'll consider reassessing the CH and doing the economic analysis, but that's as far as we're willing to go. Ann said that the original designation of CH for these species is old and not that good.

DOJ is redrafting the settlement agreement to be more generic, without all of the details. DOJ will start the draft and leave blanks for the dates, which Gary Frazer will provide.

Jean Williams will ask Gary Frazer about the work plan. Do we want to just have an internal working document, rather than a formalized document? Yes.

Plaintiffs will get what they want for the 5-year status review and critical habitat.

Plaintiffs may want to have a meeting here in D.C. to negotiate the ESA part. We don't believe it's necessary to have a meeting. Discussions could continue via conference calls, e-mails, faxes, etc. but it would be a good move to accommodate them and agree to a meeting. Emphasize that we're bound by the dates set forth in the ESA and our regulations. These dates are not negotiable. We could send the plaintiffs the draft document for their review prior to the meeting. Meeting tentatively scheduled for Nov. 21 at 10:00. Gary Frazer and Pete Raynor/Ben Jessup will represent FWS at the meeting. Put as positive a spin as possible. Show the plaintiffs that we're willing to concede the on as many issues as we can, in order to accommodate their desire for increased timber harvest.

\* We must be as consistent as possible with all previous ESA litigation.

Plaintiffs want a stay, but we should push for a dismissal.

(2) ONC Lands

FS and BLM are working on 4 options, which range from  
nothing to survey and manage  
adjust riparian reserve and use adaptive management  
manage the region for increased thinning

Rebecca (Rebecca Watson, AS-LMM?) will pick a preferred option.

We can still get 1 billion board feet of timber if we choose the option that adjusts the riparian reserve with adaptive management.

We will have an answer to the plaintiffs by Nov. 21 and run it by DOJ first. It will be faxed to DOJ for review this afternoon. DOJ will contact the plaintiffs and provide a progress report.

(3) FOIA from Earthjustice

It was obviously written by someone who knows exactly what to ask for.

\* When withholding information, all federal agencies must coordinate the release of information from WO, RO, FO and respond consistently. We don't want to release information that another bureau withholds.

Evaluation of what information to withhold must be made on a document-by-document basis, and then we have to get SOL review and approval of the proposed withholding before releasing the documents to the requester. Each bureau should assign a coordinator for responding to this FOIA.

Lead for response should be at the WO level for each bureau. Johnny Hunt, the FWS FOIA Officer, will coordinate with Pete Raynor to determine exactly what the product will be and who it will be provided to. Since the FOIA was not addressed to the Secretary's office, then they do not need to be included in the response.

Who did the response to the FOIA on the energy task force? It was multi-agency. Use it as an example for how to respond to this FOIA.

What can be withheld as attorney-client privilege? Notes from a meeting to discuss response to a litigation can be withheld if SOL was present at the meeting. If no SOL was present, then the notes can not be withheld.

file = C:\Documents and Settings\Grote\Local Settings\Temp\c.lotus.notes.data\Ann Klee conf



Wendi Weber  
03/21/2003 05:10 PM

To: Lee Folliard/OSO/R1/FWS/DOI@FWS, Sarah  
Hall/RO/R1/FWS/DOI@FWS, Robin Bown/OSO/R1/FWS/DOI@FWS,  
Barry Mulder/RO/R1/FWS/DOI@FWS  
cc:  
Subject: Carol Dinkins to visit Dep. Sec Griles

I had a conversation with Gary about this meeting this afternoon and will share our discussion via phone. Gary did say he would let me know what comes out of the mtg, so I will hopefully hear something Monday.

Wendi Weber  
U.S. Fish and Wildlife Service  
Chief, Division of Endangered Species  
911 NE 11th Avenue  
Portland, OR 97232-4181  
phone: (503)231-6158  
fax: (503)231-6243  
e-mail:wendi\_weber@fws.gov

— Forwarded by Wendi Weber/RO/R1/FWS/DOI on 03/21/2003 05:04 PM —



Gary D Frazer  
03/21/2003 02:33 PM

To: Wendi Weber/RO/R1/FWS/DOI@FWS  
cc:  
Subject: Carol Dinkins to visit Dep. Sec Griles

— Forwarded by Gary D Frazer/ARL/R9/FWS/DOI on 03/21/2003 05:29 PM —

John Engbring  
03/21/2003 01:12 PM

To: Gary D Frazer/ARL/R9/FWS/DOI@FWS, Elizabeth  
Stevens/ARL/R9/FWS/DOI@FWS  
cc: Steve Thompson/SAC/R1/FWS/DOI@FWS, Kenneth  
McDermond/SAC/R1/FWS/DOI@FWS, Miel  
Corbett/SAC/R1/FWS/DOI@FWS, Michael  
Long/AFWO/R1/FWS/DOI@FWS, Randy  
Brown/AFWO/R1/FWS/DOI@FWS, Barry  
Mulder/RO/R1/FWS/DOI@FWS, Phillip  
Detrich/MOBILE/R1/FWS/DOI@FWS  
Subject: Carol Dinkins to visit Dep. Sec Griles

Gary: I just spoke with Carol Dinkins. The purpose of her visit with Griles is not specifically about Pacific Lumber Company. Rather, it has to do with the recent lawsuit on the NW Forest Plan, and the proposed settlement for the lawsuit.

Carol knows that part of the settlement is a review of the status of spotted owl and marbled murrelet. She plans to ask Griles to develop a review process that will include outside reviewers, as opposed to strictly an internal FWS review. She believes that the reviews should be performed by independent experts, not members of the recovery teams that might have previous positions to justify.

A few points that she plans to make are:

- N. spotted owls in California are doing well
- N. spotted owls in California may be a distinct population segment, separate from WA & OR
- Murrelets from Canada down to California may be part of one, large mobile population
- Current information does not show murrelets are in decline
- Some areas designated as murrelet critical habitat have few if any murrelets

both the owl and murrelet reviews. I think you should also assume, for the purposes of redesigning your process, that the integration of outside experts into the data gathering, synthesis, and analysis will obviate the need for the separate expert/peer review you were planning to do.

Let me know if you find this impossible to accomplish while still meeting our deadline. You will, of course, have to be very persuasive on that point, but if you find that it really can't be done, I'm prepared to deliver that message upstairs.

If you can figure out the process issues, finding and engaging truly independent experts (i.e., not invested in any particular outcome) will obviously be a separate challenge. -- GDF

03/27/2003 10:21 AM

Folliard/OSO/R1/FWS/DOI@FWS, Barry  
Mulder/RO/R1/FWS/DOI@FWS

cc:  
Subject: Murrelet 5 year review

Wendi is available Monday (31) at 10:00- 11:00 and 1:00-2:00. On Tuesday she is available in the afternoon. Will any of these times work for you??

Thanks

----- Forwarded by Maridy DeCarlo/RO/R1/FWS/DOI on 03/27/03 10:17 AM -----



Wendi Weber

03/27/03 08:27 AM

To: Maridy DeCarlo/RO/R1/FWS/DOI@FWS  
cc: Sarah Hall/RO/R1/FWS/DOI@FWS, Robin  
Bown/OSO/R1/FWS/DOI@FWS, Lee  
Folliard/OSO/R1/FWS/DOI@FWS, Barry  
Mulder/RO/R1/FWS/DOI@FWS

Subject: Murrelet 5 year review

Maridy,

Could you please set up a mtg with the folks above sometime early next week, thanks

Wendi Weber  
U.S. Fish and Wildlife Service  
Chief, Division of Endangered Species  
911 NE 11th Avenue  
Portland, OR 97232-4181  
phone: (503)231-6158  
fax: (503)231-6243  
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----- Forwarded by Wendi Weber/RO/R1/FWS/DOI on 03/27/2003 08:26 AM -----



Gary D Frazer

03/26/2003 05:19 PM

To: Cynthia Barry/RO/R1/FWS/DOI@FWS, Wendi Weber/RO/R1/FWS/DOI  
cc: Patrick Leonard/ARL/R9/FWS/DOI@FWS, Martin  
Miller/ARL/R9/FWS/DOI, Elizabeth Stevens/ARL/R9/FWS/DOI@FWS,  
Clint Riley/ARL/R9/FWS/DOI@FWS  
Subject: Murrelet 5 year review

As a result of Carol Dinkins' meeting with Steve Griles and Ann Klee (Clint Riley and I also attended), Ann has asked that the Service integrate the involvement of independent outside experts into the 5 year review process. Specifically, she asked that the Service integrate their involvement into the data gathering, synthesis and analysis process, rather than just engaging outside experts to critique the synthesis and analysis of the Service.

