




## AFRC Annual Meeting: See You Soon at Skamania Lodge

There is still time to register for the AFRC Annual Meeting, April 19-22 at Skamania Lodge in Stevenson, WA. Click here to [register today](#) and join us for unique opportunities to network with colleagues in the industry, learn about key issues and policy innovations affecting federal forest management, and meet with key federal land management executives and decision makers.


AFRC staff is putting the final touches on the meeting [agenda](#) that brings together leaders in industry and government for focused discussions and interactive panels on public lands management. Highlights include:

- Reflections from the Dean of the Oregon House Delegation, Congressman Peter DeFazio
- Carbon, Climate Change, Working Forests with Dave Tenny, National Alliance of Forest Owners
- A Lawmakers Panel: Bring Bipartisanship Back to Forest Management
- "The Bill and Heath Show" - A Political Outlook for 2022 and Beyond
- Partnering for Success: Good Neighbor Authority in the West
- Public Forest Managers' Breakouts with Forest Service and Bureau of Land Management officials
- Keeping Washington Evergreen with Hilary Franz, Washington Commissioner of Public Lands
- A Vision for our National Forests with U.S. Forest Service Chief Randy Moore
- Advocacy Workshop: Building our own "Timber Army"

## The AFRC Podcast



***Impact of Russian Invasion*** The AFRC Podcast

Episode 6 Guest: Travis Joseph  
AFRC President 

**The [AFRC Podcast](#) is a monthly discussion examining key issues and news relating to forestry, forest products and public lands management.**

**The Russia's invasion of Ukraine is prompting American consumers and policymakers to consider where our wood products come from. AFRC President Travis Joseph joins the AFRC podcast to discuss how the invasion might impact forestry and timber in the American West.**

**[Click here to listen](#). Our podcast is also available on Spotify!**

Industry bragging rights will again be at stake at this year's annual AFRC Golf Open on Tuesday, April 19. Known as "The best Northwest golf course you've probably never heard of," this year's tournament will be held once again at Elk Ridge Golf Course down the road from Skamania Lodge in Carson. It's the perfect place for golfers of all levels with beautiful, panoramic views and challenging 18 holes.

Later that evening, we will kick off our Annual Meeting at Skamania Lodge's exceptional outdoor space with breathtaking views of the Columbia Gorge, the Riverview Pavilion. Come mingle with new and old friends, elected officials, an all-star lineup of presenters and speakers under 2,500 covered square feet of space featuring two indoor fireplaces and two outdoor fire pits. Visit our [annual meeting page](#) for more information. We look forward to seeing you soon at Skamania Lodge!

## **Washington DC Update**

***Fiscal Year 2022 Appropriations.*** On March 15, President Biden signed into law a \$1.5 trillion Omnibus Appropriations bill for Fiscal Year 2022 – 5.5 months into the fiscal year. The measure sets spending levels for federal agencies and included \$13.6 billion in military and humanitarian aid for Ukraine. Overall, the bill provides \$730 billion in non-defense spending (a 6.7% increase over Fiscal Year 2021) and \$782 billion in defense spending (a 5.6% increase over Fiscal Year 2021). However, billions in additional COVID relief funding sought by President Biden and Democrats were not included.

The Forest Service received \$3.7 billion in non-fire funding, a \$239 million increase over last year. The bill provides \$4.1 billion for fire suppression and other wildland fire management programs, including \$2.1 billion in off-budget spending under the fire borrowing fix. Under the Forest Service's new budget structure, the agency receives \$1.07 billion to fund agency operations.

The National Forest System will receive \$1.9 billion which includes \$39 million for the Forest Products line item, a modest \$1.5 million increase over Fiscal Year 2021. The Fiscal Year 2021 budget request, which was developed by the Trump Administration, sought \$47 million for the Forest Product line item – the primary funding source for the agency's timber program. Meanwhile, the agency received \$187 million for Hazardous Fuels reduction activities, compared to \$180 million in Fiscal Year 2021. The Trump Administration had requested \$321 million, but this was before Congress provided the agency billions for hazardous fuels and forest restoration through the Bipartisan Infrastructure and Jobs Act.

The funding level provided for the timber program through the Forest Products line item is disappointing and far short of the levels sought by our industry. The Forest Service has indicated that it plans to offer 3.4 billion board feet of timber in Fiscal Year 2022, which would be a 600 million board feet (MMBF) increase over last year's disappointing level of 2.8 billion board feet – the lowest since 2013.

Meanwhile, the Bureau of Land Management (BLM) would receive \$117.3 million for the management of the Oregon & California Grant Lands in western Oregon. This compares to \$114.7 million in Fiscal Year 2021 and \$111 million in Fiscal Year 2020. The final report also included report language directing the BLM "to continue the fire protection agreement with the State of Oregon to maintain or enhance the current level of fire protection for BLM-managed lands in Western Oregon." Similar to recent years, the report directs the BLM to "regularly report its timber sale accomplishments for sales that have been sold and awarded rather than merely offered for sale."

