



American Forest Resource Council
5100 S.W. Macadam Avenue, Suite 350
Portland, Oregon 97239

Phone: (503) 222-9505
Fax: (503) 222-3255
E-mail: info@amforest.org
www.amforest.org

January 22, 2010

Murrelet Delisting Denied

On January 21, the U.S. Fish and Wildlife Service (FWS) published a notice in the Federal Register denying a petition to delist the marbled murrelet as an endangered species. The delisting petition was filed May 28, 2008 by AFRC, Carpenters Industrial Council, Douglas County and Ron Stuntzer. The Federal Register Notice can be found at <http://edocket.access.gpo.gov/2010/pdf/2010-951.pdf>

The decision not to delist is based in part on a finding contained in the FWS's 2009 status review that marbled murrelets in Washington, Oregon and California form a distinct population segment (DPS) from the birds in Canada and Alaska. The finding is a reversal of a 2004 finding that determined there was no DPS. The apparent difference in reasoning is based on how the agency compares Canada's regulatory protections of the species with those under the Endangered Species Act (ESA). AFRC sought delisting based on the 2004 finding, prior to the agency's decision to conduct the 2009 5-year review. The 2009 status review can be found at http://ecos.fws.gov/docs/five_year_review/doc2417.pdf.

In announcing the decision not to delist, Assistant Secretary of Interior Tom Strickland stated, "This decision strongly reflects the Obama administration's deep commitment to basing ESA decisions on the best available science."

AFRC has significant concerns about the scientific validity of the analytical methods used in the 2009 status review. Whether the international boundary justifies viewing the species as endangered in the southern end of its normal range is a question open for interpretation. */Ann Forest Burns*

FS/BLM Budget Support

As President Barack Obama prepares the 2011 budget request (the first budget to be entirely prepared under this Administration), which will be delivered to Congress in early February, a host of Senators and Representatives have written to the President in support of increased federal forest management funding to promote forest health projects, preservation of the forest products industry infrastructure, and survival of our rural communities.

Four Congressional support letters have been sent to the President since November 20, 2009. The first letter, sent on that date, from Senator Blanche Lincoln (D-AR), Chairwoman of the Senate Agriculture Committee stated that "Additional funds are desperately needed and I am writing to encourage you to consider a very modest increase in forest management for the USDA

Forest Service as a part of the 2011 budget. With an increase of just \$57 million in forest management funds we can create over 6,000 jobs.”

A second letter dated December 17, 2009 was sent to President Obama by Representative Kurt Schrader (D-OR) and 18 other Democratic members of the House of Representatives. The letter noted that “Our federal, state, and private forests have served as an economic and social cornerstone in American history. However, past policies have largely ignored forest health. With just a modest increase in funding for forest management at the USDA Forest Service we can reverse this trend and put people back to work. Studies indicate that an increase of \$151 million in forest management funds for the FY 2011 budget will create over 17,600 jobs.”

A third letter dated January 13, penned by a bipartisan group of nine members of the Senate stated “while several budget line items contribute to the Forest Service’s ability to conduct active management, the Forest Products activity is perhaps the most significant. It is essential to implementation of an integrated and sustainable program as called for in forest plans in all regions of the country. Congress appropriated \$336,722,000 for the Forest Products activity in the FY 2010 Interior Appropriations Bill, which represented a nearly \$8 million increase over the Administration’s request. There is clearly strong support in the Congress for this important program and the role it plays in maintaining the health of our national forests and the viability of the nation’s forest products industry.” Northwest Senators Ron Wyden (D-OR), Jim Risch (R-ID) and Mike Crapo (R-ID) signed onto the letter.

Finally, on December 4, 2009 five Democratic members of the Oregon delegation sent a letter to President Obama urging him “to prioritize funding for forestry activities on Bureau of Land Management Oregon & California (O&C) forestlands. This funding is critical to maintaining healthy forests in our state and creating jobs in some of the country’s most economically distressed rural areas.”