I did not prevail in my arguments that: 1) this is a significant change in a process that we had already vetted, 2) that it's late in the process to make such a change and puts us at risk of missing the deadline, and 3) that this level of involvement may not be had for free.

So I'm afraid you're going to have to figure out how this might be done. Carol Dinkins said she would provide some suggested independent experts for our consideration. I'll pass those names on as soon as I get them. While she was focused on murrelet, I think you should plan on integrating outside experts into

both the owl and murrelet reviews. I think you should also assume, for the purposes of redesigning your process, that the integration of outside experts into the data gathering, synthesis, and analysis will obviate the need for the separate expert/peer review you were planning to do.

Let me know if you find this impossible to accomplish while still meeting our deadline. You will, of course, have to be very persuasive on that point, but if you find that it really can't be done, I'm prepared to deliver that message upstairs.

If you can figure out the process issues, finding and engaging truly independent experts (i.e., not invested in any particular outcome) will obviously be a separate challenge. -- GDF

copy - 0 Sarah H.  
Robin Bown / Lea Fallard  
Barry M.

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April 4, 2003

**BY FACSIMILE: 202-208-4561**

Ann Klee, Esq.  
Counselor to the Secretary  
Office of the Secretary of the Interior  
Department of the Interior  
1849 C Street, N.W.  
Washington, D.C. 20240

Dear Ann:

It was good to see you last week and I very much appreciated the opportunity to visit. As promised, I am sending a list of suggestions for the review being undertaken in connection with the settlement agreements in the northwest. I would be glad to discuss these with you when you have an opportunity.

Yours very truly,

*Carol*  
Carol E. Dinkins

Attorney for  
Maxxam

GED:raj  
Encl:encl  
11492971.DOC

4/7/03 -  
Ging -  
from Ann, to pass along  
to Wendy et al.  
- Clint

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425-392-7653  
jfr@u.washington.edu





Patrick Leonard  
04/07/03 08:20 AM

To: Sarah Hall/RO/R1/FWS/DOI@FWS  
cc:  
Subject: Re: 5-year review of the Marbled Murrelet and N. Spotted Owl.

in case WW isn't in or checking her email . . . .

----- Forwarded by Patrick Leonard/ARL/R9/FWS/DOI on 04/07/2003 11:19 AM -----



Patrick Leonard  
04/07/2003 11:16 AM

To: Wendi Weber/RO/R1/FWS/DOI@FWS, Barry  
Mulder/RO/R1/FWS/DOI@FWS, Martin  
Miller/ARL/R9/FWS/DOI@FWS  
cc: Gary D Frazer/ARL/R9/FWS/DOI@FWS  
Subject: Re: 5-year review of the Marbled Murrelet and N. Spotted Owl.

Wendi and Barry, could you (and the appropriate staff) take a look at Julie's comments below and this draft response; does it seem to strike the right note? is there anything you'd like to add or remove? It's also important to think about how we respond might lead to needing to make changes in the notice. For example, what happens if we drop the sentence that Julie comments on?

Could you also please run this by the appropriate SOL in Portland, with the same questions? Marty and I will be in touch with the Washington SOLs.

I know we're all in a hurry to publish this notice, so (as usual) the sooner, the better . . . . Thanks,

p.l.

Julie,

Thanks for your comments. When we wrote that "analyses or conclusions that have not been peer reviewed may be discounted in this review process", we did not mean that analyses that have not been peer reviewed would be categorically excluded from consideration in the 5-year reviews. Instead, it is more a question of weighting the results of different studies or analyses: we will give more weight to the results of a study when the entire study, including the results and the interpretation of those results, has been peer reviewed than we do to a study conducted using accepted, peer-reviewed data collection and analytical protocols but where the analysis itself has not been peer reviewed; these studies in turn are given greater weight than non-peer-reviewed studies using novel protocols or protocols whose use has not been reviewed for these species. Anecdotal information, typically not collected using any protocols or rigorously analyzed, is given the least weight.

The results of the ongoing studies you mention, which i assume (i am not familiar with these specific studies) are being conducted using reviewed and approved protocols and analytical methods, will certainly be considered in the 5-year reviews (provided the results and analysis are available in time), even if they are not meant for publication and so their results not peer reviewed (although it is possible to obtain independent peer review of studies not meant for publication, and this can be particularly desirable when the results are meant to guide management decisions). Yes, the results of these studies may be discounted if otherwise-similar studies, that have been entirely peer reviewed and accepted for publication in the scientific literature, are available--but this seems the logical and correct approach. Everything else equal, peer reviewed results are better than results that lack that peer review (that is, when available, relevant, peer-reviewed results are "the best available scientific information"). Even in this case, however, we would not "exclude" the studies from the process; we would still discuss the different results in our review, as well as our reasons for giving greater weight to the peer-reviewed results.

These comments apply to studies where data have been collected and analyzed, but not to raw data provided to us without an analysis. The time available to complete the 5-year review will not allow us to conduct the analysis of raw data. Instead, we expect that these data will be analyzed, and the analysis hopefully will be peer reviewed, in time to be used in the next 5-year review.

That leads to an important point: the 5-year review is not a rule, and is not in itself a listing decision. A 5-year review is not final agency action, and the conclusion in the 5-year review is not likely subject to judicial review, as anyone who disagrees has an administrative remedy: to petition us to take the listing action they believe appropriate based on the best available data. This is not to suggest that, with the same information available, we'd make a different determination in a petition finding than we would in a 5-year review, but only that the same kinds of triggers that force agency decision-making are not there in 5-year reviews (which are not the same kind of decision). Put another way: "we wish we had more information" is not a very useful response when making an actual listing decision, but it can be very useful in a 5-year review, as it can help guide further research and analysis before the next review. In this sense the 5-year review is not a listing decision itself, but an important step towards making the best possible listing decisions in the future.

In summary, we are not proposing a change in the data standards we use for making decisions under the ESA; in fact we tried to choose our words carefully (e.g., "discount" rather than "exclude") to clarify what constitutes the best available scientific information, rather than to limit the kinds of information considered; we certainly do not want to suggest we won't use information that hasn't been peer reviewed, especially when that information is the only (and thus the best) information available. Your comments indicate we were less than successful at this, so we're taking another look at this sentence to see if we can better clarify what we intended. Thanks again.

Gary D Frazer



Gary D Frazer

04/07/2003 08:50 AM

To: Patrick Leonard/ARL/R9/FWS/DOI@FWS  
cc: Steven A Williams/ARL/R9/FWS/DOI@FWS, Marshall  
Jones/ARL/R9/FWS/DOI@FWS, Clint  
Riley/ARL/R9/FWS/DOI@FWS  
Subject: 5-year review of the Marbled Murrelet and N. Spotted Owl.

