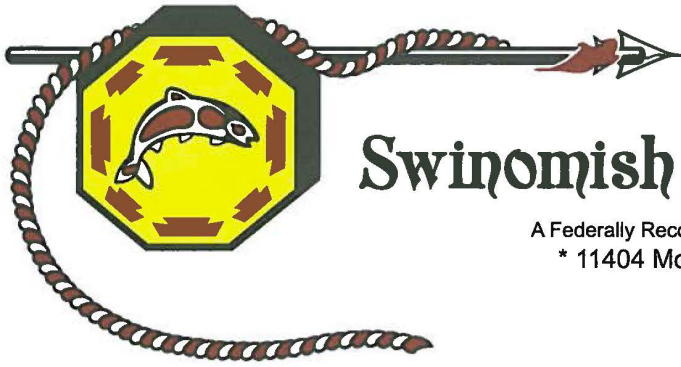




Swinomish Indian Tribal Community

A Federally Recognized Indian Tribe Organized Pursuant to 25 U.S.C. § 476

* 11404 Moorage Way * La Conner, Washington 98257 *

March 23, 2026

Ms. Erin Uloth, Forest Supervisor
Mount Baker – Snoqualmie National Forest
Via email: erin.uloth@usda.gov

Re: Objection to Forestwide Thinning EA

Dear Erin,

On behalf of the Swinomish Indian Tribal Community, (“Swinomish” or the “Tribe”) we submit this letter objecting to four (4) specific components of the Forestwide Thinning Final Environmental Assessment (“Final EA”). The Tribe appreciates you and your team’s previous response to comments and stated commitment to working with the Tribe through the Level One ID Team for timber harvest projects in the Mt. Baker – Snoqualmie National Forest (“MBS”). However, your letter dated February 5, 2026 did not adequately respond to some of the Tribe’s comments and concerns raised in our comment letters dated October 31, 2025 and January 12, 2026.

The Tribe’s purpose in submitting these objections is to seek additional clarity and secure additional commitments from the Forest Service to address impacts to the Tribe’s Treaty-reserved rights and resources within the MBS in order to ensure current and future generations can fully exercise their Treaty rights as our ancestors have since time immemorial. We look forward to further dialogue so that we may resolve the Tribe’s objections in a mutually satisfactory way.

The Swinomish Tribe’s Treaty Rights, Leadership on Salmon Recovery and Longtime Reliance on the MBS for Treaty Fishing, Hunting, and Gathering Are All at Risk from the Project.

The Swinomish Indian Tribal Community is a federally recognized Indian tribe and political successor in interest to certain tribes and bands that signed the 1855 Treaty of Point Elliott, which among other things reserved fishing, hunting, and gathering rights and established the Swinomish Reservation on Fidalgo Island in Skagit County, Washington. The Swinomish Reservation sits at the mouth of the Skagit River, the largest river system draining to Puget Sound and the only river in the Lower 48 states that still has all species of wild Pacific salmon and steelhead spawning in its waters.

Since time immemorial, the Swinomish Tribe and its predecessors have occupied and utilized vast areas of land and water to live, hunt, fish, and gather to support the Swinomish Tribe's cultural and traditional lifeways. In the Treaty, Swinomish reserved its right to take fish at its usual and accustomed fishing places in perpetuity, including throughout the entirety of the Skagit River watershed and beyond and to hunt and gather on open and unclaimed lands, including Federal- and state-owned forest lands and private industrial timberlands. These reserved rights are to be treated as the "supreme Law of the Land" pursuant to U.S. Constitution Art. 6, Cl. 2. They function akin to easements running with the lands or places they attach to, and are protected from federal, state, and private interference. *See United States v. Winans*, 198 U.S. 371, 381 (1905); *United States v. Oregon*, 718 F.2d 299, 304 (9th Cir. 1983); *United States v. Washington*, 20 F. Supp. 3d 828, 889 (W.D. Wash. 2007). These are not privileges granted by the federal government. These were and are retained sovereign rights that predate the United States itself.