Clearly, increased funding for federal forests is becoming an important issue nationwide. We can only hope that President Obama and the Office of Management and Budget take this strong support into account as they get ready to deliver the 2011 budget request. For copies of the budget letters please contact the Portland office. / *Tom Partin*

Forest Management Legislation

Three separate bills were introduced in the Senate during the last two months of 2009 that highlight the support for accelerating Forest Service management activities. Each bill includes provisions meant to encourage additional forest management to protect our forests and the forest products industry infrastructure that depends on those forests.

Senator Jon Tester (D-MT) introduced the Forest Jobs and Recreation Act, which would revamp how federal agencies manage large swaths of federal forestland in Montana. The bill would designate 680,000 acres on the Beaverhead-Deerlodge National Forest as Wilderness, while releasing other lands that are currently designated as wilderness study areas. An additional 336,000 acres would be classified as national recreation, protection, or special management areas, while keeping them open to motorized recreation. The legislation would require the Forest Service to mechanically treat a minimum of 70,000 acres over the next decade. The legislation

applies to the entire Beaverhead-Deerlodge and portions of the Kootenai and Lolo National Forests. The Beaverhead-Deerlodge is currently performing mechanical treatments on only about 1,000 acres per year. A hearing was held on the bill in the Senate and Natural Resources Committee in mid-December.

Senators Mark Udall (D-NM) and Jim Risch introduced the National Forest Insect and Disease Emergency Act. The bill would authorize creation of insect emergency areas that the Forest Service can prioritize for treatment to reduce fuel loads and fire risk, expand the use of the Healthy Forest Restoration Act in analyzing projects, extend throughout the West the “Good Neighbor Authority” to treat public lands adjacent to private property, and make the current stewardship contracting authority permanent. The legislation would also provide incentives for converting beetle-killed trees into biofuel or biopower. Both Senator Udall and Risch have seen much of their respective states consumed by insect infestations and wildfires in recent years. The intent of the bill is to focus management on areas ravaged by insects, to make our national forests healthier, and to maintain and develop the industry infrastructure needed to address the problem. The bill has not received a committee hearing.

Senator Ron Wyden introduced the Oregon Eastside Forests Restoration, Old Growth Protection and Jobs Act of 2009 (see AFRC December 21, newsletter). The goal of the legislation is to promote more active management on 8.3 million acres of National Forest land in eastern Oregon while maintaining current protections for watersheds and larger diameter trees. The legislation would also require the decommissioning of temporary roads within two years of project completion and that any new permanent roads replace existing permanent roads. Finally, the legislation would establish a Scientific and Technical Advisory Panel that would provide guidance to the Secretary on forest restoration and when to harvest trees larger than 21” in diameter and when to retain trees smaller than 21” in diameter.

The eastern Oregon legislation places a heavy emphasis on increasing mechanical treatments to generate sawlogs to help sustain the remaining industry infrastructure east of the Cascades. Currently, only about 40,000 acres are being mechanically treated on the six eastside forests designated under the bill per year. The long-term goal beginning approximately three years after enactment is to plan one project of at least 25,000 acres per forest per year. During the three year interim timeframe acres treated will ramp up in the following increments: Year One - 80,000 acres, Year Two - 100,000 acres, and Year Three - 120,000 acres. The bill also includes an authorization for an additional \$50 million in funding for project implementation during the three-year interim period or about \$17 million per year to those eastside forests. While the bill has not yet been scheduled for a hearing, Senator Wyden chairs the Forests Subcommittee.

All three of these bills signal a growing concern in Congress related to the Forest Service’s current ability to accomplish forest health projects. However, Agriculture Undersecretary Harris Sherman expressed some concerns with the Tester legislation during a December hearing and asked for additional time to improve the agency’s efforts. We are seeing first hand in the West, however, that business as usual is not keeping up with a growing forest health crisis. More to come on these bills as they work their way through the Congressional process. / *Tom Partin*