Patrick -- Pls coordinate with R1 and SOL to draft a response. Distinguish "may be discounted" from "excluded", and 5 year reviews from listing actions. Need this ASAP, as the notice will not move until this is resolved. -- GDF

----- Forwarded by Gary D Frazer/ARL/R9/FWS/DOI on 04/07/2003 08:44 AM -----

Julie MacDonald@DOI

04/05/2003 01:25 PM

To: Gary D Frazer/ARL/R9/FWS/DOI@FWS, Elizabeth  
Stevens/ARL/R9/FWS/DOI@FWS  
cc: craig Manson, David Smith, Ann Klee/SIO/OS/DOI@DOI, Steven A  
Williams/ARL/R9/FWS/DOI@FWS, Marshall  
Jones/ARL/R9/FWS/DOI@FWS, Clint  
Riley/ARL/R9/FWS/DOI@FWS  
Subject: 5-year review of the Marbled Murrelet and N. Spotted Owl.

I have the packages on my desk for review, and have a couple of questions and comments.

The rule appears to use a different standard for this review than we normally use. Specifically, the rule qualifies our data requirements by noting that, "...We will consider all information submitted,

however, raw data that has not been substantiated, analyzed, or summarized, and analyses or conclusions that have not been peer reviewed may be discounted in this review process." This sentence appears at the very end of the document. This narrowing of our data standard appears in this rule only, and is not our standard practice.

This statement appears to limit our ability to consider data collection and studies that are currently underway in the Pacific Northwest. These studies are being conducted by the timber industry, using FWS protocols and with the cooperation of the FWS. Although, the studies are not being conducted with a view to publication, and so will never be peer reviewed, it is important to note, that unlike most research studies, these studies are conducted with the concurrence, and participation of the FWS. The language proposed by the Service potentially, and no doubt inadvertently, excludes information that should be more, not less likely to be considered. This requirement also appears contrary to the statement that we will consider all scientific and commercial data available at the time of review.

In addition, this exclusion is contrary to our standard practice. For example in the Sonoma County DPS analysis, we relied solely on an unpublished, non-peer reviewed study for our justification of the designation and listing. This was also the case with the Atlantic Salmon, where the study data and analysis was and continues to be unavailable. I am concerned that our proposed exclusion of any but peer-reviewed information is arbitrary and capricious in light of our long history of considering all information regardless of whether it was peer-reviewed, substantiated, or replicable.

If the Service is considering a general change in policy with respect to the data standards we require before using information, it seems we ought to provide guidance with the appropriate public notice of this change to our long standing practice of considering and using all data.

We are interested in understanding your rationale for including the final sentence that arguably narrows the data standards far beyond the FWS normal practice and would like to clarify that you intend to make a change in the FWS's current practices of using unpublished data, personal communication, and other non-peer reviewed and unsubstantiated information to justify agency decisions.

3/5/03  
Clint, Gary, Wendie  
Barry, Scott

AFRC / Clint / Julie McDonald mtgs  
re: Syr. review on owl/murrelet  
revised brief on how to add others to review...

per Clint → let's go forth: try to do what paper said  
- to what extent is this a work in progress as  
we try to add folks to it?

→ as we start - have people tell us if we are missing  
info (sooner than later)  
- get us that info  
- then, sooner than later, have them tell us  
if we are doing something incorrectly

- how many times will they meet?

- AFRC get people involved early: often but still need 3rd  
party peer review at end of the review  
to look at methods & science used  
ex hire NAS to do the review

- time & \$ would be an issue

- optional groups AFRC suggested to do review:  
Greystone, Tetratree (neither a good fit), or

→ Barry - we will do some sort of formal review of our work  
but didn't specify how in paper

would nail down specifics in June/July  
- better to go w/ a variety of different reviewers to  
focus on specific issues rather than just 1 grp.  
- could ask American Forestry Council to help pick reviewers

Clint Riley  
05/08/2003 11:46 AM

To: Wendi Weber/RO/R1/FWS/DOI@FWS, Gary D  
Frazer/ARL/R9/FWS/DOI@FWS, Elizabeth  
Stevens/ARL/R9/FWS/DOI@FWS, Barry  
Mulder/RO/R1/FWS/DOI@FWS, Patrick  
Leonard/ARL/R9/FWS/DOI@FWS, Martin  
Miller/ARL/R9/FWS/DOI@FWS

cc:  
Subject: 5-year review

Wendi and Gary -

Having not had a chance to talk with Ann and Julie about this since our phone call, here's the note I've sent to them.

As noted, I'm providing to them the review process. I edited one paragraph, after reading it again -- basically switched the order of two sentences, to better emphasize that we're trying to use the input to help write the stuff, rather than always just react to comments. Not much my edit really says, that very well, but...

I apologize, but I'm not sure who else was on our phone call, so forward this to those I missed.

Thanks -  
Clint



5-yr review procedures.wr  
----- Forwarded by Clint Riley/ARL/R9/FWS/DOI on 05/08/2003 02:38 PM -----

Clint Riley  
05/08/2003 02:20 PM

To: Ann Klee/SIO/OS/DOI, Julie MacDonald/ASFW/OS/DOI  
cc:  
Subject: 5-year review

Ann and Julie -

I'm overdue getting back to you concerning the plans to incorporate outside information and analysis as part of the 5-year review on owls and murrelets.

The Reg 1 staff worked out a plan to accomplish this. (I'll get you a copy.) I've discussed it with them, and -- given the timeframes -- told them to proceed, with the possibility that we'll keep adjusting it as need be. Summarized, they've already started mailing out requests for information to stakeholders and interested parties, including those names received from Carol Dinkins, AFRC, etc. Part of that communication is to gather names of folks interested and willing to participate on a regular basis over the next few months. First purpose will be to make sure we're including all the relevant info that may be available. Second purpose -- in terms of order, not priority -- is to discuss how the data should be analyzed and get their input on analysis. This would continue into the fall.

I've told them to go ahead with this, and we've discussed that the whole point is to improve the substance of the review as we go, rather than do the best we can on our own and have outsiders react to it afterward.

Separately, they also plan to obtain independent peer review in the fall. This was important to AFRC, and I will get back to them on these plans. The specific method for this independent review is as-yet unspecified, and the Reg 1 folks planned to get input during the summer from the parties helping with the review, concerning how best to accomplish the peer review that would follow. Options and questions include sending it to academics, etc (similar to what we'd normally do), hiring an outside organization (suggested by AFRC), some combination of these, or a totally different option.

I told our folks it's okay to leave the methods for accomplishing the independent review as an open question for the moment, for the purpose of getting outside input on appropriate methods through the meetings this summer. However, obviously, we will be interested in what plans are developed to meet this goal.

Again, I will get back to AFRC, having met with them recently, and I'll get you a copy of what their plan looked like. Since I discussed with them a little about how this will continue to be fleshed out, let me know if you have questions along those lines.

- Clint

Barry Mulder  
05/27/2003 04:52 PM

To: Wendi Weber/RO/R1/FWS/DOI@FWS, Sarah  
Hall/RO/R1/FWS/DOI@FWS, Robin Bown/OSO/R1/FWS/DOI@FWS,  
Lee Folliard/OSO/R1/FWS/DOI@FWS  
cc: Paul Phifer/RO/R1/FWS/DOI@FWS, David  
Patte/RO/R1/FWS/DOI@FWS  
Subject: Re: Five year reviews

FYI only - Clint Riley called late this PM with the following, and asked that we be sure to cover these issues in our brief (note I bcc'd the RD just for his awareness due to our meeting last week).

AFRC and Steve Courtney were in DC last week discussing the review process with Manson and Julie M (not sure about Klee):

1-3rd party panel role - Clint's take from Julie was that the Judge is very interested in pursuing this option (due to strong concern that FWS will be making closed door internal decisions on the value of various data). Clint's perception was they felt this would not be a difficult task, but would affect timelines and involve funding. I explained we were investigating options (in addition to what we had already planned) but to be aware that the volume of data and issues would not be easy to deal with nor in short timelines.

