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## **Timber industry challenges marbled murrelet habitat designation Claims Fish and Wildlife Service violating Endangered Species Act**

PORTLAND, OR - Today, the American Forest Resource Council (AFRC) brought suit against the U.S. Fish and Wildlife Service (FWS) claiming the agency violated the Endangered Species Act (ESA) when it designated millions of acres of forest land in Washington, Oregon and California as critical habitat for the marbled murrelet.

“There is nothing straight forward in how the FWS requires federal forest managers to deal with this bird,” said Tom Partin, President of AFRC. “Because humans almost never see the bird, the FWS seems to think it can throw a net over millions of acres of federal timber land that not only aren’t being used by the bird, but don’t even have the characteristics it is looking for when it flies inland to lay its eggs. Someone has to speak up about this violation of the limits of the ESA.”

The ESA requires that critical habitat be limited to areas occupied by the species at the time of listing. Under an exception, land not occupied at the time of listing may be designated as critical habitat only if they are essential to the survival of the species. Much of the land FWS has classified as critical habitat doesn’t have the large trees the murrelet is believed to use. When the FWS designated all Late Successional Reserves (LSRs) on federal land as murrelet critical habitat, it did so assuming those areas would develop into nesting habitat over the next 400 years.

“There is nothing in the law that allows the FWS to tie up currently unsuitable land hoping it turns into habitat that will support an endangered species,” said Partin. “That’s like the government denying you a building permit because it hopes someday your neighborhood will become a city park.”

Marbled murrelets are abundant in Alaska and the western Canadian provinces. Less than two percent of marbled murrelets are found in Washington, Oregon and California. AFRC’s [filing](#) argues that the birds in the lower three states should not be listed as a separate subspecies and are adequately protected by laws other than the ESA.

Under a [rule](#) published in October, 2011, FWS designated nearly 3,700,000 acres of land in Washington, Oregon and California as critical habitat for the murrelet. This is ten times the number of acres that were “occupied” by the bird when it was listed in 1992.

Until last October, areas of federal forest known not to have the characteristics needed for the murrelet to nest could be managed without asking the FWS for clearance. FWS changed the rule without notifying the public. Now, the Forest Service and Bureau of Land Management must consult with FWS before undertaking projects on lands within the geographic area of the murrelet, whether or not it is suitable habitat.

“This is going to cost the agencies time and money that they don’t need to be spending at a time when federal budgets are really tight,” said Partin. “The forest managers know the land. They do a good job of protecting all kinds of wildlife and water resources. They know what is and isn’t murrelet nesting habitat. This is an unnecessary duplication of effort that won’t accomplish a thing.”

AFRC [notified](#) the FWS of its views last November, but the agency failed to respond and took no action to avoid the litigation.

AFRC is joined in the suit, which was filed in the District of Columbia, by Douglas County, Oregon, and the Carpenters Industrial Council.

[AFRC](#) is a regional association of forest products manufacturers and forest landowners concerned with the management of public forest lands. Over 50 percent of Douglas County’s land area is owned by the federal government and managed by the Forest Service and BLM. It owns and manages timber land which has been designated marbled murrelet critical habitat. The Carpenters Industrial Council represents some 10,000 forest products workers in Washington, Oregon and California. Its members live and work in the remote communities that are heavily dependent on forestry jobs.

The marbled murrelet is a robin-sized bird that lives and feeds in saltwater, but flies inland to lay its eggs on the branches of very large conifer trees. The species has been listed as endangered since 1992.