The BLM plans to offer 278 MMBF timber in Fiscal Year 2022, which is even with the volumes outlined in its 2016 Resource Management Plans for western Oregon. The BLM sold 298 MMBF in Fiscal Year 2021, thanks in part to roadside salvage operations following the 2020 Labor Day fires.

***Fiscal Year 2023 Budget Request.*** On March 28, the Biden Administration delivered its Fiscal Year 2023 budget request to Congress. The budget calls for a 20% “Billionaire Minimum Tax” on the ultra-wealthy and an increase in the corporate tax from 21% to 28%. It would direct billions in additional spending to the Defense Department and the Justice Department.

The Forest Service budget request would fund the National Forest System at \$2.2 billion, a \$300 million increase, “prioritizing forest restoration, recreation service delivery, climate smart land management, and reducing wildfire risk.” Unfortunately, the Forest Products line item would receive a reduction at \$37.5 million. Our industry has requested a 25% increase for the agency’s Forest Products program, so we will need to work with Congress to increase this funding level. The Vegetation and Watershed Management line item would jump from \$28.7 million to \$98.5 million to “help support post-wildfire restoration work necessary for improving watershed and landscape conditions for areas impacted by catastrophic wildfire that do not qualify for Burned Area Emergency Response.”

The Forest Service budget request also includes an increase of \$334 million to “support necessary staff levels to enhance response to year-round fire activity and allow the agency to continue important investments that support the health, well-being, and resilience of the agency’s wildland firefighting force.” This funding is intended to support the Biden Administration’s plan ensure wildfire firefighters receive no less than \$15 per hour and converting or adding an additional 3,200 firefighters and firefighting support personnel FTEs.

***AFRC in DC for meetings with Forest Service, Congress.*** AFRC staff and members traveled to Washington, DC earlier this month for meetings with Congressional offices and Forest Service leadership in conjunction with the Federal Forest Resource Coalition (FFRC) board meeting. The group met with Forest Service Chief Randy Moore and Deputy Chief Chris French to focus on the agency’s implementation of the Bipartisan Infrastructure and Jobs Act, which will provide the Forest Service nearly \$6 billion for hazardous fuels reduction and forest restoration efforts. The agency has also received an additional \$1.3 billion in supplemental appropriations for recovery activities to respond to the recent massive wildfire seasons. The group also met with Homer Wilkes, whom the Senate recently confirmed to serve as USDA Undersecretary for Natural Resources and the Environment, which oversees the U.S. Forest Service.

USDA and Forest Service leadership continue to underscore the importance of the forest products sector to the Forest Service’s ability to treat overstocked federal forests. However, industry members expressed concern about the lack of clear direction for regions and forests to ensure this new funding results in projects that result in meaningful, effective treatments while also providing the raw materials needed to sustain the existing industry infrastructure. Some national forests are citing the increased recovery and fuels reduction work as a rationale for reducing timber outputs this year. This only threatens the remaining infrastructure the agency claims is essential to forest thinning. The Biden Administration and members of Congress are also hearing from anti-forestry activists who claim that setting aside wide swaths of national forests in the Pacific Northwest from any commercial thinning is an effective solution to climate change.

It remains very challenging to meet with members of Congress and their staffs due to COVID restrictions and increased security following the January 6 capitol insurrection. However, AFRC members and staff did meet with lawmakers, their staffs, and the staff of key committees. While we expect very little legislative activity for the remainder of this year, Congressional staff are already looking ahead to the next Congress – particularly Republicans who hope the midterm election will hand them control of one or both chambers of Congress. /Heath Heikkila

## AFRC Legal Update

***Judge Aiken Denies Preliminary Injunction on Bear Grub and Round Oak Projects.*** On March 23, Judge Aiken issued a [favorable ruling](#) denying plaintiffs’ request for a temporary restraining order/preliminary injunction against the BLM’s Bear Grub and Round Oak Projects on the Medford District. Judge Aiken issued her decision *over ninth months* after the court held oral argument.

Last year, plaintiffs’ filed an action against the U.S. Fish and Wildlife Service (FWS) regarding its 2020 Biological Opinion (2020 BiOp), which analyzed the impacts of the Bear Grub and Round Oak Projects on the Northern Spotted Owl. Of particular concern to AFRC was plaintiffs’ claim that FWS failed to analyze the impacts on “floater” or non-resident owls. An unfavorable ruling on that issue could affect the BLM’s ability to show owl “take avoidance” under its 2016 RMP, which in turn would limit the agency’s ability to implement effective treatments in the Harvest Land Base. AFRC intervened on behalf of our members Timber Products, the high bidder for the Bear Grub timber sale, and Boise Cascade, the purchaser of the Lodgepole and Ranchero Timber Sales associated with the Round Oak Project. See [April 2021 Newsletter](#).