2-Time delay or extension - AFRC believes that there is a new analysis coming out in Jan 2004 and for which they would be willing to extend or delay our review (with times to be negotiated depending on the difficulty of incorporating that analysis). He said AFRC would request a time extension in writing, and that we need to be ready to respond with how that may affect the project. I explained that we were trying to find out what that review was (probably the 2004 Monitoring report which isn't due til the end of 2004) and in what stage it would be in (draft or final, peer reviewed or not) - which would affect our ability to use it in a timely fashion.

I told him we would have a briefing package ready by the end of the week or Monday (after internal regional review and discussion with the RD).

Clint also had feedback on our murrelet DPS briefing - just for our awareness: AFRC has told Manson that there is "incontrovertible" data showing this is one continuous population with no differences, and that any splitting of the species is purely and only a policy call.

Barry Mulder

----- Forwarded by Barry Mulder/RO/R1/FWS/DOI on 05/27/2003 04:33 PM -----

Clint Riley  
05/26/2003 10:05 AM

To: Gary D Frazer/ARL/R9/FWS/DOI@FWS, David B  
Allen/RO/R1/FWS/DOI@FWS  
cc: Elizabeth Stevens/ARL/R9/FWS/DOI@FWS, Patrick  
Leonard/ARL/R9/FWS/DOI@FWS, Barry  
Mulder/RO/R1/FWS/DOI@FWS, Wendi Weber@fws.gov, Sarah  
Hall/RO/R1/FWS/DOI@FWS, Dave Wesley/RO/R1/FWS/DOI@FWS,  
Cynthia Barry/RO/R1/FWS/DOI@FWS  
Subject: Re: Five year reviews

Dave and Gary -

I do continue to get inquiries from interesting parties, so I'll look forward to hearing what you're working on at this point. And I'll continue to pass along thoughts/concerns/reactions to you (using Barry as the contact point, I assume) as I receive them.

- Clint

Gary D Frazer

Gary D Frazer

To: David B Allen/RO/R1/FWS/DOI@FWS

**Clint Riley**

06/10/2003 05:57 AM

To: Julie MacDonald/ASFW/OS/DOI@DOI, Wendi\_Weber@fws.gov  
cc:

Subject: Re: Murrelet Migration Information -- FYI 

Julie - Still catching up on last week's email -- so I'm just now passing this request to the Reg 1 folks...

Wendi - Can you (or Barry, or whomever) get copies of these to Julie? Thanks.

- Clint

Julie MacDonald@DOI

**Julie MacDonald@DOI**

06/02/2003 04:13 PM

To: Clint Riley/ARL/R9/FWS/DOI@FWS

cc: craig Manson

Subject: Murrelet Migration Information -- FYI

Per our conversation regarding murrelets ... do you think the region people could get me copies of these papers? Thanks!

Seasonal movements of Marbled Murrelets: Evidence from banded birds CONDOR;  
AUG 1999; v.101, no.3, p.671-674

Congdon, B.C.\*, J.F. Piatt, K. Martin and V.L. Friesen. 2000. Rapid population expansion and peripheral isolation in marbled murrelets: historical vs contemporary evolutionary processes. Evolution, 974-986.



**Paul Phifer**  
03/18/2004 09:02 AM

To: Theresa Rabot/RO/R1/FWS/DOI@FWS, David B  
Allen/RO/R1/FWS/DOI@FWS  
cc: Barry Mulder/RO/R1/FWS/DOI@FWS, Wendi  
Weber/RO/R1/FWS/DOI@FWS  
Subject: 5-yr documentation

Her is a contact record for my discussion with Julie yesterday.



Contact MacDonald 3.17.doc

---

Paul Phifer, Ph.D.  
Office of Technical Support  
U.S. Fish and Wildlife Service  
911 NE 11th Ave  
Portland, OR 97232  
W: 503.872.2823  
F: 503.872.2810  
Paul\_phifer@r1.fws.gov

----- Forwarded by Paul Phifer/RO/R1/FWS/DOI on 03/18/2004 09:01 AM -----

**Barry Mulder**  
03/18/2004 07:04 AM

To: Paul Phifer/RO/R1/FWS/DOI@FWS  
cc:  
Subject: 5-yr documentation

Paul - when Julie M (or others) call for information, please document the call - their questions, your responses. In Julie's case (or AFRC) send the notes to Terry and Dave, cc Wendi and myself.

Also, if Julie calls, try to include Terry in the conversation. If she's not around, get Wendi or myself (or Sarah). Barry

**Marbled Murrelet 5-year Review  
Contact Record**

**FWS Contact:** Paul Phifer

**Type of Contact:** Phone discussion      Phone: Yes      Email: Letter:      Other:

**Contact(s):** Julie MacDonald

Organization: DOI

Phone #:

Email Address:

**Reason for Contact:** To discuss literature cited section of EDAW document.

**Date of Contact:** 3/17/04

**Subject(s) covered:** EDAW document, panelists, demographic model.

**Summary of contact:** Julie requested the literature cited section for the EDAW document. I told her I had yet to receive it due to the Internet shutdown. I told her I would send it to her electronically ASAP. We also discussed the EDAW report more broadly, touching on issues of modeling, the panelists, and population trend data.

Julie also requested copies of any substantive letter submitted to the Service during the Fed Reg requests for information. I told her I would compile those and send them ASAP.

3/18/04

- Sent Julie copies of all the industry & EW. & state letters from the fed reg notices
- emailed her a scanned copy of the Grinnell & Miller 1994 paper
- faxed her a copy of the EDAW lit cited (draft)

**Julie MacDonald@DOI**

03/19/2004 01:32 PM

To: Theresa Rabot/RO/R1/FWS/DOI@FWS

cc:

Subject: Re: MM 5-year review

Teresa, I have a couple other items that have just come in, which put a very interesting light on much of what we are saying about the Murrelet.

First: Grinnel. Our listing document states this bird was found regularly and was plentiful. When you actually read the cite, what Grinnel says is: "*More numerous in winter than in summer; even 'plentiful' then in some years and occurring further south*". The point about "... even 'plentiful'..." seems to make the point that the bird was not numerous or found regularly. Other notes include a statement that it occurs occasionally in San Francisco Bay, which lends some credence to my statement earlier today that it's likely it does not like the bay due to the mixing that occurs there, rather than lack of habitat.

The reference also refers to open sea as its habitat and that there have been no nests found. The cite states that nests are likely under logs or in mammal burrows. Have we ever looked in those places? (although I must admit, that seems unlikely)

I am most concerned about our apparent misrepresentation of the occurrence of these birds in California in the listing document, a mischaracterization that appears to have been replicated in nearly every other document written about the bird. It appears that the murrelet, while present, only showed up in any real numbers periodically. We need to talk about this.

Theresa Rabot@FWS

**Theresa Rabot@FWS**

03/19/2004 03:15 PM

To: Julie MacDonald/ASFW/OS/DOI@DOI

cc: Clint Riley/ARL/R9/FWS/DOI@FWS

Subject: MM 5-year review

fyi

----- Forwarded by Theresa Rabot/RO/R1/FWS/DOI on 03/19/2004 12:08 PM -----

**Theresa Rabot**

03/19/2004 12:04 PM

To: Barry Mulder/RO/R1/FWS/DOI@FWS, Kemper

McMaster/OSO/R1/FWS/DOI@FWS, Sarah

Hall/RO/R1/FWS/DOI@FWS, Wendi Weber/RO/R1/FWS/DOI@FWS,

Phillip Detrich/MOBILE/R1/FWS/DOI@FWS

cc: Paul Phifer/RO/R1/FWS/DOI@FWS, Steve

Morey/ORSO/OR/BLM/DOI@BLM, Brian T

Cox/OSO/R1/FWS/DOI@FWS, Dave Wesley/RO/R1/FWS/DOI@FWS,

David B Allen/RO/R1/FWS/DOI@FWS

Subject: MM 5-year review

In preparation for our manager's meeting on the murrelet, March 29 and 30, you need to review the entire EDAW evaluation report, not just Chapter 6, the summary chapter. Our task is to translate the science into policy decisions, so the first step is understanding the science. Reading the entire EDAW report will provide you with a more complete picture than just the summary chapter.