Forest Planning Regulations

On December 18, 2009 the Forest Service published a Final Rule in the Federal Register reinstating the 2000 forest planning rule as amended in 2002 and 2003. This also includes the interpretive rules issued in 2001 and 2004. As previously reported, on June 30, 2009 California District Court Judge Claudia Wilken invalidated the Forest Service's 2008 forest planning rule. As is customary, upon the 2008 rule being invalidated and in the absence of a new rule, the previously existing rule is reinstated which is the 2000 rule. The court's order allowed the agency to choose either the 2000 or the 1982 rule in place of the 2008 rule. Since the agency did not want to go through an entire rulemaking process to reinstate the 1982 rule, it decided to reinstate the 2000 rule with its transition provision that allows the agency to use the 1982 rule. As a result, forests in Region 6 currently in the forest plan revision process (Colville, Okanogan, Wenatchee, Wallowa-Whitman, Umatilla, and Malheur) will continue under the 1982 rule as allowed. The final rule can be found at: <http://edocket.access.gpo.gov/2009/pdf/E9-30171.pdf>.

On the same day, the Forest Service published its Notice of Intent (NOI) to prepare an environmental impact statement and request for scoping comments on the development of new forest planning regulations. The NOI states that a new planning rule "must be responsive to the challenges of climate change; the need for forest restoration and conservation, watershed protection and wildlife conservation; and the sustainable use of public lands to support vibrant communities." It presents eight principles that may be in the new rule and specifically requests comments on those principles. The NOI can be found at: <http://edocket.access.gpo.gov/2009/pdf/E9-30174.pdf>

A coalition of industry organizations is coordinating to prepare scoping comments which are due February 16. AFRC staff will prepare draft comments and make those available to members if they wish to submit their own comments. /Chuck Burley

Bull Trout Critical Habitat

On January 13, the FWS made another proposal to re-designate Critical Habitat for the bull trout. According to the FWS, "(H)istorically, bull trout were found in about 60 percent of the Columbia River Basin. They now occur in less than half of their historic range. Populations remain in portions of Oregon, Washington, Idaho, Montana and Nevada. In the Klamath River Basin, bull trout occur in 21 percent of their historic range. The bull trout is primarily threatened by habitat degradation and fragmentation, blockage of migratory corridors, poor water quality, the effects of climate change and past fisheries management practices, including the introduction of non-native species such as brown, lake and brook trout."

The last round of designating Critical Habitat started with proposals for the various Ecologically Significant Units in 2002 and 2004. These proposals identified 20,980 miles of streams and 591,557 acres of open water as meeting the standards for designation. In 2005, the FWS finalized the designation and determined that the majority of the areas identified were already being adequately protected under existing management plans, state forest practices rules or Habitat Conservation Plans. The FWS determined that only 3,827 miles of streams and 145,218 acres of open water would benefit from the additional Critical Habitat designation.

As a result of a lawsuit filed by several environmental groups, the FWS asked the Oregon US District Court for a voluntary remand of the decision. The court granted it and set a deadline to finalize a new designation for September 30. This latest proposal slightly increases the number of miles of streams that meet the Critical Habitat requirements from 20,980 to 21,692. It slightly decreased the number of open water acres from 591,557 to 533,425.

The FWS is asking for input on whether or not the exemptions granted in 2005 should be included in this final designation. Comments on the proposed critical habitat revision and the draft economic analysis will be accepted until March 15. For more information go to: <http://www.fws.gov/pacific/bulltrout/>. /Ross Mickey

Fisher Listing Upheld

In an unpublished opinion issued on January 6, the Ninth Circuit Court of Appeals upheld a decision by the Eastern District of California court that the FWS did not act arbitrarily and capriciously in concluding that the West Coast range of the fisher constitutes a distinct population segment and should be listed as a candidate species under the ESA. (*Sierra Forest Products v. Kempthorne*.) The case, brought in 2007 by the Pacific Legal Foundation on behalf of AFRC member Sierra Forest Products, was an attempt to overturn the agency's decision to list the West Coast population of the fisher, which exists in most areas of the United States, as a candidate species.

