



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



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January 2018

Save the Date: AFRC's Annual Meeting, April 3-5

Mark your calendars! This year's Annual Meeting will be held April 3-5 at [Skamania Lodge](#). We expect another productive, well-attended gathering of industry representatives; locally elected officials and Members of Congress; and U.S. Forest Service, BLM, and Washington DNR leadership and staff.

The meeting begins on Tuesday, April 3 with the AFRC Open golf tournament, followed by the opening reception. Wednesday, April 4, will feature engaging guest speakers, constructive presentations about trends in forest management, and interactive meetings with federal and state land managers. On Wednesday night, AFRC will host its annual banquet. The Annual Meeting will conclude on Thursday, April 5, with a half day of meetings, the Board of Directors meeting, and luncheon.

Hotel reservations can be made by calling Skamania Lodge at 1-844-432-4748 using the group code "1Y2839" or online [here](#). The group rate is \$162.00/night for a forest view room, \$172.00/night for a fireside room and \$182.00/night for a river view room. **The cut-off date for the room block is March 3.** A draft agenda is below and registration details will be posted on www.amforest.org in the coming weeks. In the meantime, if you have questions or to register early, please call Cindi Kaneshige at 503-222-9505.

Please mark your calendars and plan to join us in April at beautiful Skamania Lodge!

AFRC 2018 Annual Meeting April 3-5, 2018

Tuesday, April 3

11:30 am **Golf Tournament: The AFRC Open**
Four-person teams, scramble format on the 18-hole, par-70 course at Skamania Lodge

6:30 pm **Welcoming Reception**

Wednesday, April 4

7:30 am **Breakfast Panel: Telling Our Story**
Nick Smith, Executive Director, Healthy Forests, Healthy Communities

- 8:00 am **State of the Association: The Timber Industry’s Resurgence**
Travis Joseph, President
- 8:45 am **Keynote Address: A Political Perspective of Federal Forest Reforms**
U.S. Representative Bruce Westerman (*Invited*), House Committee on Natural Resources
- 9:30 am **Networking Break**
- 10:00 am **Morning Panel: A Vision for the U.S. Forest Service**
Tony Tooke, Chief of the U.S. Forest Service (*Invited*)
- 12:00 pm **Lunch Keynote: Healthy Forests and Rural Economies in Washington**
Hilary Franz, Washington Commissioner of Public Lands (*Invited*)
- 1:00 pm **Afternoon Panel: Fighting for a Sustainable Future on Washington’s DNR Lands**
Panelists TBD
- 2:00 pm **Public Forest Managers’ Breakouts**
Region 1 – Christine Dawe and Carol McKenzie
Region 4 – Nora Rasure, R4 Regional Forester
Region 5 – Randy Moore, R5 Regional Forester
Region 6/BLM – Jim Pena, R6 Regional Forester; Jamie Connell, BLM State Director
DNR – Darin Cramer, Division Manager; Koshare Eagle, Asst. Division Manager
- 5:30 pm **Social Hour/Banquet**

Thursday, April 5

- 7:30 am **Breakfast Panel: U.S. - Canada Softwood Lumber Trade Update**
Steve Swanson, President & CEO, Swanson Group
Zoltan van Heyningen, Executive Director, U.S. Lumber Coalition
- 8:45 am **The Bill and Heath Show: Forestry in the “Swamp”**
Bill Imbergamo, Executive Director, Federal Forest Resource Coalition
Heath Heikkila, Director of Government Relations, AFRC
- 9:45 am **The Lawson and Sara Show: AFRC’s Legal Program**
Lawson Fite, General Counsel, AFRC
Sara Ghafouri, Staff Attorney, AFRC
- 10:30 am **Hotel Checkout**
- 11:00 am **Board of Directors Meeting/Luncheon (members only)**

Washington, D.C. Updates

Despite the three-day government shutdown that started on January 20, Congress has made little progress towards reaching an agreement on a Fiscal Year 2018 appropriations measure, changes to budget caps established under the 2011 Budget Control Act, and several other thorny political issues, including immigration policy and the status of the so-called “Dreamers.” As we reported in the [December 2017 Newsletter](#), efforts to move a package of wildfire funding and forest management reforms have been stymied by the lack of agreement on these broader issues – particularly since a wildfire funding solution likely requires a budget cap amendment.

