

# **Exhibit E**

**Public Correspondence received as of  
July 18, 2018**

## Roxann B Borisch

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**From:** Jen Wolfsong <jenw@wolfsonglaw.com>  
**Sent:** Friday, June 8, 2018 3:44 PM  
**To:** odfw.commission@state.or.us  
**Subject:** Reversal of Marbeled Murrelet listing

Commissioners,

I attended the hearing on Feb. 12 and gave public comment urging the Commission to uplist the marbeled murrelet from threatened to endangered. I took time off work and was at the meeting all day and saw the vote at the end to reclassify this iconic bird as endangered.

Without any kind of notice to the public, you reversed your decision in Baker City yesterday. It was my understanding that you were meeting down there to discuss survival guidelines and the adoption of these guidelines, not to have another vote on a decision that was already made. In fact your press release states (see highlight):

Thursday's business includes:

- Approval of the 2019-21 ODFW budget.
- Allocation of 2019 auction and raffle tags and project funding for several Access and Habitat projects, which open private land to hunting access or improve wildlife habitat.
- Adoption of 2018-20 furbearer regulations. Changes proposed include dates and areas for the red fox season (from open in certain northeast Oregon counties the entire year to open statewide Oct. 15-Feb. 28) and restriction of certain trap sizes to water sets only.
- Adoption of new rules to allow off-reservation hunting for subsistence and ceremonial purposes as outlined in Memorandum of Agreement between the Confederated Tribes of the Warm Springs Reservation (CTWS) and the State of Oregon. The hunt area would primarily include federal public lands throughout the CTWS ceded lands as described in an 1855 Treaty with the Tribes of Middle Oregon.
- Reclassification of the marbled murrelet as endangered under the Oregon Endangered Species Act and adoption of survival guidelines. Survival guidelines are new rules to protect the seabird on state-owned, managed, and leased lands; they do not apply to private lands or other non-state public lands. Survival guidelines will be superseded by future Commission-approved endangered species management plans once developed by affected state agencies.

There was no statement to the public that reconsideration of your prior decision was going to be a part of the hearing. You completely reversed course on an extremely important issue with not even a head's up to the public. I want to know which of the Commissioners changed their votes and why. I find this about face to be incredibly unethical and a betrayal of the public trust. I would appreciate a response.

Sincerely,  
Jennifer Wolfsong

9900 SW Wilshire St., Suite 100 | Portland OR 97225

Phone: [\(503\) 616-8880](tel:5036168880) | Email: [jenw@wolfsonglaw.com](mailto:jenw@wolfsonglaw.com) | Website: [www.wolfsonglaw.com](http://www.wolfsonglaw.com)



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## Roxann B Borisch

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**From:** Jeff Davis <jeffd@live.com>  
**Sent:** Saturday, June 9, 2018 12:06 PM  
**To:** David Phelps  
**Cc:** ODFW Commission; pameladeandavis@msn.com  
**Subject:** Re: Impact of proposed rules on our Tree Farm

Looks like this got postponed until further study can be done. Way to go all!

Sent from my iPhone

On Jun 6, 2018, at 1:50 PM, David Phelps <[David.Phelps@osceolaschools.net](mailto:David.Phelps@osceolaschools.net)> wrote:

TO: Oregon Department of Fish & Wildlife Commission

FROM: David Phelps, Phelps Tree Farm, 1142 N. Old Scenic Hwy 101, Otis, Oregon, 97368, 541-921-5174

DATE: June 6<sup>th</sup>, 2018

RE: Proposed Rules Regarding Survival Guidelines

My name is David Phelps and I am a family forest owner in Lincoln County with over 700 acres of forestland. I am concerned about the up listing of Marbled Murrelets to Endangered in the Oregon Threatened and Endangered Species Act. There is good information available to suggest an up list to Endangered is not justified. Populations are stable and increasing in Oregon as is their habitat of older forests with many large limbs and platforms found on federal lands.

Although, the state T&E laws do not put restrictions on private landowners, actions by Oregon Department of Fish and Wildlife could impact actions taken by the Board of Forestry related to Marbled Murrelets.

Credible Marbled Murrelet science is limited. If you must adopt Survival Guidelines, please only use solid scientific information. Please be reminded that models are not science. Every model can be wrong in predicting actual facts, they just offer possibilities based on the assumptions used by the modeler. If the assumptions are wrong, so is the model results. Assumptions based on just a few observations is not science.

Oregon State University is underway in developing credible science about Marbled Murrelets in Oregon. It would be appropriate to wait for actual science before developing survival guidelines.

The definition of Marbled Murrelet habitat in the Survival Guidelines is not based on science.