The west coast population of the fisher has been an ESA candidate species since 2004. Although budget priorities have prevented the FWS from proceeding to determine whether or not the fisher warrants listing as a threatened or endangered species, its candidate status has caused the courts to block several timber sales in the Sequoia and Sierra National Forests. Despite apparent gaps in its population within its overall range, the animal appears to be thriving on actively managed forest lands. /Ann Forest Burns

Western Oregon Task Force

On January 5, a special interdisciplinary task force composed of career staff from the BLM, FWS, NOAA Fisheries, and the Forest Service began interviewing stakeholders interested in the management of O&C timberlands located in western Oregon. The task force is headed up by Linda Rundell, BLM New Mexico State Director.

The task force was formed following an October 2009 announcement by Secretary of Interior Ken Salazar directing BLM Director Bob Abbey and FWS Director Sam Hamilton to establish a special interdisciplinary team to take a fresh look at processes that have guided the management of BLM forests in western Oregon. This review stems from a July 16, 2009 decision by Secretary Salazar to withdraw the Western Oregon Plan Revisions (WOPR), which the BLM adopted in 2008 to guide the management on 2.1 million acres of O&C forests.

Upon withdrawal of the WOPR, management on these lands reverted back to Northwest Forest Plan guidelines, which do not comply with the O&C Act's requirement that the lands be managed primarily for timber production. It was this conflict that led to the 2003 settlement under which the WOPR was created. More recently, problems have arisen on the BLM Medford

and Roseburg Districts because of the FWS's inability to successfully conduct consultations on timber management projects in spotted owl habitat.

The task force focused on a number of statutory and process issues related to western Oregon forest management including:

- The statutory framework for planning, including the O&C Lands Act and Endangered Species Act.
- Interagency coordination and collaboration in the context of the planning process.
- The appropriate scope and geographic scale for BLM planning.
- Public outreach and involvement.
- Use and implementation of science.

These issues were used to formulate a series of 14 questions to which stakeholders were asked to respond. Several of the stakeholders interviewed included AFRC members who use and rely on a sustainable flow of timber from the O&C lands to operate their plants. Many of the industry stakeholders described the crisis facing their communities and mills in western Oregon due to a lack of volume coming from the BLM lands. The task force is scheduled to have their draft report completed and submitted to Abbey and Hamilton by March 1 and a final report submitted to Secretary Salazar by March 15. Stakeholders were told that new management policies could be implemented as early as March 31. / *Tom Partin*

DNR Biomass Grants

On January 13, Washington Commissioner of Public Lands Peter Goldmark announced that four companies had been chosen for pilot projects designed to utilize woody biomass from forestlands:

- Parametrix will launch a pilot project to convert woody biomass into liquid fuels at SDS Lumber in Bingen (Klickitat County) using fast pyrolysis technology.
- Borgford BioEnergy, LLC in Valley and Springdale (Stevens County) will utilize wood waste to generate electricity, bio-oil, syngas, and bio-char.
- Atlas Products in Omak (Okanogan County) will use forest biomass to produce wood pellets for heating.
- Nippon Paper Industries USA, Ltd. in Port Angeles (Clallam County) will utilize wood waste for the cogeneration of heat and electricity at its paper mill, as well as selling excess energy.

According to a press release issued by DNR, "The pilot projects will use slash that the companies purchase in part from state trust lands managed by DNR. The biomass can come from timber harvests or be removed during forest health treatments such as thinning over-crowded and fire-prone tree stands." / *Ann Forest Burns*

DNR Auction Booklets Online

Beginning with the January 2010 packet, Washington Department of Natural Resources (DNR) appraisal packets and auction booklets are now available online at

<http://www.dnr.wa.gov/BusinessPermits/Topics/AppraisalPackets/Pages/Home.aspx>

Contract harvesting opportunities will also be accessible from the same webpage. In addition to making information more readily accessible to the public, DNR estimates this move away from printed appraisal packets and auction booklets mailed to each potential bidder will save the department \$36,000 per year. /*Bob Dick*

Blended Stewardship Contract

On December 28, 2009 Forest Service Chief Tom Tidwell sent a letter to Regional Foresters, Directors, and Deputy Chiefs outlining his desire to develop a single blended stewardship contract to relieve some of the burden from end result contracting, and to reduce the number of contract versions and pages of requirements. In his letter Tidwell outlined the fact that stewardship end-result contracts have been in place for 10 years, with four years remaining to use that authority.