You should also read the accompanying materials you were given, especially the Lank et. al. report. Read these reports with a scientifically critical eye and come prepared to ask questions of the Service and USGS experts who will be in the meeting.

Thanks,

Terry



Brian T Cox  
03/23/2004 08:48 AM

To: Kemper McMaster/OSO/R1/FWS/DOI@FWS  
cc: Lee Folliard/OSO/R1/FWS/DOI@FWS, Miel Corbett/OSO/R1/FWS/DOI@FWS  
Subject: Re: Julie M request and comments - 3/22

Kemper,

Actually, Julie MacDonald requested over 50 documents and books yesterday afternoon. I sent out 49 scanned PDF-files of requested books and documents as of 1930 last night (Monday), and have sent all of the rest I have except one document already this morning. I have not heard back from Julie MacDonald yet as to whether they were received at her end of the e-mail spectrum.

---

Brian T. Cox  
Marbled Murrelet Recovery Coordinator  
U.S. Fish and Wildlife Service  
2600 S.E. 98th Avenue  
Portland, OR 97266  
(503) 963-7145  
(503) 231-6195 FAX  
Kemper McMaster



Kemper McMaster  
03/23/2004 08:14 AM

To: Lee Folliard/OSO/R1/FWS/DOI@FWS, Brian T Cox/OSO/R1/FWS/DOI@FWS, Miel Corbett/OSO/R1/FWS/DOI@FWS  
cc:  
Subject: Julie M request and comments - 3/22

Brian -- thanks fro the heads-up, for now let's just sit tight, if the RO needs us, they know where we are....

*Kemper*

Kemper M. McMaster  
State Supervisor  
Oregon State Office  
U.S. Fish and Wildlife Service  
2600 S.E. 98th Avenue, Suite 100  
Portland, OR 97266-1398

503/231-6179 (voice)  
503/231-6195 (fax)  
Kemper\_mcmaster@fws.gov

--- Forwarded by Kemper McMaster/OSO/R1/FWS/DOI on 03/23/2004 08:13 AM ---



Brian T Cox  
03/22/2004 11:00 AM

To: Kemper McMaster/OSO/R1/FWS/DOI@FWS, Miel Corbett/OSO/R1/FWS/DOI@FWS  
cc:  
Subject: Julie M request and comments - 3/22

FYI. Nobody has contacted me about this...yet.

---

Brian T. Cox  
Marbled Murrelet Recovery Coordinator  
U.S. Fish and Wildlife Service  
2600 S.E. 98th Avenue  
Portland, OR 97266  
(503) 963-7145  
(503) 231-6195 FAX

— Forwarded by Brian T Cox/OSO/R1/FWS/DOI on 03/22/2004 11:00 AM —

Barry Mulder  
03/22/2004 09:42 AM

To: David B Allen/RO/R1/FWS/DOI@FWS, Theresa  
Rabot/RO/R1/FWS/DOI@FWS, Wendi Weber/RO/R1/FWS/DOI@FWS  
cc: Paul Phifer/RO/R1/FWS/DOI@FWS, Brian T  
Cox/OSO/R1/FWS/DOI@FWS, Sarah Hall/RO/R1/FWS/DOI@FWS,  
Steven Morey/RO/R1/FWS/DOI@FWS  
Subject: Julie M request and comments - 3/22

FYI - Julie called for Terry/Paul this AM (both out) - she requested copies of about 12-15 publications concerning population trends and relation of logging to murrelets (her fax list will be given to Brian to collate). She commented that her review indicates continued use/overuse of "bad" data, misuse of these types of data in calculating trends (bias), misstatements about what the article authors actually stated or intended - i.e., a pattern of mistakes (her words) both in the original listing, subsequent reviews, and in EDAW's report. Barry

**Julie MacDonald@DOI**  
03/29/2004 08:13 AM

To: Theresa Rabot/RO/R1/FWS/DOI@FWS  
cc:  
Subject: Marbeled Murrelet

----- Forwarded by Julie MacDonald/ASFW/OS/DOI on 03/29/2004 11:13 AM -----

**Julie MacDonald**  
03/29/2004 11:12 AM

To: David B Allen/RO/R1/FWS/DOI@FWS  
cc:  
Subject: Marbeled Murrelet

Who is proposed for you list of experts for reviewing the EDAW report? I would like that list asap. thank you!

**Julie MacDonald@DOI**

04/28/2004 05:50 AM

To: Theresa Rabot/RO/R1/FWS/DOI@FWS  
cc: Clint Riley/ARL/R9/FWS/DOI@FWS, Craig  
Manson/ASFW/OS/DOI@DOI, Dave Wesley/RO/R1/FWS/DOI@FWS,  
David B Allen/RO/R1/FWS/DOI@FWS, Gary D  
Frazer/ARL/R9/FWS/DOI@FWS, Craig Manson/ASFW/OS/DOI@DOI  
Subject: Re: 4.27.04.MAMU 5-year review template.doc [Virus checked]

Please do not move forward with this in any way until Dave Allen has had a conversation with the Judge. We have some very serious reservations about the product we received from EDAW as it does not meet the requirements of the rfp.

Theresa Rabot@FWS

**Theresa Rabot@FWS**

04/27/2004 07:05 PM

To: Craig Manson/ASFW/OS/DOI@DOI, Julie  
MacDonald/ASFW/OS/DOI@DOI  
cc: David B Allen/RO/R1/FWS/DOI@FWS, Dave  
Wesley/RO/R1/FWS/DOI@FWS, Clint Riley/ARL/R9/FWS/DOI@FWS,  
Gary D Frazer/ARL/R9/FWS/DOI@FWS  
Subject: 4.27.04.MAMU 5-year review template.doc [Virus checked]

Attached is the 5-year review for the marbled murrelet. The settlement agreement calls for the Service to complete this review by April 30, which is Friday. The Regional Solicitors have reviewed and we have incorporated their comments. We've also discussed rollout, and propose a very neutral, short press release with Q's and A's available if we get calls. We will coordinate that with External Affairs in DC this week.

Terry

----- Forwarded by Theresa Rabot/RO/R1/FWS/DOI on 04/27/2004 03:01 PM -----

**Paul Phifer**

04/27/2004 02:57 PM

To: Theresa Rabot/RO/R1/FWS/DOI@FWS  
cc: Barry Mulder/RO/R1/FWS/DOI@FWS, Wendi  
Weber/RO/R1/FWS/DOI@FWS, Sarah Hall/RO/R1/FWS/DOI@FWS  
Subject: 4.27.04.MAMU 5-year review template.doc

Terry -- here is the latest, incorporating comments from you and Barry.

Paul Phifer, Ph.D.  
Office of Technical Support  
U.S. Fish and Wildlife Service  
911 NE 11th Ave  
Portland, OR 97232  
W: 503.872.2823  
F: 503.872.2810  
Paul\_phifer@r1.fws.gov



- 4.27.04.MAMU 5-year review template.doc

Response to Assistant Secretary Manson's 4/30/04 Comments on the Marbled Murrelet 5-Year  
Review  
May 4, 2004

1. Judge Manson's Comment: The conclusion as to discreteness rests at least in part on the international border aspect. The conclusion is based on the notion that in Canada there is a different regulatory scheme. It is noted that the recovery goals in the 2003 Canadian Marbled Murrelet assessment are of concern and that application of Canada's new SARA is "unknown" and "incomplete." I've looked at SARA and note that it becomes fully effective in about 30 days from now. It has some pretty robust provisions. We need to further examine this matter.