Our timber is important to us for revenue and retirement. If the draft survival guidelines definition of habitat were adopted in a Forest Practices Act Marbled Murrelet protection rule, we would be motivated to never let our timber get to 60 years old and to harvest any timber that is older than 60 years even if we would prefer to let it get older.

Please do not make the survival guidelines onerous to landowners, particularly if there is no science to justify the restrictions.

Our family have owned our property for over 70 years. We manage it sustainably and strive to be a good stewards of the land. We love our forest and all the economic, social, and environmental values it brings to our family.

Respectfully Submitted,

David G. Phelps



June 12, 2018

**VIA CERTIFIED MAIL, U.S. MAIL and EMAIL**

Oregon Department of Fish & Wildlife  
Attn: Oregon Fish & Wildlife Commission  
4034 Fairview Industrial Drive SE  
Salem, Oregon 97302  
Odfw.commission@state.or.us

Dear Chair Finley and Members of the Commission,

Sea Shepherd Conservation Society, Portland Chapter, is writing to request the Commission return to its original, legitimate, and public-involved decision, made at the Commission hearing on February 12, 2018 to uplist the marbled murrelet from threatened to endangered on the Oregon Endangered Species Act. Sea Shepherd is deeply concerned about the Commission's recent and sudden reversal of this decision at its hearing on June 7, 2018. Not only did the Commission reverse this decision without alerting the public of this possibility, but the Commission's news release regarding the June 7 hearing deceptively omitted this information. In fact the news release specifically states the agenda as "reclassification of the marbled murrelet as *endangered* under the Oregon Endangered Species Act and adoption of survival guidelines... Survival guidelines will be superseded by future Commission-approved *endangered* species management plans once developed by affected state agencies." (emphasis added). In addition, the "Notice of Proposed Rulemaking" posted in the Oregon Secretary of State Bulletin stated "These rules are needed to reclassify the marbled murrelet from threatened to endangered...and to establish survival guidelines for the species." (Marbled Murrelet Reclassification and Survival Guidelines filed 4/26/2018).

That the Commission would veer from a decision that was made with a multitude of public, scientific, and interest group participation and reverse its course with no notice to Oregonians and thus, no chance for input from Oregonians in violation of Commission rules and Oregon law, is a disturbing betrayal of the public trust and places the marbled murrelet squarely on the path to extinction (see OAR 635-001-000 "Prior to the adoption, amendment or repeal of *any* permanent rule, the Department shall give notice of the proposed action...."

emphasis added and ORS 183.335 "Prior to the adoption, amendment, or repeal of any rule, the agency shall give notice of its intended action... which provides a reasonable opportunity for interested persons to be notified of the agency's action." ORS 183.335(a)).

Sea Shepherd Conservation Society urgently requests that the Commission return to its original decision to uplist the Marbled Murrelet as endangered on the Oregon Endangered Species list in order to comply with Oregon Law, to restore the public's faith in this Commission, and to save this iconic bird from extinction.

Sincerely,

*Michelle Seidelman*

Michelle Seidelman  
Chapter Coordinator  
Sea Shepherd Conservation Society, Portland Chapter  
portland@seashepherd.org

## Roxann B Borisch

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**From:** Diane Nauertz <dianenauertz@gmail.com>  
**Sent:** Saturday, June 16, 2018 12:09 PM  
**To:** odfw.commission@state.or.us  
**Subject:** marbled murrelet

To whom this may concern, It has come to my attention through various environmental resources that your commission has chosen not only to disregard public/scientific opinion on this topic but also to hide this fact from the public eye. I am writing to urge you to re-reverse your decision and place this critically important sea bird on the state's "ENDANGERED" species list, not "THREATENED" as it was previously listed, but "ENDANGERED". Please comply with your own rules and follow through on your initial decision which was made with knowledgeable input from experts and the public alike. This is too important a decision to be made based on politics or some other petty reason. This is about saving ANOTHER species from extinction.  
Sincerely, Diane C. Nauertz

**Roxann B Borisch**

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**From:** Nancy Howes <nancyhowes@gmail.com>  
**Sent:** Saturday, June 16, 2018 11:41 AM  
**To:** odfw.commission@state.or.us  
**Subject:** Oregon Endangered Species Act, Marbled Murrelet

Hi,

I am a member of the Sea Shepherd Conservation Society, Portland Chapter and I am writing in regard to your recent decision to revoke the marbled murrelet status from endangered to threatened on the Oregon Endangered Species Act. This bird needs the most protection possible as it is in danger of going extinct, if strong measures are not taken. I am concerned about the habitat that is needed to keep this species vital and strong. Please do the right thing. Thank you for reading this.

