



**TO: Donni Vogel, Central Coast District Ranger,
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objections-pnw-siuslaw@fs.fed.us**

C/O: Project Planner, Donni Vogel, dvogel@fs.fed.us

DATE: July 10, 2020

**From: Paul Engelmeyer
Lead Objector
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**Project Name: Deadwood Creek Landscape Management Project
Responsible Official: Project Planner, Donni Vogel, Michele Jones,
District Ranger, Siuslaw National Forest, Central Coast District
Ranger**

FORMAL OBJECTION

**Dear Ms. Vogel: Please consider this my formal objection to the
current FONSI for Deadwood Creek Restoration Project.**

REQUEST FOR MEETING TO DISCUSS RESOLUTION:
Portland Audubon Society hereby requests a meeting to discuss potential resolution of the issues raised in this objection.

KEY ISSUES WITHIN PREFERRED ALTERNATIVE 2 THAT WOULD BE ADDRESSED BY THIS OBJECTION;

Despite our support for Siuslaw NF (SNF)'s restoration strategy for the plantation forests in the Deadwood Creek watershed, your efforts to restore stream complexity by placing large wood in streams, and to reduce watershed impacts that result from the road system (by storing/closing/decommissioning and properly maintaining roads), we have identified significant key issues that we believe have not been addressed adequately in this FONSI.

The best available scientific information must be utilized to properly guide the planning process and adequately inform the public. Documentation of how the best available science is used throughout the process is required by §§ 219.6(a)(3) and 219.14(a)(3). Also, it must be shown what the best available science was that was the basis for that determination and provide an explanation of how the information was applied. 36 C.F.R. §219.3. A lack thereof or ignorance of the best available science would deem the agency's actions arbitrary and capricious. *BARK v. U.S.F.S.*, No. CV 04-356-MO, 2007 WL 756746 (OR. March 3, 2007)

A. The Scientific Literature Does Not Support the Proposed Thinning Regimes for Interior Forest and Sensitive Species Protection in Alternative 3. A finding of no significant impact is not justified.

The Marbled Murrelet (MAMU or Murrelet; *Brachyramphus marmoratus*) was listed as a threatened species on September 28, 1992,

in Washington, Oregon, and northern California (Service 1992, p. 45328). The MAMU's critical habitat was first designated on May 24, 1996 (Service 1996, p. 1) and revised as recently as 2016 (Service 2016, p. 51506).

The threats to the species at the time of listing, which are still relevant today, are:

- Habitat destruction and modification in the terrestrial environment from timber harvest and human development
- Increased forest "edge effects" from timber harvest
- Other anthropogenic factors, such as oil spills and fishing nets used in gill-net fisheries
- New threats identified since listing include predation and various impacts to the marine environment (Service 2019, pp. 29, 43).

The recommendation from the 1997 MAMU Recovery Plan was as follows:

3.1.1.3 Maintain and enhance buffer habitat surrounding occupied habitat. Maintaining buffers around occupied habitat will mediate the effects of edge by helping to reduce environmental changes within the stand, reduce loss of habitat from windthrow and fire, reduce fragmentation levels, increase the amount of interior forest habitat available, and potentially help reduce predation at the nest. To have the greatest benefits, buffer widths should be a minimum of 300-600 feet and should consist of whatever age stand is present, including existing plantations (which should be managed to provide replacement habitat).

The lack of no-cut buffers in the preferred alternative remains inadequate to protect occupied stands and a FONSI is not warranted. The 40% and 60% canopy closure adjacent to identified occupied Murrelet stands is not protective enough.

The Forest Service will be violating section 7 and Section 9 of the Endangered Species Act if it proceeds with the Deadwood Creek Landscape Management Project as planned.

Section 9 of the Endangered Species Act prohibits the "take" of Marbled Murrelets, which include actual death or injury -- including impacts on breeding and survival of young birds -- as a proximate result of impacts to marbled murrelet habitat. Any incidental take of marbled murrelets linked to such habitat impacts constitutes an "adverse effect" on the species for purposes of the Forest Service's procedural responsibilities under Section 7.

The best available science clearly indicates that management of areas adjacent to occupied Marbled Murrelet habitat as proposed in the Deadwood Creek project is reasonably certain to produce habitat conditions (berry flush, etc.) that will increase corvids and jays, and thus in turn is reasonably certain to increase predation of juvenile marbled murrelets or result in the failure of marbled murrelet nesting attempts. This constitutes incidental take of Marbled Murrelets.