The participants in the Service's deliberative process focused on the differences in conservation status, management, and regulatory mechanisms between the U.S. and Canada.

*Conservation status:* There are fewer murrelets in the lower 48 than in Canada, and the historic percentage of murrelet habitat loss is higher here than in Canada.

*Management differences:* Canada's Species at Risk Act (SARA) becomes fully in force June 1, 2004. Under SARA, the murrelet is listed as threatened, and per SARA's requirement, the Canadian Marbled Murrelet Recovery Team is currently completing a Recovery Strategy for the murrelet. This Recovery Strategy is expected in the summer of 2004 and the draft elements of the strategy are in Canada's Murrelet Conservation Assessment<sup>1</sup> (A. Burger, Univ. of Victoria, member of the Canadian Marbled Murrelet Recovery Team, pers. comm. 4/29/04). This assessment equates a 30% decline in murrelet habitat and numbers over 30 years with the ability to delist the bird. In juxtaposition, the Service's recovery goal is for a stable or increasing murrelet population in four of the six Washington, Oregon, and California conservation zones for 10 years.

Canada's Recovery Strategy is based on the listing guidelines from the Committee on the Status of Endangered Wildlife in Canada (COSEWIC)<sup>2</sup> (A. Burger, pers. comm. 4/29/04). Given that these are well-established guidelines and the Recovery Strategy is nearly complete, significant changes in Canada's proposed delisting criteria for the murrelet are not expected.

*Differences in regulatory mechanisms:* Also discussed in the decision process were the differences between our Northwest Forest Plan and British Columbia's current and potential revisions to its Identified Wildlife Management Strategy (IWMS), which is enabled by its Forest Practices of British Columbia Act. The murrelet is listed as a Red species under the IWMS, which provides the murrelet some habitat protection, but not to the level of Forest Plan.

In total, the managers determined there are differences in conservation status, management, and regulatory mechanisms between the U.S. and Canada that are

<sup>1</sup> <http://www.sfu.ca/biology/wildberg/bertram/mamurt/team.htm>, last checked May 5, 2004.

<sup>2</sup> [http://www.cosewic.gc.ca/eng/sct0/Assessment\\_process\\_tbl2\\_e.cfm](http://www.cosewic.gc.ca/eng/sct0/Assessment_process_tbl2_e.cfm), last checked May 5, 2004.

significant in light of 4(a)(1)(d), and these differences are not expected to change in the near future.

2. Judge Manson's Comment: EDAW's scope of work requires an evaluation of "all available relevant information." EDAW did not evaluate the material listed in the bibliography prepared by the Centre for Wildlife ecology. The statement of work also specifies that EDAW will include "a list and explanation of all reviewed information, etc." I can't find any thing that complies with this element of the SOW. This has substantive consequences as evidenced by a number of instances where review of the cited publication reveals gaps in EDAW's analysis. We need to further examine this matter as well.

Literature review forms were provided by EDAW as part of the administrative record and submitted a week or so after the evaluation report. The review forms, entitled "Marbled Murrelet Literature Review Form" includes individual reviews of some 1,100 documents, many of which are from the annotated bibliography submitted by the Centre for Wildlife Ecology. The review form was completed for each document not cited in the EDAW report, in addition to a number of the documents that were cited. Although a review form was not completed for every document cited in the evaluation report, the "review" of these documents was judged to have occurred in the process of incorporating them into the evaluation report. The review form includes entries on the area of coverage, the issues addressed, the sources of the document (i.e., Refereed Journal, Agency/Tribal, etc.), and whether the document was incorporated into the report. The Service's administrative record includes a digital or paper copy of every document used in the evaluation report. The information provided by EDAW on these forms along with their report was determined to have met their contractual requirement to evaluate all available relevant information.

Some information/reports considered by EDAW were also considered in their entirety by the Service's deliberative process on the 5-year review, such as the Lank et al. 2003 report and key submissions from interested stakeholders. This was done in order to ensure the most complete analysis of all available relevant information. The references considered by the participants, including primary references, are cited in the Service's administrative record and in the actual 5-year status review submitted to your office for review.



Gary D Frazer  
05/17/2004 09:34 AM

To: Dave Allen, Theresa Rabot, Clint Riley  
cc: Elizabeth\_Stevens@fws.gov, Patrick\_Leonard@fws.gov  
Subject: Re: Marbled Murrelet 5 year review [Virus checked]

I am assuming from this that the Government's counter -- which I understood to be to extend the deadline without any condition -- was accepted by the plaintiffs. Have you heard this? I'll check with Dave Gayer and let you know if that's not the case. -- GDF

----- Forwarded by Gary D Frazer/ARL/R9/FWS/DOI on 05/17/2004 12:25 PM -----



Julie\_MacDonald@ios.  
doi.gov  
05/17/2004 11:53 AM

To: Gary\_Frazer@fws.gov  
cc:  
Subject: Re: Marbled Murrelet 5 year review [Virus checked]

Please do not proceed with this pending instructions from the Asst. Secretary. We have serious concerns with the information used to arrive at the conclusions. We have requested and recieved an extension from the plaintiffs.

Gary\_Frazer@fws.g  
ov  
MacDonald/ASFW/OS/DOI@DOI  
05/17/2004 10:27  
year review [Virus checked]  
AM

To: Julie  
cc:  
Subject: Marbled Murrelet 5

Per your request. -- GDF

----- Forwarded by Gary D Frazer/ARL/R9/FWS/DOI on 05/17/2004 10:25 AM -----

Theresa Rabot

Manson/ASFW/OS/DOI@DOI,  
04/27/2004 07:05  
Allen/RO/R1/FWS/DOI@FWS, Dave Wesley/RO/R1/FWS/DOI@FWS,  
PM  
Gary D Frazer/ARL/R9/FWS/DOI@FWS  
5-year review template.doc

To: Craig  
cc: David B  
Riley/ARL/R9/FWS/DOI@FWS,  
Subject: 4.27.04.MAMU

Barry Mulder  
08/04/2004 04:13 PM

To: Theresa Rabot/RO/R1/FWS/DOI@FWS, Wendi  
Weber/RO/R1/FWS/DOI@FWS  
cc: Paul Phifer/RO/R1/FWS/DOI@FWS, Sarah  
Hall/RO/R1/FWS/DOI@FWS  
Subject: Re: Marbeled Murrelet

Terry - to follow up on Julie's question about whether EDAW had considered all recent (including unpublished) information, I talked directly with the person she asked about (CJ Ralph - see my note to her below). What I didn't state to Julie, was that CJ was peeved that his unpublished reports weren't cited, plus he said that he was upset that he hadn't been involved in the review. He also said that his data don't support the conclusion (about trend) [Paul checked CJ's unpublished reports which indicate population declines - so not sure what he was referring to]. I explained to CJ that his reports were in the record, but that we focused on recent, published (and peer reviewed) reports, and that we had been directed by the Dept not to use any Federal researcher on EDAWs panel. I did tell him that we had done further review of EDAW's final report, and had included Marty Raphael in that effort. However, not sure I mollified him. CJ also (in a round about way) indicated that we may be doing another status review on the murrelet (and that he would be involved).

To make matters worse, I was just talking with Courtney about the owl, and he mentioned he had another conversation with Julie about his work. I asked him if the murrelet came up, and he said yes, and that he had told Julie the EDAW report was incomplete and wrong, and that it was in appropriate for EDAW not to cite CJ's work. He said he also recommended another review.

A little history: both CJ and Courtney are the original murrelet researchers in the NW, and were the originators of all the surveys (15 yrs or so ago). However, their work has not been thought highly of by the current research community, and has not been cited much in recent years.