Plaintiffs raised three main arguments as to why FWS’s 2020 BiOp violated the Endangered Species Act (ESA) by failing to consider important aspects of the spotted owl conservation: (1) the BiOp failed to analyze the long-term effects of the action on spotted owls in light of the species’ shorter life span; (2) the BiOp failed to consider the effects of the action on nonresident or “floater” owls and their recolonization efforts; and (3) the BiOp failed to consider the effects of the action given the possible success of the ongoing experimental barred owl control program. Judge Aiken, however, determined that plaintiffs’ failure “to show serious questions going to the merits” of their ESA claims “weigh[ed] strongly” against granting their requested relief, declining to address the other preliminary injunction factors—i.e., irreparable harm, balance of the harms, and public interest.

At the outset, the court acknowledged that it “cannot substitute its judgment” for that of the FWS. As to the merits, the court first found that the BiOp adequately address the owl’s life cycle. “FWS did not find, as plaintiffs suggest at oral argument, that the proposed [nesting, roosting, and foraging] treatments would cause the spotted owls to ‘blink out’ in the action area,” given that these projects will retain the vast majority of NRF habitat in the action areas—96% in the Bear Grub Project and 83% in Round Oak Project. Second, the court found that the BiOp adequately addresses the impact of floater owls, noting that the precise “degree to which floaters influence or regulate populations is unknown.” Instead, recolonization is dependent on competition from barred owls and the availability of large reserve habitats, as analyzed by the 2016 RMP. Third, the court deferred to FWS on whether and how to use the preliminary results of the barred owl control program in its BiOp. The barred owl experimental program is still ongoing and FWS was not required to make decisions on data that isn’t available.

Although Judge Aiken’s decision in this case is not on the merits, the denial of the preliminary injunction is a huge win. The Round Oak and Bear Grub Projects are important projects, authorizing timber harvest and fuels reduction on 8,142 acres and generating 57.3 MMBF. Boise Cascade has been operating its sales since last summer. Unfortunately, the BLM may put the Bear Grub Project on hold, for reasons unrelated to the litigation, to revise its Environmental Assessment in light of concerns raised during the administrative protest process.

This case is part of a series of cases brought by the same plaintiff group, challenging various BLM projects under the ESA. For example, plaintiffs raised identical ESA claims against the BLM’s North Project—i.e., the failure to analyze the owls’ life cycle, failure to analyze impacts to floater owls, and the failure to use habitat assessment for determining the possibility of take. In August 2021, Judge Clarke issued a Findings and Recommendation, which was adopted by Judge McShane, rejecting plaintiffs arguments and upholding the project. Plaintiffs have brought another challenge with identical claims against the BiOp for the Poor Windy and Evans Creek Projects, which is currently pending before Judge Aiken. As for this case, plaintiffs have 60 days to appeal denial of the preliminary injunction to the Ninth Circuit. /Sarah Melton

### ***Grays Harbor Superior Court Upholds the About Time, Bluehorse, and Proposer DNR Timber Sales.***

In our [January 2022 Newsletter](#), we mentioned how a fledgling anti-forestry group, the Center for Responsible Forestry, has appealed a series of DNR timber sales, demonstrating a broader policy agenda, asserting identical claims that DNR has failed to comply with its “Old Forest Target” in its 1997 Habitat Conservation Plan (HCP) and the 2006 Policy for Sustainable Forests (2006 PSF). The Center’s arguments are simply that: 1) DNR has enforceable obligations under its 1997 HCP and 2006 PSF to ensure that 10-15 percent of its forests attain a minimum age of either 150 or 123 years by 2097, and 2) the timber sale should be stopped because DNR is not on track to meet these targets. In our view, the Center had completely misinterpreted DNR’s obligations under the 1997 HCP and 2006 PSF and question whether the *aspirational targets* of the HCP and 2006 PSF will be achieved many decades from now; rather than demonstrate that the sales at issue actually fail to conform with the requirements under the Public Lands Act or the State Environmental Policy Act (SEPA).

The Center also conflates the use of stand age with stand structure. DNR has used stand ages as surrogates or guides for identifying when forested stands (typically unmanaged stands) transition into various stand structure characteristics. The aspirational targets of the HCP and 2006 PSF are for “fully functional” stands or in layman terms have “Old Growth” characteristics.

The About Time Timber Sale, located in Grays Harbor County, was the first in this series of appeals to have oral argument before the Superior Court. The sale was purchased by Murphy Company, who participated as a defendant-intervenor.

On March 14, Judge Katherine Svoboda—a recently appointed Superior Court judge and former Grays Harbor County Prosecutor—held oral argument for the About Time appeal. During the hearing, Judge Svoboda elected to consolidate Bluehorse and Proposer timber sale appeals, finding that they present the same legal issues and should be appropriately resolved in one action for purposes of judicial economy.