Swinomish is a primary guardian of the Skagit and Samish River basins and surrounding coastal areas. For decades, the Tribe has invested in scientific research which increasingly indicates that without reversing some of the past degradation to salmon habitat, and without protecting the remaining intact, functioning habitat, recovery of ESA-listed salmonids and the Southern Resident Killer Whale ("SRKW") that depend upon them is not possible. Among other efforts, Swinomish has advocated for decades to protect instream river flows, ensure federal, state and local regulations are enforced and policies and plans adhere to best scientific and technical data, including to restore riparian, floodplain and estuary habitats, remove roads causing harm to salmon and hunting habitat within the Mt. Baker – Snoqualmie National Forest, and protect nearshore habitat for salmon recovery in the Skagit basin, through significant policy, scientific, and legal efforts.

The Tribe is an adjudicated co-manager of Washington fisheries along with the Washington Department of Fish and Wildlife (WDFW) and in this capacity has worked with WDFW and NOAA Fisheries for decades to ensure protection and restoration of fishery habitats and resources in the Skagit and Samish basins, as well as shellfish resources in Washington's coastal zone. The Tribe was a founding member of the Skagit River System Cooperative ("SRSC") (established as the Skagit System Cooperative in 1976 and renamed in 2003), a fisheries and environmental science and research consortium between Swinomish and the Sauk-Suiattle Indian Tribes. SRSC is considered a center of excellence in fisheries science, research and restoration. It has more than 25 highly qualified scientists and biologists with expertise in fish biology, hydrology, hydrogeology, restoration ecology and environmental permitting and regulatory compliance and works closely with Swinomish staff to pursue salmon recovery goals.

Swinomish tribal members have regularly practiced their Treaty rights to hunt, gather, and conduct spiritual ceremonies throughout the MBS. Further habitat fragmentation and impacts from new roads and timber harvesting present serious concerns of substantial harm both to the numerous Swinomish tribal members who engage in the exercise of Treaty rights in these areas and the underlying, collectively held Treaty rights themselves. The EIS must account for the impacts to the exercise of these rights.

Today, Swinomish can harvest far fewer plants and animals than previous generations, which impacts my and the Tribal Community's ability to feed our families and practice our cultural lifeways. Recovering native plant and animal populations is high on the Tribe's list of priorities because we are starting to lose hunters and gatherers as opportunities to hunt and gather decline. This loss breaks the generational cycle that has existed for millennia. Before, our earliest thoughts were on the water, with our parents, uncles and grandparents catching salmon, and also on the land, hunting and gathering. If our children are no longer following in our footsteps, we—as a Tribe, as a people—are threatened with losing a way of life that has been with us for thousands of years.

Equally impactful, habitat degradation, fragmentation, and destruction already represent an existential threat to the plants and animals that form part of the foundation of the Tribe's Treaty rights. Simply put, our fish, plants, and animals are experiencing a homelessness crisis. After more than a century of population growth, recreational impacts, and resource extraction in the greater Skagit River watershed, as well as the Mt. Baker - Snoqualmie National Forest and its surrounding public lands, the remaining habitat does not come close to meeting conservation needs—much less meeting the Tribe's needs in terms of access to and availability of multiple species.

This level of habitat degradation is also harmful on a cultural level to a people whose teachings and beliefs are so tied to the land. From an early age Swinomish youth are taught that life begins in the Upper Watershed—fishing, hunting, and everything else depends on the cold, clean water of the Skagit River flowing downstream from the Cascade Mountains. We have a saying that our existence occurs “from whitecap to whitecap”—meaning, from the snow and glaciers atop the Cascade mountains to the whitecaps of waves breaking in the Salish Sea. We may be the “People of the Salmon,” but we are not just that—for example, the Swinomish story pole features a mountain goat, a species only found in the alpine and sub-alpine areas of the Upper Watershed. It is vital to Swinomish that the Forest Service maintain connectivity and species diversity in critical habitats throughout the MBS.