January’s government shutdown ended with yet another short-term agreement to fund the government through February 8 and to give Congressional leaders more time to negotiate. It is unlikely, however, that Congress will be able to reach an agreement before the deadline. Congressional Republicans left Washington, D.C. on January 31 for a three-day retreat in West Virginia and Congressional Democrats are scheduled to leave for their three-day retreat on Maryland’s eastern shore on February 7 – leaving Congress just three working days before the deadline.

It is widely expected that Congress will pass another funding extension, but it is not clear how a deal will be reached. Setting aside the immigration issue, which has the two parties and the White House far apart, significant disagreement remains on discretionary funding levels. Republicans want to amend the budget caps primarily for defense spending, while Democrats are demanding that non-defense discretionary domestic spending also be increased.

In addition to uncertainty surrounding efforts to pass a comprehensive fire funding and forest management reform package, many county and school groups in the West are also making a renewed push to reauthorize Secure Rural School (SRS) payments as part of a broader spending agreement. AFRC continues to advocate strongly for the passage of meaningful forest management reforms and an effective fire funding fix. /Heath Heikkila

Washington State Legislative Update

The Washington Legislature is in the fourth week of its 60-day session. The biggest development of the last few weeks was the passage of the long-stalled Capital Budget and a compromise solution to a rural water rights issue known as the *Hirst Decision*. The Capital Budget included \$13 million for DNR forest health efforts in Eastern Washington. The funding is expected to allow the agency to increase treatments on state lands, provide additional cost-share funding for small forest landowners, and accelerate its use of the Good Neighbor Authority to increase management activities on federal forests.

AFRC has testified before several legislative committees on policy bills related to the Marbled Murrelet Long Term Conservation Strategy and providing greater legislative oversight over DNR’s management of state trust lands. These opportunities allowed AFRC to highlight the state’s fiduciary responsibility to the beneficiaries and the importance of the DNR timber sale program to our industry.

Trust Mandate Legislation, SB 6539. Senator John Braun (R-Centralia) recently introduced [Senate Bill 6539](#), which seeks to ensure compliance with the state’s fiduciary responsibility in managing state trust lands. The legislation received [a hearing](#) in the Senate Agriculture, Water, Natural Resources & Parks Committee on Monday, January 29. The Port of Port Angeles, Sierra Pacific Industries’ Tom Nelson, Skamania County Commissioner Tom Lannen, Tom Swanson of Green Crow, and AFRC testified in support of the bill. DNR did not take a position on the legislation.

There are several encouraging aspects of the legislation, including a forward-looking revenue target that incorporates active management and inflationary growth. The legislation would also strengthen reporting and tracking requirements to track DNR’s performance. Other aspects of the legislation deserve more careful thought, but we are excited about its introduction. Senator Braun is the Ranking Republican on the Senate Ways & Means Committee, so his interest in this issue is a positive sign.

Marbled Murrelet Legislation, HB 2285. The House Agriculture & Natural Resources Committee recently passed a [substitute version](#) of [House Bill 2285](#), legislation sponsored by Rep. Mike Chapman (D-Port Angeles) to codify and fund Commissioner Hillary Franz’s “Solutions Table” to make recommendations for mitigating the impact of the Marbled Murrelet Long-Term Conservation Strategy (MMLTCS) on trust land beneficiaries, local economies and jobs. AFRC [testified](#) at the January 10 committee hearing to make recommendations on how the legislation should be improved, including:

- Broadening the legislation to look for solutions to the overall impact of species protections and the 1997 Habitat Conservation Plan (HCP) on trust beneficiaries and economies, rather than limiting it to just the MMLTCS.
- Requiring more detailed information outlining the impact of the HCP and other set-asides to each individual trust in the form of lost timber volume and revenues.

Unfortunately, the substitute added several alarming provisions, including legislative intent language suggesting that the solutions table provide recommendations for “additional reasonable conservation measures for the marbled murrelet that support a viable population in Washington state” and to provide for the recovery of the murrelet. This mandate is not appropriate for state trust lands and is impossible given DNR’s own viability model, which shows that murrelet populations will continue to decline regardless of what DNR does on state trust lands.