As to the merits, Judge Svoboda outright rejected the Center’s challenge to the sales, finding that their arguments fail to identify any arbitrary and capricious agency action under the Public Lands Act and fails

to show that DNR's SEPA threshold determinations were clearly erroneous. Despite the Center for Responsible Forestry's assertion to the contrary, the court determined that RCW 79.02.030 required the Center to pay for the cost of preparing the administrative record, which equated to about \$5,000.

Two weeks after this favorable ruling, the Center moved to voluntarily dismiss their challenge to the Point Blank timber sale in Lewis County, which was set to have a hearing on April 5. AFRC and Lewis County intervened as defendants and submitted a [brief](#) in opposition to the Center's arguments. As our brief pointed out, Lewis County and its Junior Taxing Districts are relying heavily on the proceeds from this sale to fund essential services. The Point Blank timber sale was auctioned for \$2,935,245.44, of which \$1,915,247.65 will be routed provided to Lewis County and its junior taxing districts, with the remainder being used to maintain state capitol buildings and fund DNR.

The Center has not moved to dismiss the other pending appeals, including Green Thomas, Two Years Out, Taylor Downhill Sorts, Goodman 1, and Pivot, all of which remain pending in Wahkiakum County, Jefferson County, and Pacific County Superior Court. AFRC members are purchasers of several of the sales implicated in those appeals.

We suspect that Center for Responsible Forestry will appeal the ruling in About Time, Bluehorse, and Prosper to the Washington Court of Appeals. AFRC is closely monitoring this action, as well as the other DNR timber sale challenges. /Sara Ghafouri

***Despite Mixed Ruling, Judge Winmill Allows the Brebner Flat Project to Proceed.*** On March 2, the U.S. District Court for the District of Idaho issued a mixed ruling in a challenge to the Brebner Flat Project on the Idaho Panhandle. AFRC intervened on behalf of our member Stimson Lumber Company and was previously successful in defeating a motion for preliminary injunction against the project (see [February 2021 Newsletter](#)).

Plaintiffs' ESA claim asserted that the Forest Service failed to prepare a biological assessment for the grizzly bear. In support of their claim, plaintiffs argued that the species list from FWS, that identifies which endangered or threatened species may be present in the project area, should have included the grizzly bear. Section 7(c) of the ESA requires the species list to be based on the "best scientific and commercial data available."

Judge Winmill agreed with plaintiffs, finding that the Forest Service violated the ESA by failing to obtain an adequate species list that demonstrates what ESA-listed species may be present in the action area. The court determined that FWS did not sufficiently articulate how it updates its species maps with respect to the grizzly bear, characterizing the agency's descriptions as "hazy" and questioned whether the FWS had done so based on the most recent (at that time) grizzly bear monitoring report for the Selkirk Mountain. The district court acknowledged that the species list would likely not change if or when the FWS does a better job drawing the line between the science and the species list, but the court concluded the Forest Service had relied on a species list that did not pass legal muster and remanded that issue for further analysis.

Both Federal Defendants and Stimson raised an additional defense as to why the preparation of a biological assessment in this instance was unnecessary. We argued that under the ESA, and FWS's implementing regulations, the preparation of a biological assessment is necessary only for "major

*construction*” activities. AFRC has tried to push this legal argument in other cases. For example, in the challenge to the North Hegben Project on the Custer Gallatin National Forest we raised the same argument, but it was rejected by the court.

Judge Winmill wrote 16 pages analyzing the statutory and regulatory text and history, finding that the mandatory scope of the biological assessment is set out in the plain text of the ESA and that an agency may not interpret the statute (via a regulation) in a manner that contravenes the plain text. However, Judge Winmill’s analysis interpreted the regulation in a manner that *is consistent* with both the ESA and the regulatory text: “Simply because the regulation requires a [biological assessment] for major construction activities does not mean that it excuses the Forest Service from preparing a [biological assessment] for projects that are not major construction activities. Interpreting the regulation as a non-exhaustive example of a circumstance when a [biological assessment] is required harmonizes the regulation with the agency’s statutory duty.”