Swinomish has a system of issuing permits and tags to Tribal members for the subsistence harvest of game. These harvests are small due to conservation needs and the dwindling availability of many species for harvest, but are nonetheless very important to Tribal members' health, tradition, and cultural practices. In the 2024-2025 subsistence and ceremonial hunting season, Tribal hunters harvested 16 deer (approximately 800 pounds), 27 elk (approximately 7,290 pounds), one bear (approximately 100 pounds), and an estimated 200 geese (approximately 1200 pounds) and 500 ducks (approximately 1500 pounds).

Subsistence hunting and gathering is much more important to Swinomish and other treaty tribes than it is to the general population. Game and harvested foods like berries, in addition to fish and shellfish, have been a major part of the Swinomish diet since time immemorial. All of these foods, and in particular game, have declined as a share of Swinomish member's diets due lack of access, fragmented habitat, falling abundance due largely to inadequate or degraded habitat, and harvest time restraints.

The Tribe's adjudicated Treaty areas within both the MBS and the greater Skagit River watershed are co-located in many areas potentially impacted by the proposed actions, including around the Skagit River, Baker River, Cascade River, and the Suiattle River that drains into the Sauk River. Allowing thousands of acres of timber cutting, new road building, and expansion and development of new quarry operations throughout these important salmon rivers and their many tributaries, and over ecologically important wildlife corridors that connect public lands for wildlife migration could result in substantial direct, indirect, individual and cumulative impacts to the Tribe's Treaty rights and Traditional Cultural Properties.

Objection 1: The Forest Service has not provided adequate justification or safeguards for allowing the harvest of trees >20" DBH up to 26" DBH.

The first objection is regarding the allowance of timber harvest on trees >20" diameter at breast height ("DBH") up to 26" DBH. In the Tribe's January 12, 2026 letter on the Draft EA, we included comments that:

The NMFS BiOp restricts commercial thinning of stands >80 years and >20" DBH, up to 26" DBH, to the Olympic National Forest only, but the Draft EA does not include the same restriction. **The Final EA must include the restrictions that in the MBS no commercial or non-commercial thinning will occur on stands >80 years or >20" DBH.** If the USFS intends to allow commercial thinning of stands >80 years and up to 26" DBH, **the Final EA must set forth the criteria and conditions under which commercial harvest of stands >80 years and up to 26" DBH will be granted.**

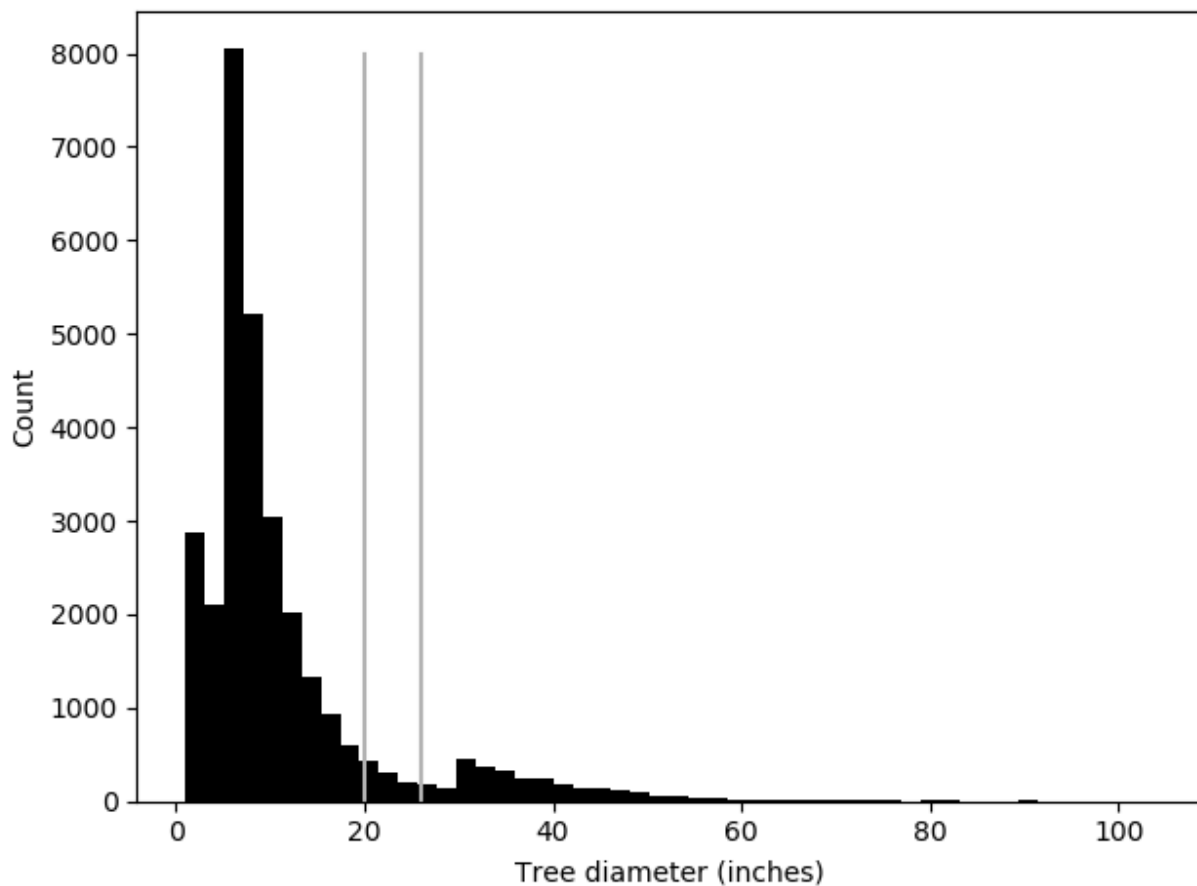
Forest Service's February 5, 2026 letter noted a "detailed analysis outlining the conditions in which the removal of trees over 20" to 26" would be considered can be found in the variance request to the regional ecosystem office (REO). Due to staffing, the variance request is still under review and awaiting final decision which is expected before signature and publication of the Final EA and Draft FONSI."