--- Forwarded by Barry Mulder/RO/R1/FWS/DOI on 08/04/2004 03:46 PM ---

Barry Mulder  
08/04/2004 03:23 PM

To: Julie MacDonald/ASFW/OS/DOI@DOI  
cc: Theresa Rabot/RO/R1/FWS/DOI@FWS, Paul  
Phifer/RO/R1/FWS/DOI@FWS  
Subject: Re: Marbeled Murrelet

Julie - we have a considerable number of publications involving CJ Ralph which fill the time period between 1995 and 2003 but which are published with other scientists as lead authors (e.g., WD Beauchamp, NJ Bentivoglio, JE Hunter, M Huff, LL Long, CB Meyer, SL Miller, KN Schmidt, HB Stauffer) - all of which are in the literature list and admin record. These articles cover both habitat and at-sea information.

I also talked directly with CJ Ralph to clarify your question about unpublished data. He stated he has and is aware of some unpublished (nonpeer-reviewed) data which he felt may have not been considered in the review (and which he stated he hasn't had the opportunity to write up for publication yet). To check whether this information is in the record, we reviewed the contractor's (CD) database. Their database has an extensive list of these unpublished reports, including 16 from CJ all of which were either cited and/or reviewed by the contractor (along with unpublished reports from a couple of other scientists he mentioned - Raphael, Long, Golightly among others). So, in response to your question, yes they were considered in the review.

Paul will provide copies of the Friesen references, and a copy of Ralph's most recent (2002) unpublished rpt. If you would like the other copies, please let us know and we can send you any of these you would like to review. Just let us know. You should receive these in the AM. Barry Mulder

Julie MacDonald@DOI

Julie MacDonald@DOI

To: Barry Mulder/RO/R1/FWS/DOI@FWS

**Julie MacDonald@DOI**

To: Theresa Rabot/RO/R1/FWS/DOI@FWS

08/04/2004 06:32 AM

cc:

Subject: Marbeled Murrelet

Could you please ask staff to email me the Friesen genetic work on Murrelet, and the most recent Ralph work on murrelets. I don't have any copies of either report on the CD. If you already emailed them separately or sent them separately, just tell me and I'll look in the proper place. Thank you!

**Barry Mulder**  
08/10/2004 02:43 PM

To: David B Allen/RO/R1/FWS/DOI@FWS, Theresa Rabot/RO/R1/FWS/DOI@FWS, Wendi Weber/RO/R1/FWS/DOI@FWS, Jana Grote/RO/R1/FWS/DOI@FWS, Joan Jewett/RO/R1/FWS/DOI@FWS  
cc: Sarah Hall/RO/R1/FWS/DOI@FWS, Danielle Chi/RBFWO/R1/FWS/DOI@FWS, Karl Halupka/WNES/R1/FWS/DOI@FWS, Robin Bown/OSO/R1/FWS/DOI@FWS  
Subject: Today's Jerry Franklin public workshop on NWFP

FYI - Courtney reported his conversation this AM with Manson and Julie. He said they asked about both species - owl and murrelet.

On owls, he said he told them the outcome was obvious, and not challengeable. They asked about how to handle, and he said he (panel) recommended considering a recovery (or similar) team - he said they were surprized there was no recovery team. He also said Julie suggested initiating a dialogue between the enviros and timber industry, and he told them that there were a number of initiatives underway (e.g., Jack Ward Thomas/Jerry Franklin, etc).

On murrelets, he said he expressed his opinion that the EDAW document is flawed, other points of view were not considered, and that the team was biased. In response to Julie's question, he said he didn't think peer review would help (now why is that we may wonder?).

He also said they may be either getting back to him or to us in the immediate future (wasn't clear). Barry

----- Forwarded by Barry Mulder/RO/R1/FWS/DOI on 08/10/2004 02:15 PM -----

**Barry Mulder**  
08/06/2004 02:24 PM

To: David B Allen/RO/R1/FWS/DOI, Theresa Rabot/RO/R1/FWS/DOI  
cc: Wendi Weber/RO/R1/FWS/DOI@FWS  
Subject: Today's Jerry Franklin public workshop on NWFP

Related follow up - Steve Courtney called to say that Julie MacDonald asked him to (succinctly) summarize his comments (next week) for the RIEC to Judge Manson (next Tuesday at 11 AM our time). Steve did not know if FWS was to be included in that call. Barry

----- Forwarded by Barry Mulder/RO/R1/FWS/DOI on 08/06/2004 02:19 PM -----

**Barry Mulder**  
08/06/2004 02:03 PM

To: David B Allen/RO/R1/FWS/DOI, Theresa Rabot/RO/R1/FWS/DOI, David Patte/RO/R1/FWS/DOI, Kemper McMaster/OSO/R1/FWS/DOI, Ken Berg/WWO/R1/FWS/DOI, John Engbring/SAC/R1/FWS/DOI, Phillip Detrich/MOBILE/R1/FWS/DOI  
cc: Wendi Weber/RO/R1/FWS/DOI@FWS, Sarah Hall/RO/R1/FWS/DOI@FWS, Danielle Chi/RBFWO/R1/FWS/DOI@FWS, Karl Halupka/WNES/R1/FWS/DOI@FWS, Robin Bown/OSO/R1/FWS/DOI@FWS, Steven Morey/RO/R1/FWS/DOI@FWS  
Subject: Today's Jerry Franklin public workshop on NWFP

FYI - the Ecological Society of America is holding its annual meetings in Portland this week. This morning's 4-hr session was on the NWFP led by the old "Gang of Four+" (Franklin, Norm Johnson, Gordie Reeves, Hal Salwasser among others). (Ex) Governor Kitshaber gave an unscheduled speech (and press conference) to announce his new initiative (thru Lewis and Clark Univ) to create a forum to explore innovative tools, science, and policies (i.e., an integrated and collaborative approach to problem solving) to develop new solutions.

Joan Jewett  
08/26/2004 08:11 PM

To: Elizabeth Stevens/ARL/R9/FWS/DOI@FWS  
cc: Jeffrey M Fleming/ARL/R9/FWS/DOI@FWS, David  
Patte/RO/R1/FWS/DOI@FWS, Sarah Hall/RO/R1/FWS/DOI@FWS,  
Theresa Rabot/RO/R1/FWS/DOI@FWS, Megan  
Durham/ARL/R9/FWS/DOI@FWS  
Subject: ON A FAST TRACK - NSO/MAMU outreach

Hi Beth,

Here are the news release and Q&A for the 5-year review of the marbled murrelet. I've also include the joint outreach plan for the murrelet and the northern spotted owl 5-year review, which outlines how we will deal with the release of the upcoming final SEI report and the Owl Demographic Study. After you review them would you please send them to Julie McDonald? She asked to see them.

The latest amended settlement agreement calls for releasing the results of the murrelet 5-year review on **Tuesday, August 31.**

I'm not sure it will actually happen then but if it does we need to be prepared. When these documents receive all the required approvals would you please return them to David Patte? I will be gone on Tuesday.

Many thanks!

Joan



MAMU\_5yearReviewResults\_draftNR\_082604 MAMU\_5yearReviewResults\_QA\_082604.



NSO\_MAMU\_5yearReviewResults\_ORP\_082604

*Turnout till 9/2 David POC*

*→ ask Michelle re: posting actual review versus summary*  
*→ ask M.*  
*David will make changes*

Department of the Interior  
U.S. Fish & Wildlife Service  
Pacific Regional Office  
911 NE 11<sup>th</sup> Avenue  
Portland, Oregon 97232-4181  
Phone: 503/231-6121  
Fax: 503/231-2122  
<http://pacific.fws.gov>

# News Release



August 31, 2004

04-XX

Contact: David Patte, 503-231-6121

## Five-year Review of Marbled Murrelet Completed

The U.S. Fish and Wildlife Service announced today that it has completed its formal 5-year review of the marbled murrelet, a threatened species protected under the Endangered Species Act.