Plaintiffs requested that the Brebner Flat Project be vacated in light of the ESA violation, but Judge Winmill ruled that “the agency’s error is limited in severity, and vacatur would result in a disproportionate disruption to the project, which has largely withstood the environmental groups’ legal challenge.” The court expressly acknowledged that vacatur would “cause immediate economic harm and would threaten the safety of local communities.” Judge Winmill also recognized how the project would benefit communities within the wildland urban interface: “the [c]ourt is particularly mindful of the dangers that ceasing harvest operations now would pose to the [WUI] of Avery for the upcoming fire season.” AFRC would like to thank Julie Weis with Haglund Kelley LLP for her exemplary work in defending the Brebner Flat Project on behalf of our members. /Sarah Melton

***Ninth Circuit Denies Emergency Request for a Preliminary Injunction on 18 Projects.*** In our [January 2022 Newsletter](#), we reported the Ninth Circuit issued an unpublished memorandum decision vacating the district court’s denial of a preliminary injunction that implicates 31 Projects on the Stanislaus, Sierra, and Sequoia National Forests. The Ninth Circuit panel requested that the district court do the following on remand: (1) order the Forest Service and FWS to advise the district court on whether the raw post-2020-wildfire vegetation data cited by plaintiffs’ is compatible with existing methods or models for estimating the fisher population; (2) order the Forest Service and FWS to advise whether it would have taken too long to model a new fisher population estimate from the raw post-2020- wildfire vegetation data at issue here considering any urgent need to complete the 31 Forest Service logging projects; (3) inquire into any other questions pertinent to whether the raw post-2020-wildfire vegetation data makes any difference in the ESA analysis of these logging projects, including why FWS did not use this data in formulating the 2021 Programmatic Biological Opinion (BiOp), why FWS can or cannot use this data, where FWS is now in its analysis of the fisher population, and what has been done with this data; and (4) reevaluate plaintiffs’ request for a preliminary injunction on its ESA claim in light of any update to the size of the SSN fisher population based on “the best scientific and commercial data available’ when formulating a BiOp.”

On remand, the district declined to follow plaintiffs’ request to proceed with an entirely new preliminary injunction motion. Instead, the court set a briefing schedule requiring Federal Defendants to file a factual submission that responds to the specific inquiries identified by the Ninth Circuit in its memorandum decision and allow plaintiffs an opportunity to respond to the agency’s factual submission. In a footnote, the court also explained it has an “overwhelming caseload” with an extensive “backlog,” which may

result in the court not being able to issue orders in submitted civil matters within an acceptable period of time.

Concerned by the potential delay from the district court, plaintiffs quickly filed an emergency motion for a preliminary injunction with the Ninth Circuit, requesting that 18 out of the 31 projects be enjoined, alleging that those project activities may have an impact on the fisher or its habitat. Before the government had time to respond to plaintiffs' motion, the Ninth Circuit promptly denied the request for an injunction. The court noted that the factual record does not contain "sufficient evidence to allow us to determine whether Unite the Parks will suffer irreparable harm absent the preliminary relief that it seeks from us. It is not clear from Unite the Parks' motions whether any of the logging projects at issue, let alone which ones, would affect the fisher or its habitat. We conclude that this determination is best addressed in the first instance by the district court because it requires further factfinding."

However, the Ninth Circuit ordered the district court to "act expeditiously" and "to promptly rule on the preliminary injunction issues [that were] remanded." In response, the district court informed the parties that it will hold a hearing shortly after briefing is completed in April and will issue an order before June 1, 2022.

AFRC continues to monitor this case given its impact on the Sierra and Sequoia National Forests' timber program. Many of the projects that plaintiffs seek to enjoin have already withstood litigation and include important forest health and resiliency work. For example, AFRC member Sierra Forest Products has several sales implicated by the preliminary injunction request—including sales associated with the Bald Mountain Restoration, Exchequer Restoration, Joey Healthy Forest and Fuels Reduction Projects—which are planned for operations in 2022 and involve important salvage, hazard tree removal, and forest resiliency treatments. /Sara Ghafouri

***Mixed District Court Ruling Regarding the Houston South Project.*** On March 30, the U.S. District Court for the Southern District of Indiana issued a mixed ruling in a challenge to the Houston South Vegetation Management and Restoration Project on the Hoosier National Forest in Indiana. The Houston South Project includes over 3,400 acres of hardwood harvest and significant work to regenerate white oak stands. There was broad support for the project because it would help the Forest achieve its goal of establishing 4 to 12 percent of the area to contain young forest habitat, which would benefit diverse wildlife populations including the Ruffed Grouse. Partnering with numerous forestry and wildlife groups, AFRC filed an *amicus curiae* brief in support of the project. See [January 2021 Newsletter](#).

AFRC participated in this case because it presented an opportunity to fight the expansion of the Ninth Circuit's *Cottonwood* case, which environmental groups have heavily relied on in support of their ESA challenges. The *Cottonwood* decision directs the Forest Service to re-do its Forest Plan consultation anytime new information on endangered species arises, greatly complicating Forest Service timber sales across the Northwest.

Plaintiffs challenged the Houston South Project, asserting it violated NEPA and the ESA. First, plaintiffs alleged that the Forest Service violated NEPA by failing to consider any "mid-range alternatives" and failing to take a hard look at the potential effects of the project activities on the nearby Lake Monroe. Plaintiffs also alleged that the Forest Service and FWS violated the ESA by failing to reinstate consultation on the Indiana bat, an ESA listed species, because "new information" on the White Nose



Syndrome, a disease affecting hibernating bats, “reveal[ed] effects of the action that may affect” the bat in a manner not previously considered.