The 2-page REO memorandum dated March 2, 2026 ("REO Memo") noted that the Final EA seeks vegetation management activities "which differ from existing exemption criteria for commercial thinning in REO memorandums 694 and 801." Specifically, the REO Memo noted that the MBS seeks concurrence to implement treatment activities "that differ from Stand Attribute (2) in memorandum 694" which states:

"Individual trees exceeding 80 years in those provinces or exceeding 20-inches diameter breast height in any province, shall not be harvested except for the purpose of creating openings, providing other habitat structure such as downed logs, elimination of a hazard from a standing danger tree, or cutting minimal yarding corridor. . . **Cutting older trees or trees exceeding 20-inches DBH for any purpose will be the exception, not the rule.**" (Emphasis added).

Simply put, the Tribe does not believe the Forest Service has provided sufficient justification for this proposal, and does not believe it has provided adequate safeguards or conditions to ensure that harvesting trees >20" DBH "when necessary" will not become the default rule. This open-ended allowance is in direct contradiction of Memorandum 694. This is of particular concern when it comes to the protection of Marbled Murrelets – see specific objection below.

The ecological significance of the target SDI = 275 needed to justify the increase in allowable cut size from 20" DBH to 26" DBH is poorly developed and seems to be based largely on the experience of having a hard time selling timber in the SF Stillaguamish. Is the problem of many trees >20" DBH and age <80 widespread? To examine this question, we analyzed data from the Forest Inventory and Analysis database (FIA; a Forest Service product). We clipped the data to MBS stand age polygons less than 80 years old and looked at diameter distributions from plot data from those stands, shown below. While some imprecisions are undoubtedly present in this analysis, it paints a general picture of there not being many trees with 20"<DBH<26". Why would cutting the few trees >20 DBH be good for the creation of old growth conditions and ungulate forage? Put another way, if the SDI target is missed by a small amount, will ungulates and species diversity suffer?