We believe these and other provisions in the legislation would negatively impact Commissioner Franz’s “Solutions Table.” The legislation recently cleared the House Rules Committee and could receive a vote on the floor soon. AFRC is encouraging interested parties to contact Representative Mike Chapman, the bill’s sponsor, at Mike.Chapman@leg.wa.gov or 360-786-7916 to share your concerns. /Heath Heikkila

New Marbled Murrelet Habitat Assessment

The National Council of Air and Stream Improvement (NCASI) has completed an analysis of marbled murrelet habitat trends in Oregon. For this analysis, they were interested in how many forest acres have been recruited into the 50+ year age class since 1995 within 50 miles of the

Pacific Coast. This is determined using the stand age variable (STDAGE) in the FIA database (O’Connell et al. 2015). They analyzed data for a 10-year period from approximately 1,480 plots for a total of about 14,800 plots. Of these, about 9,500 plots are forested, representing 29.65 million acres. For estimating current forest conditions, the most recent measurement for each plot is used.

Analysis of the data found:

- Since 1995, an average of 64,710 acres have been added annually to the 50-year age class.
- The trend has been increasing: 226,400 acres were added from 1995-1999, and about double that amount (460,864) were added from 2012-2016.
- During that same time, in the same geography, on average of 28,000 acres of “habitat” have been harvested annually.
- Therefore, according to the most recent inventory data from Oregon, during 2012-2016, an average of 92,173 acres have been recruited annually into the 50+ age class, while an average of 28,011 acres in that age class have been harvested, yielding a net recruitment of over 64,000 acres annually.
- Less than 1% of the acres that were harvested were older than 80 years old.

When commenting on the proposed up-listing of the murrelet in Oregon, NCASI made two main points.

- We now know that birds do travel long distances during the breeding season, likely due to lack of sufficient foraging resources (based on OSU research in 2017). As a result, the at sea monitoring trends likely mean little for a given zone over a restricted period of time (2003-2015). That casts doubt on negative trends, such as the negative population trend in Zone 1 (Northern Washington), but it also means that we can’t take much confidence in the positive or increasing trends on the coast of Oregon either. What might be more appropriate when considering the population viability is to consider the entire Northwest Forest Plan area trend over the same period, which was stable.
- Based on our FIA analysis, the residual pressures on the Oregon breeding population are clearly not a result of further terrestrial habitat loss. /*Ross Mickey*

Chetco Bar Fire Salvage

The Rogue River-Siskiyou National Forest has released a solicitation for public scoping comments on their proposal to conduct salvage of timber resources damaged by last summer’s Chetco Bar Fire. The fire burned 191,197 acres of mixed ownership, of which 170,321 acres were on Forest Service managed land. Of this total, the Forest Service is considering salvage on 13,626 acres (8%) within lands designated as Matrix under the Northwest Forest Plan. Approximately 25,000 acres of Matrix designated-land were affected by the fire, but the Forest indicated in their scoping letter that only those acres that were impacted by fire that consumed 50%+ of the forest canopy would be considered for salvage treatments. Those acres that experienced less mortality were deferred due to the Forest Service’s determination that within those areas “the fire effects to the forest ecosystem are often beneficial.”

The scoping notice stresses the fact that salvage will occur only on lands designated as Matrix as lands designated otherwise “either prohibit post-fire salvage or are required to show ecological beneficial effects of treatments to aid in post-fire ecosystem recovery.” The notice also anticipates further reduction in the 13,626 proposed salvage acres due to considerations such as “avoiding riparian reserve areas” and those related to “post-fire wildlife habitat.” To assist in determining the impacts that various degrees of salvage will have on certain wildlife species, the Forest Service “team” assigned to this project will include a representative from the U.S. Fish & Wildlife Service.

The Forest Service clearly recognizes the need for expediency in implementation of this project and have therefore requested an Emergency Situation Determination (ESD) from the Chief of the Forest Service. If an ESD is granted, the proposed action could be implemented immediately following completion of an environmental analysis. This expedited implementation would increase the level of recovery from damaged timber resources and reduce the risk of loss to any potential purchaser. AFRC will be working with the Rogue River-Siskiyou National Forest to develop a final product that provides useful timber products to local purchasers in a timely manner while also supporting the future reforestation of those burned acres with a new stand of trees. /*Andy Geissler*