Nancy Howes

## Roxann B Borisch

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**From:** Barbara Franklin <boydbf59@yahoo.com>  
**Sent:** Monday, June 18, 2018 10:16 PM  
**To:** odfw.commission@state.or.us  
**Subject:** Marbled murrelet

**Categories:** Forwarded to Wildlife, printed

To the ODFW Commissioners,

I am writing to express my disgust regarding your failure to uplist the Marbled Murrelet from threatened to endangered. AGAIN, this agency has no concern for wildlife, science or the values of Oregonians. This is a new low, but of course is not surprising, as this commission clearly is at the beckon call of special interest groups – in this instance the timber industry. Both Washington and California recognize the significance of loosing yet another species to ignorance and have protected the Marbled Murrelet. Clearly, this is a pattern, as you recently ignored protections for Oregon wolves. AGAIN, you had the interests of the ranchers foremost rather than Oregon citizens. I will make sure I petition the governor to ensure this commission is not re-appointed.

I realize this group is emboldened by the current administration, but the citizen's of Oregon are not. We value our wildlife and environment and expect our representative either elected or appointed to represent us.

Barbara Franklin

Sent from [Mail](#) for Windows 10

## Roxann B Borisch

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**From:** Joanie Beldin <joanibldn@gmail.com>  
**Sent:** Saturday, June 23, 2018 8:57 AM  
**To:** odfw.commission@state.or.us  
**Subject:** Marbled Murrelet Decision Reversal

Dear Chair Finley and Commissioners:

I am deeply concerned and disappointed by the recent reversal of the marbled murrelet decision.

In an unprecedented move, the decision to uplist the marbled murrelet from "threatened" to "endangered" - which was the scientifically correct decision - was reversed. The science supports the concern that without increased protection, this bird is at risk of extinction. I'm very disappointed that political pressure from the timber industry, county officials and coastal legislators reversed the course.

Most Oregonians count on ODFW to make decisions that will protect and restore our native fish and wildlife species.

I ask that all future decisions be made according to solid peer-reviewed science.

Thank you for your consideration.

Sincerely,  
Joan Beldin  
10223 N. Hudson St. Portland 97203

## Roxann B Borisch

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**Subject:** FW: Marbled Murrelet Data  
**Attachments:** PSG Reverse MAMU downlisting final copy 2.docx

**From:** Mark Rauzon [<mailto:mjrauz@aol.com>]  
**Sent:** Monday, July 02, 2018 12:19 PM  
**To:** [curt.melcher@state.or.us](mailto:curt.melcher@state.or.us); Shannon Hurn <[Shannon.M.Hurn@coho2.dfw.state.or.us](mailto:Shannon.M.Hurn@coho2.dfw.state.or.us)>;  
[Christina.E.Donehower@state.or.us](mailto:Christina.E.Donehower@state.or.us); [Douglas.F.Cottam@state.or.us](mailto:Douglas.F.Cottam@state.or.us); [Martin.Nugent@state.or.us](mailto:Martin.Nugent@state.or.us);  
[Rod.W.Krahmer@state.or.us](mailto:Rod.W.Krahmer@state.or.us); [Kevin.L.Blakely@state.or.us](mailto:Kevin.L.Blakely@state.or.us)  
**Subject:** Marbled Murrelet Data

Dear ODFW Director and key staff:  
We ask you to reconsider your determination of withdrawing endangered status from the Marbled Murrelet based on better data mentioned in our letter.  
Thank You.

Mark J. Rauzon  
Vice-Chair for Conservation  
Pacific Seabird Group  
&  
Laney College  
Geography Dept.  
900 Fallon St.  
Oakland, CA 94607  
[mjrauz@aol.com](mailto:mjrauz@aol.com)



## Pacific Seabird Group

Dedicated to the Study and Conservation of Pacific Seabirds and their Environment

July 01, 2018

To members of the ODFW staff:

The Pacific Seabird Group (PSG) is writing to express our great concern regarding the misrepresentation of scientific information in the letter sent by Oregon's Coastal Caucus, to the ODFW Commission prior to the June 2018 meeting and the Commission's recent decision to reverse the uplisting of the Marbled Murrelet under the Oregon Endangered Species Act.