Section 9 makes it unlawful for agencies (as well as most other entities) to take -- whether incidentally or deliberately -- protected species such as marbled murrelets. While the U.S. Fish and Wildlife Service has authority to authorize incidental take under certain conditions, the Forest Service will violate section 9 of the ESA if it proceeds with an agency action -- such as the Deadwood Creek project - that results in incidental take without prior authorization of this result. Since the best science shows that the Deadwood Creek project is reasonably certain to cause incidental take of marbled murrelets, it is inconsistent with the ESA without incidental take authorization from FWS

Since the science shows incidental take is likely due to the Deadwood Creek project, the Forest Service's finding that the project is "not likely to adversely affect" Marbled Murrelets is not supported by the science in the agency's record and is thus arbitrary and capricious. To the extent FWS has concurred in this NLAA determination, that conclusion is likewise not supported by the science in the record and is thus also arbitrary and capricious.

Since the best available science shows that incidental take is reasonably certain to occur as a result of implementing the Deadwood Creek project, the Forest Service has an obligation to initiate formal consultation with FWS prior to issuing a decision to proceed with the project. Incidental take constitutes an adverse effect under section 7, thus triggering an obligation for formal consultation. In the resulting consultation, FWS could authorize incidental take as long as the level of take did not constitute jeopardy and the Forest Service took steps to minimize take. However, absent explicit authorization by FWS in an incidental take statement, the Forest Service will also violate section 7 in addition to section 9 by proceeding with the Deadwood Creek project absent formal consultation and issuance of a biological opinion and incidental take statement by FWS.

The ESA sets forth specific and clear standards applicable to proposed federal agency action. The Forest Service is falling short of these standards and violating the ESA by issuing a "not likely to adversely affect" determination, failing to initiate formal consultation with FWS, and issuing a decision to proceed with an agency action reasonably certain to incidentally take marbled murrelets by increasing predation of young marbled murrelets and impairing reproductive success of birds nesting in occupied habitat adjacent to the project.

The best available science does not support the risk involved in

compromising these stands into the near term (40 years) in order to create older forest conditions in the long term (100 plus years). The need for no cut buffers is well supported in the literature: Intact buffers around occupied, suitable, and restoration sites are needed to maintain or allow the creation of high quality nesting habitat (McShane et al. 2004), reduce potential for blowdown (Jaross and Read 2006), maintain microclimate (Chen et al. 1993, 1995, Kramsater and Bunnell 1999, McShane et al. 2004), and reduce the impacts of hard edges, which have been linked to increased nest predation (Nelson et al. 2002). Burger (2002) found that Murrelets are more likely to select suitable nest trees and stands with high rates of lichen and bryophyte growth. Van Roonyen et al. (2011) found that edges can negatively impact epiphyte growth and survival.

Effects Related to Recovery Plan Goals

The recovery plan for MAMU includes two recovery actions (4 and 5) intended to conserve and improve the quality of Suitable habitat (Service 1997, p. 123).

Recovery Action 4: “Implementing short-term actions to stabilize and increase the population that include maintaining potential suitable habitat in large contiguous blocks and buffer areas; maintaining habitat distribution and quality; decreasing risk of fire and wind-throw; decreasing adult and juvenile mortality; reducing nest predation; increasing recruitment; and initiating research to determine impacts of disturbance in both marine and terrestrial environments.” (Service 1997, p. 124).

Recovery Action 5: “Implementing long-term actions to stop population decline and increase population growth by increasing the amount, quality and distribution of suitable nesting habitat, decreasing fragmentation, protecting “recruitment” habitat, providing replacement habitat through silvicultural techniques, and improving marine habitat quality.” (Service 1997, p. 124). We believe a 40% Canopy Cover adjacent to occupied stands without no-cut

buffers has a high probability of increasing berry flush and thus have a direct negative impact on adjacent suitable occupied stands. The open canopy is also likely to increase the presence of predators and increase the probability of blowdown.

The Project has an adverse effect on these recovery goals. Suitable habitat will be impacted and fragmented, and individual MAMU and their potential productivity will be adversely impacted in portions of their range.

Malt and Lank (2007) and van Roonyen et al. (2011) found that forest fragmentation results in abiotic changes to forest structure which affects nest site suitability. They found that sites at timber harvest edges had lower moss abundance than interior nest sites and natural edge sites (stream corridors and avalanche chutes) due to stronger winds, higher temperature variability, and lower moisture retention when compared with interior sites.

Maintaining microclimate is critical to maintaining moisture in the stand to help moss development and aid in proper thermoregulation of MAMU adults and chicks. Chen et al. (1993, 1995) have demonstrated microclimate effects of clearcut edges to >780 feet [237 m] into the forest interior. They found fragmented stands and forest edge areas to have higher winds, increased solar radiation, and lower humidity than contiguous mature and old-growth forests.