AFRC’s Request Granted to Appear in the Lostine Public Safety Project Litigation

On January 16, U.S. District Court Magistrate Judge Sullivan granted AFRC’s motion to appear as an *amicus curiae* party in the Lostine Public Safety Project Litigation (Lostine Project), despite plaintiffs Greater Hells Canyon Council (formerly Hells Canyon Preservation Council) and Oregon Wild’s opposition. This case is centered around the Forest Service’s application of the 2014 Farm Bill’s categorical exclusion (CE), which allows a project to be excluded from procedural requirements of the National Environmental Policy Act so long as it meets certain statutory requirements. The Lostine Project is located on an 11-mile corridor on the Wallowa-Whitman National Forest and in an area that has been designated by the Chief of the Forest Service as a landscape-scale insect and disease area under the Farm Bill.

AFRC’s *amicus* brief, filed on December 22, 2017, highlights three narrow issues: (1) the Lostine Project was developed through the type of collaborative process required under the Farm Bill; (2) the Farm Bill does not require the Forest Service to assess whether “extraordinary circumstances” exist, a requirement for regulatory but not statutory CEs; and (3) the Forest Service reasonably interpreted its Lostine River Wild and Scenic River Management Plan to allow the silvicultural techniques that are authorized under the project. This case is the first to challenge the meaning of a “collaborative process” under the Farm Bill. In addition, like with the Sunny South Project on the Tahoe National Forest, this case provides an important opportunity to continue to press our contention that the 2014 Farm Bill CE is essential for projects aimed to combat insect and disease infestations and that “extraordinary circumstances” review under the Farm Bill contradicts clear congressional intent to expedite these types of projects.

Oral argument will be held on March 20 at 1:30 p.m. in Pendleton, Oregon. /*Sara Ghafouri*

High Court to Decide Important Critical Habitat Questions in Gopher Frog Case

The Supreme Court agreed on January 22 to take the case of the gopher frog which will answer two key [questions](#) about the proper extent of critical habitat designations under the Endangered Species Act (ESA). AFRC joined with the National Association of Home Builders in an [amicus brief](#) urging the Court to take the case ([August 2017 Newsletter](#)).

The first question is whether critical habitat can be designated in an area that currently cannot support, and likely *never* will support, members of the species. This question has implications for northwest species like the northern spotted owl, where a significant portion of the designated critical habitat was set aside based on assumptions that it may eventually be inhabited. A similar dynamic has infected planning for marbled murrelet conservation, as the Washington Department of Natural Resources has made assumptions about the ability of certain areas to become murrelet habitat despite the areas' unsuitability.

The ESA allows designation of both "occupied" and "unoccupied" critical habitat. With occupied critical habitat, the impacts of an erroneous designation are not as significant. This is because the presence of the species invokes the "take" prohibition in ESA [section 9](#) as well as the consultation/no jeopardy obligation in ESA [section 7\(a\)\(2\)](#). When habitat is not occupied, designation of critical habitat brings a section 7 obligation to avoid "adverse modification." If habitat is designated that is not only unoccupied, but unoccupiable, the costs of regulatory compliance are imposed without corresponding conservation benefit. This defeats the Supreme Court's warning, in [Bennett v. Spear](#) (1997), that the ESA should not be implemented on the basis of "speculation or surmise."

The second question in the case is whether the courts may review the government's decision not to exclude critical habitat due to economic or other impacts. [Section 4\(b\)\(2\)](#) permits the U.S. Fish and Wildlife Service (FWS) and/or the National Marine Fisheries Service to "exclude any area from critical habitat if [it] determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless [it] determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned." While courts have found that environmental groups may challenge an exclusion of habitat on economic grounds, they have found that industry groups may *not* challenge a decision not to exclude because it is committed to agency discretion. This is important when the FWS has designated over three-quarters of Matrix lands (designated for timber production) as northern spotted owl critical habitat.

In 2001, the Mississippi gopher frog was listed as an endangered species. At the time of the listing, the gopher frog was only known to exist in Harrison County, Mississippi. The final critical habitat rule designated 1,500 acres of privately-owned land in St. Tammany Parish, Louisiana based on a report that gopher frogs were seen in that area back in 1965. In designating the critical habitat, FWS determined that the private landowners would face an economic impact of \$33.9 million over 20 years. The landowners sued, as did Weyerhaeuser, the holder of a long-term timber lease on the property.