PSG is an international, non-profit organization that was founded in 1972 to promote the knowledge, study, and conservation of Pacific seabirds. It has a membership drawn from the entire Pacific basin. Among PSG's members are biologists and scientists who have research interests in Pacific seabirds, government officials who manage seabird refuges and populations, and individuals who are interested in marine conservation. Since 1986 PSG has included a Marbled Murrelet Technical Committee, which is composed of several working groups that act on the status, distribution, and monitoring protocol for the Marbled Murrelet. PSG also identifies and facilitates research, addresses conservation problems related to this species, and acts as a liaison between research and government. PSG has served as an **unbiased** forum for government, university, and private sector biologists to discuss and resolve issues related to Marbled Murrelet conservation along the Pacific coast of North America.

PSG urges you to follow sound science and reinstitute the Marbled Murrelet as Endangered for the following reasons:

The information in the Caucus letter does not accurately represent the science it quotes; much like other testimonies at the June hearing opposed to uplisting the species. The Oregon Coastal Caucus letter **cherry-picks scientific data** that does not reflect the whole of the dataset. We are alarmed that elected officials would present such spurious information and are deeply concerned that they would write and support a letter on Marbled Murrelet science without consulting the scientists who reported the data or their constituents who have worked on Marbled Murrelet issues in Oregon for decades. In this letter we respectfully clarify the inaccuracies in the Coastal Caucus.

The Coastal Caucus letter cites the latest Northwest Forest Plan Interagency Regional Monitoring Program Summary Report that includes 2017 data from at-sea Marbled Murrelet

surveys published in May 2018<sup>1</sup>. The letter states that the report provides new data indicating the Oregon Marbled Murrelet annual rate of change is "...affirmatively trending upward through 2016, and that the trend is now statistically significant". What the Coastal Caucus letter fails to recognize is that these at-sea surveys only take place every other year in Conservation Zones 3 and 4 (most of Oregon is included in Zone 3, Southern Oregon in Zone 4); as a result the Oregon 2016 trend estimate actually relies on data interpolation for Zone 4 based on datasets from multiple years since there was no 2016 data for Zone 4. **The 2016 Oregon population estimate in Table 2 relies on data only from Zone 3 from 2016. The Zone 4 data used in the Oregon estimate is an interpolation of data collected in 2015 and 2017.** This is evident in Table 3 of the Pearson et al. report (see red arrow in screen shot of Table 3 of Pearson et al. 2018 included as an addendum at the end of this letter). In addition, Zone 4 data from the last 2 years surveyed (2015 and 2017) showed unusually high density estimates of murrelets outside the range of confidence intervals (see Pearson et al. report – Figure 3, Zone 4 graph). There was no data gathered for Zone 3 in 2017, yet the years 2016 and 2017 have strong leverage on the overall trend estimate reported. The monitoring report was clear about these data limitations, which the Coastal Caucus ignored. Given that the Marbled Murrelet is a long-lived species with low reproductive rate, it is not possible to conclude that this sudden increase in density is the result of local reproduction and high survival rates. It is entirely possible that murrelets foregoing breeding in recent years due to historically poor oceanic conditions in the North Pacific<sup>2</sup> are spending more time at sea and thus inflating the population estimate. There is also a strong likelihood that immigration from outside populations could result in more birds counted in Oregon's nearshore waters.

It is unacceptable and unprofessional to base an important decision, in this case the welfare of an endangered bird species and the habitat it depends on, on one data point from one study - especially such tenuous data as described in the preceding paragraph. The at-sea population trend information (and problems with these estimates) was discussed at the February 2018 ODFW Commission meeting when the Commission moved to uplist the Marbled Murrelet to Endangered. Other factors were deemed more relevant to the uplisting of the bird including the >80% extinction projection, continued habitat loss, and the at-sea juvenile to adult ratio being extremely low (.03 to .08)<sup>3,4</sup>, which is certainly not indicative of a successfully breeding population. The Commission rejected the full weight of evidence that was exhaustively researched and vetted by ODFW staff in the Marbled Murrelet Status Review Report<sup>5</sup>. And not only did this report provide sufficient justification for uplisting based on a

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<sup>1</sup> Pearson, S.F., B. McIver, D. Lynch, N. Johnson, J. Baldwin, M.M. Lance, M.G. Raphael, C. Strong, R. Young, T. Lorenz, and K. Nelson. 2018. Marbled murrelet effectiveness monitoring, Northwest Forest Plan: 2017 summary report. 19pp.

<sup>2</sup> <https://phys.org/news/2017-02-pacific-vast-seabird-die-off.html>

<sup>3</sup> Crescent Coastal Research 2008. Population and productivity monitoring of Marbled Murrelets in Oregon during 2008. Final report to the U.S. Fish and Wildlife Service, Oregon State Office, Portland, Oregon. Crescent Coastal Research, Crescent City, California.