Moreover, the REO Consistency Review analysis demonstrated that 8 out of 10 plots were able to achieve SDI=275 while not cutting any trees larger than 20" DBH. The authors

pointed out that this could only be achieved in the model in which a pure thin from below constraint was imposed and essentially no trees smaller than 20" DBH were retained. This implies that in most cases there can be a tradeoff in how the SDI target can be achieved: you can either cut the larger trees or the smaller trees. Who will be responsible for determining this tradeoff, and at what phase of a project? Will it be the logging operator? Will it be the FS timber staff, who are under pressure from the administration to harvest more timber? Bigger trees are more valuable and more efficient operationally. How will ecological goals be protected when making these decisions? Further, our understanding of typical Forest Service thinning projects is that few if any trees smaller than the allowable cut size are retained anyway. Below is a photo of one of the MBS projects in Finney Creek, in which the residual stand is highly uniform, with all trees smaller than the max diameter cut. It seems like logging operators take everything they can get up to the maximum diameter, so it is unlikely smaller trees will be retained to contribute to stand structural diversity. Allowing larger trees to be cut will simply do just that.



Prescriptions that allow cutting trees with $DBH > 20"$ but only when necessary to achieve density goals sound like a headache to sell and execute. Will every tree with $20 < DBH < 26$ that is allowed to be cut be marked and accounted for before a mill appraiser comes through?

In the Tribe's opinion, some flexibility is acceptable if it would allow implementation of more projects that benefit tribal resources such as by increasing elk habitat and fixing roads.

However, the Forest Service has not made a sufficient case for why harvesting larger trees is “necessary” across the entire forest, how it will benefit habitat, on what conditions it would be allowed and at what scale it would be utilized. Would increasing the maximum diameter to 22", but only in absolutely necessary situations to reach density goals, have fixed the problem in the SF Stilly? The proposed allowance needs further discussion before moving ahead.

Objection 2: The Final EA does not include any specific analysis of, or mitigation measures to avoid and protect, the privacy and sanctity of the Tribe’s clearly stated traditional cultural properties, sacred sites and traditional cultural landscapes integral to the Tribe’s exercise of its Treaty-reserved rights.

The Tribe submitted comments on October 31, 2025 and January 12, 2026 that:

“Areas within the Mt. Baker Snoqualmie National Forest, and particularly those within the Skagit River Watershed, encompass numerous Traditional Cultural Properties (TCPs), sacred sites, and cultural landscapes integral to our identity and spiritual practices. These areas include:

- (1) ceremonial and prayer sites,
- (2) traditional gathering areas for medicines, foods, and materials, and
- (3) cultural landscapes that embody our stories and oral traditions.

The Proposed Rule does not, but the EIS must, address how these irreplaceable Tribal cultural resources would be protected from:

- Physical destruction through road construction and logging operations;
- Desecration through increased public access and industrial activity;
- Loss of privacy and sanctity necessary for ceremonial practices;
- Looting, vandalism, and unauthorized artifact collection; and
- Increased wildfire risk from human-caused ignitions that threaten cultural, sacred sites and culturally modified trees.

The EIS must provide a comprehensive assessment of the direct and indirect individual and cumulative effects to the exercise of these Treaty protected rights that are essential to the Tribe’s cultural lifeways and identity.”

The Final EA did not include any specific analyses that address these comments, nor did the Forest Service’s February 5, 2026 in response letter to the Tribe provide sufficient detail beyond that it would adhere to the biological opinions from the US Fish & Wildlife Service and the National Marine Fisheries Service. Neither of those documents gave any consideration to the individual and cumulative impacts on Treaty-reserved rights and resources.

Given the significant amount of industrial activity that is being proposed to continuously occur for the next thirty (30) years throughout the MBS, which includes a vast area of the Tribe’s adjudicated Treaty area, there is a need for the Forest Service to specifically address the impacts to the Tribe’s ability to exercise its Treaty-reserved rights for traditional cultural, religious and spiritual practices amidst the substantial noise and disturbance of continuous logging, blasting

and helicopter activity.

One of the reasons underlying this concern includes the Final EA is Soil, Fish and Wildlife Design Criteria SWF 16:

SWF16. Make all attempts to locate new landings or turnarounds a minimum 150-foot slope distance from rivers, streams, ponds, seeps, wetlands, and wet areas. If location outside of the 150-foot slope distance is **not possible**, then landings or turnarounds shall be located outside of the applied riparian reserve buffer for that stream type.