The Fifth Circuit upheld FWS's critical habitat designation despite the concession that the frog did not occupy the site, the site cannot sustain the frog, and that changes would have to be made to make the Louisiana site habitable in the foreseeable future. The court determined the ESA does not require "critical habitat" to be habitable.

The case is to be argued in fall 2018 with a decision likely by the following June. AFRC intends to file an *amicus* brief highlighting economic impacts of critical habitat designations, particularly the northern spotted owl, and critical habitat regulations that designate habitat based on unlawful speculation that the area may eventually be inhabited. */Lawson Fite*

Okanogan-Wenatchee National Forest Update

The Okanogan-Wenatchee (Ok-Wen) National Forest encompasses more than four million acres in north central Washington and stretches north to south from the Canadian border for 180 miles. It is the largest national forest in Region 6, with seven Districts, each with their own identities. While having the largest land base in the Region, the Forest has struggled to produce a consistent timber sale program. The Forest's FY18 timber target is only 30 million board feet. The inconsistency of a timber sale program has led to the departure of all sawmills from the bounds of the Forest which has created hardships for getting management projects completed.

AFRC staff has been working with the Forest to help identify key issues that keep the Forest from increasing the pace of scale of restoration, and reducing the fuel loadings that are present throughout the Forest. The heavy fuels have been problematic in recent years with the Forest experiencing mega fires in 2014 and 2015.

Major issues curbing management from AFRC's perspective includes: 1) no clear direction on how to manage Late Successional Reserve (LSR) lands on eastside forest stands, 2) getting projects through consultation in a timely manner, and 3) getting a permanent team in place to direct the Forest.

- Problem 1: The Forest was awarded the Tapash CFLRP project on the south end of the Forest (Naches and Cle Elum Districts). However, very little progress has been made regarding forest restoration because the Region and Forest have been unable to settle on a management strategy for eastside LSR lands. This has resulted in large projects such as Little Crow and Swauk Pine to languish for years. Finally, this past year, the Huck timber sale moved forward because matrix land was pulled out of the Little Crow assessment and sold separately. The LSR management issue will also threaten new projects being developed if a solution is not found soon.
- Problem 2: The Ok-Wen has several projects that need to go through consultation with the U.S. Fish & Wildlife and NOAA Fisheries. Timber sales, grazing allotments, mining issues, and roads are just a few of the types of projects that need consultation. From AFRC's staff perspective, the regulatory agencies do not have enough staff to handle the work load. Much of the 2018 timber sale program still needs to go through the consultation process which could jeopardize a timely sales program.

- Problem 3: The Ok-Wen has been a revolving door of personnel over the last few years including the Forest Supervisor, Deputy Forest Supervisor, Natural Resource Director and other key decisionmakers. This has led to not having a solid team in place to direct the Districts and not being able to formulate a long-term plan. There is no consistency from District to District and in some cases little oversight.

While these problems might seem insurmountable, there is reason to hope that the Ok-Wen will fight through their issues and develop a sustainable timber program going forward. Forest Supervisor Mike Williams and Natural Resource Director Teri Tucker are in the process of hiring new staff and putting together a team that works together, rather than taking a District by District approach. The Forest has made a proposal to the Region on how to manage eastside LSR lands which will hopefully be a successful strategy for managing hundreds of thousands of acres on the Forest. Finally, the new Forest team plans to get projects in front the regulatory agencies in a timely manner.

In addition to AFRC, the Little Naches Working Group and the North Central Washington Forest Health Collaborative (NCWFHC) have spent hundreds of hours working with the Forest, funding planning work, and offering other kinds of help in an effort to increase the pace and scale of management on the Forest. AFRC staff has participated in both collaboratives.

The breakthrough and path forward for the Forest will hopefully be found in the developing Upper Wenatchee Pilot Project. The project is a few miles west of Leavenworth, covering 78,000 acres, and offers many restoration opportunities for both aquatic and terrestrial landscapes. The project area lies in the part of the Forest covered by the Northwest Forest Plan, and contains both matrix and LSR land classifications as well as many acres of Wildland Urban Interface. For the project to be successful, a management regime in both matrix and LSR lands will have to be developed. This strategy is strongly supported by AFRC and NCWFHC. If this project is successful, it can become a template for management on the Ok-Wen and become the first solid step for increasing the pace and scale on the Forest in the future. */Tom Partin*