The SNF has not monitored the impacts of a 40% Canopy Cover on moss mat abundance/development when compared to interior forest conditions. Without such monitoring, an informed analysis is impossible, and failure to take the precautionary approach involves great, irreversible risks for MAMU recovery.

Murrelets nesting at edges, and especially hard edges bordering open areas like thinned stands and clearcuts, appear to be at greater

risk of predation than in the forest interior. Given that nest predation appears to be a dominant demographic driver for the murrelet (McShane et al. 2004; Nelson 1997; Peery et al. 2004, 2006a; Piatt et al. 2007), any forest alteration that increases predation risk is likely to have a negative and perhaps serious impact on local murrelet populations.

Reducing predator risks by minimizing edge habitats and controlling corvid access to garbage and human food (e.g., at campsites) is also likely to benefit Murrelets in modified landscapes.

Raphael et al. (2008) recommend that pole-sized or larger trees be maintained in 100% of the area within a minimum of 328 foot (100 m) around occupied murrelet stands and older forest sites. Murrelet nests has shown that simple-structured stands adjacent to nesting areas may decrease predation at nests (Raphael et al. 2002, Ripple et al. 2003), demonstrating the value of uncut buffers to suitable murrelet habitat.

Larger patches of interior forest located away from forest edges are more likely to help protect nesting Marbled Murrelets from the effects of predation, changes to microclimate, and other types of disturbance events and activities. Interior forest is not subject to edge effects.

For these reasons, the choice of Alternative 2 with its failure to incorporate effective no-cut buffers adjacent to suitable and occupied stands will result in significant impacts. Alternative 3, created by a small group of community members and participants in the Stewardship Groups working with SNF, utilized this science to create no-cut buffers adjacent to the best 'interior forest patches'. Despite this being representative of the best available science, a precautionary approach, and a reasonable alternative that would have resulted in only 145 additional, but highly critical acres, being set aside, the

Siuslaw ignored Alternative 3 without adequate justification and without scientific support.

Further, our group identified 18 units (for ease we have reproduced this table below) that should not be further thinned; they are ecologically moving in the right direction. Some of these stands have 60 TPA and the canopy is closed. Some are adjacent to occupied Murrelet stands. We believe any thinning would increase a berry flush which would lead to increases in corvid abundance. Predator increases are likely to impact Murrelet nesting success into the future. Alternative 2 does not address this impact.

This thinning, would also, according to a review of recommendations from Brenda McComb regarding Flying squirrel habitat needs, result in a high probability of impacts to the most significant prey for the Northern Spotted Owl. It is also likely to impact dispersal habitat for the Northern Spotted Owl. Neither impacts were addressed in analysis of Alternative 2. Potential impact the Humboldt Marten was also not acknowledged.

Alternative 2 also does not clearly address the need to improve 'Interior forest' conditions: The Assessment Report for Federal Lands in the Coast Range completed by the SNF in 1992 identified interior forest percentages by sub-watershed - the North Fork Siuslaw is approximately 11% Interior Forest. Actions associated with the Alternative 2 restoration strategy will not clearly protect nor increase the percentage of 'Interior forest conditions'. Management actions including road closures/decommissioning must show how improved interior forest conditions will be achieved.

Alternative 2 does not adequately address reduction in road impacts in relationship to interior forest conditions.

REMEDIES THAT WOULD RESOLVE THE OBJECTION:

Portland Audubon Society respectfully requests that the Forest Service withdraw and modify portions of their Preferred Alternative 2.

- 1. Create no-cut buffers adjacent to occupied Marbled Murrelet (Murrelet or MAMU) stands**
- 2. Drop or provide a much more conservative thinning regime for the 18 previously thinned units (see table 1 below, copied from the Deadwood Creek submittal to provide for multiple ecological benefits)**
- 3. Develop a roads analysis that addresses priority road treatments to improve interior forest condition.**

TABLE 1

Stand ID #	Current TPA.	EA Canopy Closure prescription	Audubon recommends
TPA			
605023	75	40%	75
605029	80	early seral	80
605037	65	40%	65
605042	75	early seral	75
605061	50	40%	50
605073	90	60%	90
605084	75	early seral	75
605086	80	40%	80
605095	80	60%	80
605099	80	40%	80
605112	75	40%	75
605118	75	40%	75
605178	75	40%	75
605179	80	40%	80
605189	80	40%	80
605195	80	40%	80
605215	80	40%	80
605235	75	40%	75

We look forward to working with you to resolve these outstanding issues so that the Deadwood Creek Restoration work can move ahead.

Signature: Paul Engelmeyer Date: July 13, 2020

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