Landings needed within the buffer of fish-bearing streams will require approval from aquatic specialist prior to implementation. (Emphasis added).

This Design Criteria does not give any indication of the basis upon which it would be decided when it is “not possible” to locate a landing outside of the 150-foot distance. Nor does it give any indication of what criteria an aquatic specialist would utilize to allow a landing within the riparian habitat buffer along a fish-bearing stream. This language opens the door to helicopter and heavy machinery landings¹ – of which there will be dozens of new ones each year – being located within the riparian buffer of fish-bearing streams. The potential individual and cumulative impacts of this allowance are extremely concerning to the Tribe.

Additional reasons underlying this concerns are the massive amount of helicopter activity that the biological opinions of both the US Fish & Wildlife Service (“USFWS BiOp”) and National Marine Fisheries Service (“NMFS BiOp”) have sanctioned. The NMFS BiOp states that there would not be any helicopter landings within the Riparian Reserve, yet Design Criteria SWF 16 opens the door to that allowance.² The USFWS BiOp notes that an annual average of 10-13 acres of helicopter landings will occur in the MBS, of which approximately 30% will be new construction.³ The NMFS BiOp notes that up to 33 helicopter flights each year will be needed for trail maintenance.⁴ For Special Use Permits, including for “New Seismic” activity, sites may be accessed via helicopter without limitation.⁵ The USFWS BiOp Incidental Take Statement (“ITS”) for Northern Spotted Owl’s in the MBS includes 269 acres annually from “helicopter operations,” and 1,225 acres annually from “blasting, crushing and pile driving.”⁶ The ITS for Marbled Murrelet’s in the MBS includes 293 acres annually and 8,790 acres programmatically from “helicopter landings.”⁷

The Tribe has reviewed the Heritage Report included with the Final EA but believes that more detail and certainty is needed in order to ensure the adequate protection of the privacy and sanctity and resources that the Tribe relies upon to exercise its Treaty-reserved rights in the MBS.

¹ USFWS BiOp, PDF p. 62: “Helicopter operation may include service and log landings. Forest Service landings can be up to **1 acre in size** to accommodate the fuel truck, whereas log landings **up to 3 acres** may be needed to accommodate the arriving logs and necessary logging equipment.” Emphasis added.

² NMFS BiOp, PDF p.46.

³ USFWS BiOp, PDF p. 63.

⁴ NMFS BiOp, PDF p. 92.

⁵ USFWS BiOp, PDF p. 112.

⁶ USFWS BiOp, PDF p. 430.

⁷ USFWS BiOp, PDF p. 431.

Objection 3: The Final EA does not include any specific analysis of, or mitigation measures to avoid and protect, the Tribe’s stated concerns to limit impacts to, and increase protections for, the culturally important species Northern Spotted Owls.

The Tribe objects to the allowable impacts on the Northern Spotted Owl. In the Tribe’s October 31, 2025 letter, it stated:

“Northern Spotted Owl (NSO) populations have declined dramatically across the species range, with the most severe declines occurring in the northern portion of the species range. In Washington, populations have declined by more than 80% from 1995-2017.⁸ Particularly in light of these dramatic population declines, maintaining unoccupied habitat on the landscape is critical to allow for NSO recolonization, as are management actions taken to reduce invasive barred owl populations and ensuring habitat continuity for NSO dispersal across occupied suitable habitat. Current estimates of NSO occupancy rates for MBS are 66 NSO pairs in the Action Area.⁹ NSO are particularly sensitive to audio-visual stressors during the early breeding season, when flushing an adult may result in injury to eggs or young. The BiOp presents ongoing impacts to NSOs from the impacts of:

- 11.6 miles of temporary road construction per year,
- 4 miles of permanent road construction per year,
- 4 acres of quarry expansion per year, and
- 10 acres of new quarry development per year.¹⁰

The fragile status of NSO in Washington necessitates a conservative approach to any actions that may further exacerbate declines. NSO populations in both the Olympic Peninsula Province and Western Washington Cascades Province are both experiencing range contractions and are at severe risk of stressors associated with small populations such as demographic stochasticity, skewed sex ratios, lower genetic diversity and Allee effects. Any loss of NSO individuals or disruption of breeding within the Action Area will increase the probability of extirpation, particularly if losses are higher than anticipated.”