Chief Judge Tanya Walton Pratt rejected plaintiffs’ ESA claims, holding that the Forest Service and FWS did not fail to consider the “best available science.” Plaintiffs’ argument rested on the assertion that Federal Defendants failed to consider a 2019 Review on White Nose Syndrome, but the court found that 2019 Review and the review of Houston South Project were issued weeks apart by the same FWS biologist. The court determined that there was no evidence in the record to suggest the biologist ignored their own findings about the bat while “greenlighting” the project. On this issue, however, the court did not address or even reference the Ninth Circuit’s decision in *Cottonwood*. Judge Pratt also rejected one of plaintiffs’ NEPA claims, holding the Forest Service rightly considered reasonable alternatives and noted that the court’s “job is to ensure [the Forest Service] complied with the [NEPA] procedural requirement to consider alternatives, not pass judgment on whether suggested alternatives should have been chosen.”

Unfortunately, the court granted summary judgment in favor of plaintiffs on their other NEPA claim for failure “to fully evaluate the environmental effects to Lake Monroe” and remanded that issue to the Forest Service for additional analysis. The Forest Service owns approximately 20% of the Lake Monroe watershed, including portions of the South Fork Salt Creek watershed, which contributes 30% of Lake Monroe’s water and is located within the Houston South Project area. Judge Pratt found that the Forest Service failed to evaluate the potential impacts the Houston South Project could have on Lake Monroe, which suffers from sedimentation and algal blooms but serves as the sole source of drinking water for 120,000 people in southern Indiana, and that the Forest Service did not adequately consider or discuss these concerns. Judge Pratt ruled that the Houston South Project should therefore not move forward without first determining how the water quality of Lake Monroe could be affected.

We appreciate the Ruffed Grouse Society, National Wild Turkey Federation, Congressional Sportsmen’s Foundation, Indiana Forestry & Woodland Owners Association, Indiana Sportsmen’s Roundtable, Backcountry Hunters & Anglers, National Deer Association, Izaak Walton League of America, Porter County Chapter, Indiana Hardwood Lumbermen’s Association, and Federal Forest Resource Coalition for their participation as *amici* in this matter. /Sarah Melton

### ***AFRC in the News***

- Nick Smith was interviewed by [Northwest Public Broadcasting](#) on DNR state trust lands and the case attacking the trust mandate in the State Supreme Court.
- Amanda Astor from Associated Oregon Loggers and Nick Smith co-authored an opinion in the [Register Guard](#) regarding the need to replace lumber imports with wood products made in Pacific Northwest.

## **Advances in Bioacoustics Technology for Northern Spotted Owl and Marbled Murrelet Surveys**

Land managers with the Forest Service typically develop timber sales designed to minimize potential adverse impacts to threatened and endangered species, including the Northern Spotted Owl (NSO) and Marbled Murrelet (MAMU). That design includes seasonal restrictions on timber operations to avoid

noise disturbance to these species during their nesting and breeding periods. By themselves, those restrictions are manageable; however, layer those wildlife restrictions with wet-weather restrictions, summer fire shutdowns, recreation restrictions, and others, and the available days to operate in a single calendar year diminish significantly. A 2018 BLM timber sale called [Clean Slate](#) provides an extreme example by not having a single month where timber operations were unrestricted. Clean Slate did not attract any bidders, likely because it was largely inoperable.

AFRC regularly urges federal land managers to design this myriad of restrictions in a manner that protects the resources of concern while generating timber sale contracts that can be realistically implemented. The way seasonal restrictions for the NSO and MAMU are currently applied, coupled with emerging research on new surveying technology, provides an opportunity to improve this design.

The [January issue](#) of Science Findings, published by the Pacific Northwest Research Station, provides updates on a pilot study of the effectiveness of bioacoustics monitoring in detecting the location of NSOs across ten historical demographic study areas. Conventional surveying techniques for NSOs involved callback and mark-and-recapture methods. Not only are those methods costly and time intensive, but scientists became concerned with the risk to NSOs responding to these calls in the growing presence of aggressive Barred Owls. In response to these challenges, researchers developed a pilot study in 2017 to test the effectiveness of bioacoustics in detecting NSO presence. This pilot includes thousands of autonomous recording units placed across the demographic study areas that can distinguish the vocal calls of numerous bird species, as well as other wildlife. This new technology has the potential to detect the locations of NSOs, MAMUs, and other species across millions of acres in a way that would be infeasible and impractical with the historical calling techniques used for the past several decades.