As a result of the review, no change in the listing classification of the marbled murrelet is recommended. The review also affirmed that marbled murrelets in Oregon, Washington and California qualify as a Distinct Population Segment (DPS) under the Service's 1996 DPS policy.

"Our review considered the best science that has become available since the marbled murrelet was listed in 1992," said Dave Allen, Regional Director of the Service's Pacific Region.

In conducting the review, a panel of seven Service officials relied on a 344-page report prepared by a private contractor, EDAW, Inc., of Seattle, which had 16 non-Federal scientists evaluate, synthesize and interpret the latest scientific and commercial information on marbled murrelets. In addition to the EDAW report, Service officials directly considered other key scientific documents about marbled murrelets during their review, having at their access nearly 1,000 pieces of other related information.

The 5-year review, required by the Endangered Species Act, considered all information that has become available since the original listing of the marbled murrelet, such as: population and demographic trend data; genetics; species competition; habitat condition; adequacy of existing regulatory mechanisms; and management and conservation planning information.

The review assessed: (a) whether new information suggests that the species' populations are increasing, declining or stable; (b) whether existing threats are increasing, the same, reduced or eliminated; (c) if there are any new threats; and (d) if new information or analysis leads us to determine that a reclassification of the status of the species is warranted.

The scientific information considered in the review shows that marbled murrelet populations in Oregon, Washington and California continue to decline, with the population in the three states estimated to be approximately 24,400. Restrictions on gill-netting in Washington and California are believed to have reduced murrelet mortalities from gill-netting but high predation on nests by crows and jays, particularly

near areas used by humans, continues to be a factor in the species' low breeding success. The historical rate of habitat loss in the three states has slowed, primarily due to the Northwest Forest Plan, but continues at an estimated 1 percent per year. And suitable habitat has not been developed to replace lost historical habitat.

The Service panel found that the currently listed murrelet population meets the agency's criteria for a Distinct Population Segment because the population is both discrete and significant. Marbled murrelets in Washington, Oregon and California constitute roughly 18 percent of the species' distribution and the loss of these populations would likely reduce the evolutionary potential and long-term viability of the species' entire range from Alaska to California.

More information on the 5-year review is available at XXXX.

The Service agreed to conduct the 5-year review of the marbled murrelet following a lawsuit filed by the American Forest Resources Council. The agency also is conducting a 5-year review of the northern spotted owl, in accordance with the settlement of a lawsuit filed by the Western Council of Industrial Workers. The northern spotted owl was listed as a threatened species in 1990. That review is expected to be completed in the fall of 2004.

Research and monitoring programs for both of these species are being implemented on Federal and non-Federal (state, private, tribal) lands. As a result, a large body of new information has become available. Although this information has been made public throughout the past decade, and the Service has continued to use the best available data in carrying out its ESA responsibilities, this information had previously not been evaluated under the ESA's 5-year review process.

The U.S. Fish and Wildlife Service is the principal Federal agency responsible for conserving, protecting and enhancing fish, wildlife and plants and their habitats for the continuing benefit of the American people. The Service manages the 95-million-acre National Wildlife Refuge System, which encompasses 544 national wildlife refuges, thousands of small wetlands and other special management areas. It also operates 69 national fish hatcheries, 64 Fish and Wildlife Management offices and 81 ecological services field stations. The agency enforces federal wildlife laws, administers the Endangered Species Act, manages migratory bird populations, restores nationally significant fisheries, conserves and restores wildlife habitat such as wetlands, and helps foreign governments with their conservation efforts. It also oversees the Federal Assistance program, which distributes hundreds of millions of dollars in excise taxes on fishing and hunting equipment to state fish and wildlife agencies.



David Patte

08/30/2004 06:01 PM

To: Phil Carroll/OSO/R1/FWS/DOI@FWS, Lee  
Folliard/OSO/R1/FWS/DOI@FWS, Douglas  
Zimmer/WWO/R1/FWS/DOI@FWS, Tom  
Buckley/UCRB/R1/FWS/DOI@FWS, Alexandra  
Pitts/SAC/R1/FWS/DOI@FWS, Paul Henson/SAC/R1/FWS/DOI, John  
Engbring/SAC/R1/FWS/DOI@FWS, Al  
Donner/SAC/R1/FWS/DOI@FWS

cc:

Subject: MAMU Release Status

As of COB today, we are still awaiting a final decision and/or guidance from DC. Please do not act on the region's draft news release (sent earlier as a heads-up).

David

U.S. Fish &amp; Wildlife Service

Department of the Interior  
 U.S. Fish & Wildlife Service  
 Pacific Regional Office  
 911 NE 11<sup>th</sup> Avenue  
 Portland, Oregon 97232-4181  
 Phone: 503/231-6121  
 Fax: 503/231-2122  
<http://pacific.fws.gov>

# News Release



*Julie's Draft*

August 31, 2004 → *Today*

Contact: Joan Jewett, 503-231-6121

04-XX

*DRAFT*

## Five-year Review of Marbled Murrelet Completed

The U.S. Fish and Wildlife Service announced today that it has completed its formal 5-year review of the marbled murrelet, a threatened species protected under the Endangered Species Act.

As a result of the review, a determination ~~that~~ <sup>was</sup> made that marbled murrelets in Oregon, Washington and California do not qualify as a Distinct Population Segment (DPS) under the Service's 1996 DPS policy. That policy states the designation as a distinct population will be reviewed as part of any 5-year review.

With its determination that the population does not qualify as a DPS, the Service also announced that it will expand its status review of the population, and conduct a status review of the entire species. "While there is no DPS under our policy, the question of whether these populations constitute a significant portion of the range and whether the species as a whole is declining, must be addressed before we take action to ~~remove protections~~ <sup>any</sup> for the murrelet", said Dave Allen, Regional Director of the USFWS in Portland, Oregon. *affect the status*

The Service agreed to conduct the 5-year review of the marbled murrelet following a lawsuit filed by the American Forest Resources Council. The agency also is conducting a 5-year review of the northern spotted owl, in accordance with the settlement of a lawsuit filed by the Western Council of Industrial Workers. The northern spotted owl was listed as a threatened species in 1990. That review is expected to be completed in the fall of 2004.

The determination that the murrelet is not a distinct population will have no immediate affect on the protections available to the species.

Research and monitoring programs for both of these species are being implemented on Federal and non-Federal (state, private, tribal) lands. As a result, a large body of new information has become available. Although this information has been made public throughout the past decade, and the Service has continued to use the best available data in carrying out its ESA responsibilities, this information had previously not been evaluated under the ESA's 5-year review process.

*DRAFT*  
1 of 2

**Craig Manson@DOI**

08/31/2004 02:13 PM

To: David B Allen/RO/R1/FWS/DOI@FWS, Theresa  
Rabot/RO/R1/FWS/DOI@FWS

cc:

Subject: Re: Marbled Murrelet [Virus checked]

Lawyer-vetted version.



MAMU DPS.doc

Craig Manson  
Assistant Secretary for Fish and Wildlife and Parks  
United States Department of the Interior  
1849 C Street NW  
Washington DC 20240



Paul Phifer

08/31/2004 04:31 PM

To: David B Allen/RO/R1/FWS/DOI@FWS, Theresa Rabot/RO/R1/FWS/DOI@FWS, Craig Manson/ASFW/OS/DOI@DOI, Julie MacDonald/ASFW/OS/DOI@DOI  
cc: Sarah Hall/RO/R1/FWS/DOI@FWS, Jana Grote/RO/R1/FWS/DOI@FWS  
Subject: Revised Murrelet 5-year review

Attached is the revised MAMU 5-year review incorporating the new DPS information.



MAMU 5-Year Review Final.8.31.04.c

The two modifications made:

Page 6, question 7b, "yes" to "no."

Page 15, under "Biological Issues", revised text (bolded) concerning genetic information.

Paul

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