<sup>4</sup> Crescent Coastal Research 2013. Marbled Murrelet productivity measures at sea in northern California during 2011 and 2012: an assessment relative to Redwood National and State Park Lands. Final report to the U.S. Fish and Wildlife Service Cooperative Agreement No. F111AC01081. Crescent Coastal Research, Crescent City, California.

<sup>5</sup> ODFW. 2018. Status review of the Marbled Murrelet (*Brachyramphus marmoratus*) in Oregon and evaluation of criteria to reclassify the species from threatened to endangered under the Oregon Endangered Species Act. Oregon Department of Fish and Wildlife. 134pp.

wealth of scientific evidence, it also clearly documented the for commercial overutilization of murrelet habitat (i.e. accelerated logging on non-federal land) and that existing state programs and regulations are inadequate to protect the species or its habitat. Months of hard work by ODFW staff on the status report was **totally ignored** by the ODFW Commission members that voted to reverse their decision to continue the uplisting process.

The Coastal Caucus letter goes on to state that the Pearson et al. 2018 report “invalidates” and “has proven wrong” the 2004 demographics model<sup>6</sup>. There is no logic behind these statements. **Comparing the results of Pearson et al. 2018 and McShane et al. 2004 is totally inappropriate.** The Pearson report is solely a population trend estimate based on at-sea survey data – nothing more. The McShane demographic model is a predictive model based on a suite of demographic inputs including the latest population trend information **as well as** adult survivorship, age of first breeding, sex ratio, reproductive success, fecundity, juvenile to adult ratios, immigration/emigration, environmental factors, etc. While the McShane et al. demographics model should be updated with new data, the most recent demographic information collected since 2004 (see studies cited in the status review on the continued very low reproductive success estimates, increasingly poor oceanic conditions, etc.) indicates it is improbable that more recent population trend data would significantly change the declining population trajectory predicted by the McShane models.

The Coastal Caucus letter also called for the Commission to wait until the completion of the OSU study<sup>7</sup> before a reclassification decision is made. Will there likewise be a moratorium on logging? While the OSU study will provide important information about the Marbled Murrelet, the weight of evidence documented in the ODFW status review report based on **decades of information clearly indicates the time to act is now.** The consensus of existing studies on the species is more than sufficient for the ODFW Commission to choose to adequately protect the Marbled Murrelet and its habitat by maintaining its February decision to uplist the species to endangered. In fact, the preliminary data from the OSU study suggests that murrelets in Oregon’s nearshore waters are moving long distances reinforces the plausibility of immigration as a factor behind the recent apparent positive population trend. Regardless, numbers of birds at sea are not necessarily indicative of breeding success since it takes 2-3 years for a murrelet to begin breeding, and with a low reproductive rate, current changes in population will not be identified by simply counting the number of birds until several years later – putting us behind the timeline to effectively make changes to support the population. Nothing about the OSU study invalidates the existing research on the Marbled Murrelet, and the Coastal Caucus is incorrect to draw any connection between the study and the legality of the ODFW Commission’s decision.

We recommend that the ODFW Commission immediately reverse the decision made at the June meeting and maintain their original decision to uplist the Marbled Murrelet from threatened to endangered under Oregon’s Endangered Species Act. It is important that

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<sup>6</sup> McShane, C. T. Hamer, H. Carter, G. Swartzman, V. Friesen, D. Ainley, R. Tressler, K. Nelson, A. Burger, L. Spear, T. Mohagen, R. Martin, L. Henkel, K. Prindle, C. Strong, and J. Keany. 2004. Evaluation report for the 5-year status review of the marbled murrelet in Washington, Oregon, and California. Unpublished report. EDAW, Inc. Seattle, Washington. Prepared for the U.S. Fish and Wildlife Service, Region 1. Portland, Oregon.

<sup>7</sup> Rivers, J. 2018. The Oregon Marbled Murrelet Project: science to inform conservation and management of Oregon’s coastal forests. Oregon State University presentation to the Oregon Fish and Wildlife Commission, February 9, 2018, Portland, Oregon.

Oregonians can trust the ODFW Commission to base its decisions on accurate and unbiased interpretation of the science, such as the Marbled Murrelet status review developed by its own staff. We are discouraged that the Commission has seemingly chosen to be influenced by social, economic, and political pressures rather than maintaining their focus on protecting and enhancing our wildlife for future generations.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, reading "Mark J. Rauzon". The signature is fluid and cursive, with the first name "Mark" and last name "Rauzon" clearly legible.

Mark J. Rauzon  
Vice Chair for Conservation  
Pacific Seabird Group  
[conservation@pacificseabirdgroup.org](mailto:conservation@pacificseabirdgroup.org)

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