If this new technology continues to yield successful outcomes, it could be applied to both broad-scale population trend assessments as well as project-level designs. The current application of seasonal wildlife restrictions on timber sales by the Forest Service is constrained by the costly and time-intensive nature of conducting NSO and MAMU surveys through historical methods. The Siuslaw National Forest, for example, anticipates conducting commercial thinning across approximately 1,500 acres in 2022 and over 2,700 in 2023 and does not have the capacity or funding to conduct NSO and MAMU surveys across this footprint. So, instead of determining whether these species are actually present in the vicinity of these vast acreages, the Forest uses habitat as a surrogate for occupancy. In other words, they assume every acre that meets established habitat thresholds is occupied by NSOs and MAMUs and applies operating restrictions adjacent to those acres. These assumptions lead to inflated levels of restrictions since not every acre that contains habitat is likely occupied by these species.

The operating restrictions on a [sale currently advertised](#) by the Siuslaw National Forest called Sailing illustrates this reality well. The project operation schedule under C6.315 does not apply restrictions around occupied habitat but rather around **all** “mature or old-growth forest” regardless of whether it is being used by these sensitive species. Bioacoustics monitoring could allow the Forest Service to make real occupancy determinations across these acres to align operating restrictions with actual species presence.

The NSO monitoring program is expected to transition to bioacoustics by 2023. The U.S. Fish & Wildlife Service is developing protocols based on bioacoustics that can be used on project-level activities, including timber sales. /*Andy Geissler*

## **Washington DNR Fails to Hit Volume Target and Lowers Fiscal Year 2022 Target**

At the July 6, 2021, Board of Natural Resources (Board) meeting, [DNR staff provided a Fiscal Year 2022 Sale Plan and Volume target](#). The July 2021 report showed a statewide sale volume target of 580,114 MBF, with 518,895 MBF of this volume scheduled for western Washington. Currently the average western Washington Sustainable Harvest level for the Fiscal Year 2015 to 2024 planning decade is 465,000 MBF or 465MMBF. Due to earlier shortfalls in the current planning decade, DNR had scheduled 494,000 MBF to be delivered in Fiscal Year 2022, along with a 24,359 MBF shortfall from Fiscal Year 2021. It is anticipated that [DNR will report at the April 5 BNR meeting](#) (as published and downloaded on 3/29/22) that the new statewide Fiscal Year 2022 target has been lowered to 458 MMBF. Based on this presentation, DNR had already lowered the Fiscal Year 2022 target from 580,114 MBF down to around 564 MMBF.

AFRC now anticipates that in western Washington DNR will offer 381,465 MBF, or 137,430 MBF below the July 6, 2021, reported Fiscal Year 2022 target. DNR-managed lands in eastern Washington are expected to provide 76,828 MBF of the new 458,293 MBF statewide target. Through the February 2022 auction, DNR has offered 281,589 MBF and sold 274,558 MBF, or approximately 60% of the new lower fiscal year target. This leaves DNR needing to sell 183,735 MBF in the last four months of the fiscal year. Currently, the March auction has 39,744 MBF and the April auction has 14,051 MBF scheduled for sale. Assuming DNR does not add additional sales to the March and April auctions, they will need to sell 129,940 MBF in May and June or roughly 28% of the entire fiscal year target.

DNR reports several reasons for these shortfalls. These include the ongoing “Older Forest” issue (see [February 2022 Newsletter](#)), staffing, and others. It is anticipated that DNR will report to the Board that staff expects to shift 146 MMBF into the next fiscal year. The breakout of this volume is reported as 38 MMBF related to “older forests,” 73 MBF related to “staffing issues” and 35 MBF listed as “other.” It should be noted that this is the volume that is anticipated to be “shifted” into the next fiscal year. Not the total volume impacted by these issues. DNR currently has at least 7 timber sales on hold related to the “older forest” issue, that account for about 49 MMBF.

Additionally, DNR staff is “re-working” a host of timber sales under the “interim guidance” mentioned above. This has led to removal of volume that DNR may re-offer in the future once the Board has addressed the “older forest” issue. However, we have strong reasons to believe that portions of this “pre-1900” volume will not be brought to auction, even if the Board affirms the current Old Growth policy. At this time, it is unclear what the full impact of the “interim guidance” about “pre-1900” stands will be on DNR timber sale program.

While the Department has had challenges filling field forester positions, we also understand they have had staff in various Regions work to help other Regions complete timber sales on time. Plus, staff is now spending time “re-working” existing timber sales that have not been presented to the Board under the “interim guidance” on the “pre-1900” stands. This is diverting staff time from the new sales they should be working on. The “other” category includes sales that have been delayed for reasons other than staffing and “older forest” impacts. One challenge that DNR reports with some of these sales has been lack of access due to snow or storm events for Forest Practices to review and approve Forest Practices harvest applications. At this time, it is unclear if DNR will meet this lower target for Fiscal Year 2022. And

absent a resolution to the “older forest” issue, the Fiscal Year 2023 target will be highly unreliable. /Matt Comisky

## **Groups Working to Help Reboot Okanogan-Wenatchee National Forest Restoration**

The Okanogan-Wenatchee National Forest located in North Central Washington covers 3.8 million acres, stretching from Naches to the south to the Canadian border to the north. This diverse forest has a host of challenges implementing critical restoration work needed to stay ahead of the prolific wildfire threat faced every summer. Recent landscape-sized projects have stalled out and the implementation of needed thinning and restoration work has not happened, leading to frustration for forest planners as well as stakeholders such as the North Central Washington Forest Health Collaborative (NCWFHC) and the timber industry. The consequences for this lack of implementation became very clear this past summer when 225,000 acres of the Forest burned including part of the proposed Twisp Project on the Methow Valley District.