Despite these specifically stated concerns by the Tribe about a culturally important species, the Forest Service did not make any adjustment to the extensive allowance of incidental take allowed by the USFWS BiOp in its Final EA which allows:

⁸ Franklin, A.B., K.M. Dugger, D.B. Lesmeister, R.J. Davis, J.D. Wiens, G.C. White, J.D. Nichols, J.E. Hines, C.B. Yackulic, C.J. Schwarz, S.H. Ackers, L.S. Andrews, L.L. Bailey, R. Bown, J. Burgher, K.P. Burnham, P.C. Carlson, T. Chestnut, M.M. Conner, K.E. Dilione, E.D. Forsman, E.M. Glenn, S.A. Gremel, K.A. Hamm, D.R. Herter, J.M. Higley, R.B. Horn, J.M. Jenkins, W.L. Kendall, D.W. Lamphear, C. McCafferty, T.L. McDonald, J.A. Reid, J.T. Rockweit, D.C. Simon, S.G. Sovern, J.K. Swingle, and H. Wise. 2021. Range-wide declines of northern spotted owl populations in the Pacific Northwest: a meta-analysis. *Biological Conservation* 259:109168.

⁹ USFWS BiOp, Table NSO 2, p.131.

¹⁰ USFWS BiOp, Table NSO 15, p.161.

- Total acres helicopter log landings “that will remove spotted owl dispersal habitat annually” for the MBS = 4 acres annually.¹¹
- “Helicopter operations at log landings supporting timber harvest can last up to three weeks (Section 8.1.6) and exposure per nest will be 1.5 days. Quarry expansion (2 acres) can last up to three weeks at any one site (Section 8.1.6) and exposure per nest will last up to three weeks. Quarry development (10 acres) can last up to three weeks at any one site (Section 8.1.6) and exposure per nest will last up to one week. Therefore, duration of exposure to adverse effects per spotted owl nest from helicopter operations and quarry actions will last much longer, typically one to three weeks.”¹²
- Helicopter operations will coincide with the spotted owl nesting season (March 1 to September 30) and occur in proximity of NRF habitat.¹³
- In conclusion, spotted owl will be exposed to adverse audio-visual effects from helicopter operations when they occur between 100 yards and 256 yards of NRF habitat during the early breeding season. These exposures will result in flushing of the nesting spotted owl pair, which will increase the likelihood of injury to eggs and young. During the late breeding season, these audio-visual effects to the nesting pair and fledgling are expected to be insignificant because we expect them to move away from the source of audio-visual disturbance. Should they encounter a barred owl, we expect them to reduce competitive interactions with barred owl by also moving away.¹⁴

We appreciate that the Forest Service is relying on federal agency expertise in the biological opinions. However, the conclusion cited above that the significant allowable activities will flush nesting and roosting NSOs but dismissed the resulting impacts with a “don’t worry about it, these birds will just fly somewhere else even if they encounter a primary predator” is nonsensical and unscientific. The Tribe requests that the Forest Service take its concerns seriously about the need to provide adequate safeguards to nesting and roosting NSOs and work to find an appropriate level of mitigation for the ongoing significant disturbance that will occur, as well as pre-harvest and post-harvest monitoring plan.

Objection 4: The Final EA does not include any specific analysis of, or mitigation measures to avoid and protect, the Tribe’s stated concerns to limit impacts to, and increase protections for, the culturally important species Marbled Murrelets.

The Tribe objects to the allowable impacts on Marbled Murrelets. In the Tribe’s October 31, 2025 letter, it stated:

“Marbled murrelet subpopulations in Washington have declined by 4.1% between 2001-2022 due to nesting habitat loss, primarily through timber harvest

¹¹ BiOp PDF page 161.

¹² BiOp PDF page 175.

¹³ BiOp PDF page 178.