The Chief stated that it is his desire to seek permanent authority of this important tool, but he believes the best way to accomplish this is to develop one simplified contract instrument. Tidwell's vision of this new contract will focus on achieving the end results identified through the collaborative process, facilitate best value contracting, and protect the interests of the stakeholders and the government.

A team of individuals from the Directors of Forest Management and Acquisition Management will develop this new contract. The Chief plans to provide an update on their progress at the February National Leadership Council meeting. More to come on this as new information becomes available and stakeholders have a chance to comment. /*Tom Partin*

NEPA and Climate Change

President Obama may issue an executive order requiring climate change be added to the list of factors federal agencies must consider when conducting environmental analyses under the National Environmental Policy Act (NEPA). This is in response to a petition filed in 2008 by the Sierra Club, Natural Resources Defense Council and International Center for Technology Assessment.

The Los Angeles Times (Jim Tankersley, January 1) reported that Nancy Sutley, CEQ Chairwoman, said that federal agencies "should think about both the effect of greenhouse gas emissions, and the effects of climate change, on decisions they make." She added that the administration's decision is not final.

Last year, Senators John Barroso (R-WY) and James Inhofe (R-OK) wrote Sutley that such new requirements would "slow our economic recovery while providing no meaningful environmental benefits." The Senators continued "Projects across the nation are already experiencing delays or being canceled due to inappropriate and inefficient implementation and litigation from existing environmental regulations." In her response, Sutley wrote "I don't think that we have much to fear in terms of NEPA being a barrier to getting things done". (LA Times) /*Chuck Burley*

Oregon FPA Under Attack

A recent article in The Oregonian reported that the riparian protection measures in the Oregon Forest Protection Act (FPA) are inadequate to protect coastal waterways according to the

Environmental Protection Agency and the National Oceanic and Atmospheric Administration. This issue has manifested itself in the context of the coastal management plan as required by the Coastal Zone Management Act. In reviewing Oregon's coastal plan, the federal agencies wrote "Oregon's forestry program lacks adequate measures for protection riparian [sic] areas of medium, small and non-fish bearing streams, high risk landslide areas, and for mitigating the impacts of legacy roads." A consequence of the federal agencies not approving the state's plan is the loss of federal coastal conservation funds which can be significant.

In an effort to force the issue, the Northwest Environmental Advocates filed a lawsuit last year against the federal agencies in an attempt to cut off the funding until changes are made to the FPA.

When one digs into this issue it becomes apparent that those who feel the FPA isn't adequate look at the law's regulatory features, and not the results on-the-ground. According to Jim Paul with the Oregon Department of Forestry, Oregon's forest lands produce clean water. "Clearly Oregon does not have the strictest regulations, but in terms of water quality conditions, the data speaks for itself," Paul said.

We can only hope that evidence-based methods prevail in this case. This is one reason the Hinkle Creek paired watershed study was implemented several years ago—to measure the effectiveness of the FPA in protecting fish and water quality. Unfortunately, many of the critics of the FPA chose not to attend a Board of Forestry tour last year of the Hinkle Creek study area. /Chuck Burley

Washington's Tax Problems Grow

Washington State's general fund experienced a \$9 billion shortfall by May 2009. The outlook for 2010 is not much better. At the beginning of the legislative session on January 11, the projected shortfall was \$2.6 billion. In December, Governor Christine Gregoire unveiled her 2010 budget, which, as required by state law, was written using current revenue levels.

On January 12, the Governor proposed a revised budget that restores \$779 million dollars cut from her original budget. She stated her intention that these be funded by such mechanisms as "closing tax loopholes" and "eliminating policies that unfairly benefit out-of-state business." It now appears likely a tax increase will be on the table during the 2010 legislative session.

The 2010 legislative session will be short (60 days) and will, or at least should, focus on solving the budget crisis. /Bob Dick