*Photos: Members of NCWFHC and the Forest Service discuss options of managing LSR lands on the Okanogan-Wenatchee National Forest*

Six of the top ten key firesheds in Region 6 identified for a multiyear national investment strategy to target fuel management funding to reduce risk to developed areas are located on the Okanogan-Wenatchee. Firesheds were identified based on wildfires igniting on forest land available for mechanical treatments and near at-risk communities. The Wildfire Crisis Implementation Plan and Strategy released in January 2022 prioritizes hazardous fuels treatments, including commercial thinning, on these key firesheds. It is critical that the Okanogan-Wenatchee improve its project planning effectiveness in order to meet the desired outcomes and priorities outlined in this Plan.

There are a host of reasons why the projects which promote forest restoration, (Upper Wenatchee Pilot Project and Twisp Project) have failed. Those include uncertainty on how to manage forests on lands designated as Late Seral Reserves (LSR) stands of timber, completing consultation with the U.S. Fish and Wildlife Service in a timely manner, an out-of-date Forest Restoration Strategy, and failure of the NCWFHC to lend its timely support to certain projects like Twisp, thus causing delays.

All parties that have an interest restoration work being accomplished agree that changes are needed. Local homeowners that live in the Wildland Urban Interface are fearful of losing their homes to wildfire, biologists who are tasked with recovering and improving habitat for species such as the northern spotted owl and anadromous fish species are losing more and more habitat to wildfire, and the forest products industry who desperately needs the timber from this Forest due to shrinking timber supplies have engaged in work on several fronts to attempt to reboot and reinvigorate needed work on the Forest.

**NCWFHC Steering Committee Retreat.** On March 24-25, the NCWFHC Steering Committee held a retreat to discuss what the committee can do to help ensure that planned projects are implemented in a timely manner. This internal check was needed because a couple of groups within the collaborative were instrumental in delaying implementation of the Twisp Project. Frank discussions by some collaborative members, including AFRC, emphasized that without timely support from ALL collaborative members, future projects are unlikely to be successful, and some members will be leaving NCWFHC. AFRC believes the retreat was successful and the participants agreed to work hard moving forward to make the Forest and the Collaborative successful.

**LSRA Update.** The Forest and Region is working on an update to the LSR Assessment (LSRA) that should provide a clearer strategy where and what kind of forest health treatments can be conducted in the LSR areas on the Forest, thus shortening future planning timelines. The dilemma the Forest faces is that much of the habitat for spotted owls and other species is at risk to large wildfires, but there is no agreement on what kind of treatments can be undertaken and the result has been no treatments being done.

**Updated Forest Restoration Strategy.** Several members of NCWFHC including AFRC members are supporting an update of the Forest Restoration Strategy (FRS) which was last updated in 2012. This work will: 1) identify and incorporate any new science/research/tools that have emerged since the 2012 version, and 2) review three example landscape restoration projects to determine how the FRS was used and implemented and where changes could occur. This would include addressing internal/external relationships, accountability, commitment, and capacity to implement the FRS and landscape-scale restoration. This work should be completed by August and provide a much clearer path forward on how to get projects planned and implemented in an efficient manner.

**Outside Groups Doing NEPA Planning.** Wildfire burned about 10,000 acres of the 77,000-acre Twisp planning area last summer. In analyzing the best path forward, the District chose to move forward with only a portion of the total project (North Twisp) because it was less controversial due to those lands being designated as matrix which allows more flexibility in management. This left three drainages, the Middle Twisp, Upper Twisp, and Little Bridge Creek possibly without treatment. Four members of NCWFHC are currently proposing to do the NEPA planning work needed to get these areas treated. This effort will be called the Midnight Project. The four groups include the Yakama Tribe, Washington DNR, The Nature Conservancy, and The Wilderness Society. With these groups doing the NEPA work on these landscapes, it will allow the District to start analyzing a new project called Upper Methow. Jointly, these efforts should help increase the pace and scale of treatments on the Forest.

When combined, these four efforts should bring a new focus, energy, and urgency to getting lands on the Okanogan-Wenatchee treated. This reboot for the Forest is desperately needed and is probably the Forest's last chance to begin getting needed work implemented. / *Tom Partin*