¹⁴ BiOp PDF page 181.

on non-Federal lands.¹⁵ Additionally, fire, insect infestation, tree diseases and wind storms further contribute to reductions in available marbled murrelet nesting habitat. Marbled murrelet in Washington experience extremely low fecundity rates that are not sufficient to maintain stable populations. Marbled murrelet are also vulnerable to edge effects that increase exposure to corvid nest predators. Any activities that result in the loss of occupied nesting habitat, mortality of breeding adults, or reductions in nest productivity due to disturbance or increased exposure to nest predators reduce the probability of recovery.

We are very concerned that the Project anticipates the annual removal of 96 Suitable Nesting Trees in the MBS.¹⁶ Additionally, significant audio-visual impacts are proposed annually that would have adverse effects on Marbled Murrelets.¹⁷ These adverse impacts must be accounted for in an EIS. Removal of occupied habitat or any activities that disturb or increase the edge effect of occupied habitat should be avoided in the Action Area.”

The USFWS BiOp echoes these concerns, noting that:

“Disruptions that cause a murrelet to flush can advertise a nest location, thereby increasing the likelihood of predation of the eggs or nestlings. When an adult is flushed, it can alert a predator to its location and the location of its egg or chick, thereby facilitating predation. These behavioral disruptions result in a likelihood of injury by increasing the risk of predation, reducing the fitness of nestlings as a result of missed feedings, and/or increasing energetic costs to incubating adults.”¹⁸

Further, the USFWS BiOp has the conclusions that:

1. Each adult can tolerate noise disturbance for a single 24-hour period during incubation without consequence to individual fitness or a measurable increased predation risk to the egg. For the purpose of this analysis, prolonged exposure is defined as two days or more of activity in the same location during the incubation phase.
2. The normal behavior of incubating adults is to rest and remain motionless during the day. Prolonged disturbance (two days or more) occurring within disruptive distance (Table MM 8) of a nest impacts this normal behavior by causing adults to remain vigilant and alert during a time when they are normally resting, increasing their energetic costs.

¹⁵ Lorenz, T.J., M.G. Raphael, R.D. Young, D. Lynch, S.K. Nelson, and B. McIver. 2021. Status and Trend of Nesting Habitat for the Marbled Murrelet Under the Northwest Forest Plan, 1993 to 2017. Gen. Tech. Rep. PNW-GTR-998. Portland, Oregon: U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station. 72 p.

¹⁶ BiOp, Table MM12, p.234.

¹⁷ BiOp, Tables MM8 and MM15, pps. 220 and 239, respectively.

¹⁸ BiOp, PDF page 224.

3. During incubation, murrelets are likely to abort incubation exchanges when noise and visual activity involving heavy equipment use occurs within disruption distance (Table MM 8) of a nest. If an adult flushes from a nest during an incubation exchange, this leads to an increased likelihood of injury to both nesting adults and unattended eggs from an increased risk of predation.¹⁹

The Tribe requests that to address its concerns the Forest Service apply a daily Limited Operating Period (“LOP”) to reduce the potential to disrupt Murrelets during feeding and incubation exchanges.

In addition, the Tribe objects to the removal of up to 96 individual Suitable Nesting Trees (“SNTs”) annually.²⁰ Even though the removal of SNTs would be potentially felled outside of the Murrelet nesting season, that any SNTs could be felled during the nesting season and without well-documented exigent circumstances is unacceptable. The Tribe requests that to address its concerns the Forest Service vastly reduce the number of allowable SNTs that could be felled annually and commit that prior to any such action staff-level tribal consultation would occur.

Conclusion

The Tribe appreciates our good working relationship and your commitment to address impacts to the Tribe’s Treaty-reserved rights and resources within the MBS in order to ensure current and future generations can fully exercise their Treaty rights as Swinomish’s ancestors have since time immemorial. We look forward to further dialogue so that we may resolve the Tribe’s objections in a mutually satisfactory way. Thank you for your consideration.

Sincerely,



Amy Trainer, Director of Environmental Policy
Swinomish Indian Tribal Community

¹⁹ BiOp PDF page 226.

²⁰ BiOp PDF page 233.