

Summary of FWS FOIA Documents Received by Earthjustice on Oct. 22, 2007

1. Murrelet Status Review Determination Changed at Last Minute by Ms. MacDonald

FWS Region 1's draft status review found that the tri-state murrelet population satisfied the requirements to be a distinct population segment ("DPS"). As late as August 30, 2004, the status review "affirmed" that the tri-state population is a DPS. Draft News Release 8/31/04. An August 26, 2004 email indicates that Julie MacDonald asked to see the status review, Q&A, and press release. Jewett Email 8/26/07. As of the close of business on August 30th, the region was "still awaiting a final decision and/or guidance from D.C." Patte Email 8/30/04. On August 31, 2004, a revised status review incorporates new DPS information embodied in a "lawyer-vetted version" transmitted by Assistant Secretary for Fish and Wildlife and Parks Craig Manson. Manson Email 8/31/04. Three modifications were made: (1) changing from "yes" to "no" the answer to "Does the original listing meet the DPS policy with regards to the Discreteness and Significance elements of the DPS policy?" (Phifer Email 8/31/04) (2) a reference to the recent entry into force of Canada's Species At Risk Act; and (3) insertion of the statement "The currently listed murrelet population is not discrete according to the 1996 DPS policy." The first version of the press release containing the revision indicating the tri-state population is not a DPS is labeled "Julie's Draft."

2. Ms. MacDonald's Interference With Science

While the eleventh hour reversal allegedly was based on a new Canadian law (although the regional scientists had already discounted the effectiveness of that law, see Response to Ass. Sec. Manson's Comments 5/4/04) - the released FOIA documents show Julie MacDonald's meddling in the science as well.

- The EDAW report was circulated for review.¹ "Our task is to translate the science into policy decisions, so the first step is understanding the science." Rabot Email 3/19/2004.

Julie MacDonald responded. "Our listing document states this bird was found regularly and was plentiful. When you actually read the cite, what Grinnel says is: *'More numerous in winter than in summer; even 'plentiful' then in some years and occurring further south.'* The point about '... even 'plentiful'...' seems to make the point that the bird was not numerous or found regularly. Other notes include a statement that it occurs occasionally in San Francisco Bay, which lends some credence to my statement earlier today that it's likely it does not like the bay due to the mixing that occurs there, rather than lack of habitat."

¹ EDAW is the scientific consulting firm that obtained the contract to perform the status review scientific evaluation.

“I am most concerned about our apparent misrepresentation of the occurrence of these birds in California in the listing document, a mischaracterization that appears to have been replicated in nearly every other document written about the bird. It appears that the murrelet, while present, only showed up in any real numbers periodically. We need to talk about this.” MacDonald Email 3/19/2004.

- “Julie request the literature cited section for EDAW document” and “copies of any substantive letter submitted to the Service during the Fed Reg requests for information.” “We also discussed the EDAW report more broadly, touching on issues of modeling, the panelists, and population trend data.” 3/17/2004 Contact Record. Requested documents sent 3/18/04.
- On March 22, 2004, Julie MacDonald requested copies of 12-15 publications concerning population trends and relation of logging to murrelets. “She commented that her review indicates continued use/overuse of ‘bad’ data, misuse of these types of data in calculating trends (bias), misstatements about what the article authors actually stated or intended - i.e., a pattern of mistakes (her words) both in the original listing, subsequent reviews, and in EDAW’s report.” Mulder Email 3/22/2004.
- “Actually, Julie MacDonald requested over 50 documents and books yesterday afternoon. I sent out 49 scanned PDF-files of requested books and documents as of 1930 last night (Monday) and have sent all of the rest I have except one document this morning.” Cox Email 3/23/2004.
- Julie MacDonald does not want status review to exclude raw data that have not been subject to peer review and explains that such a standard would exclude timber industry research underway that is not intended for publication and thus will not be peer reviewed. MacDonald Email 4/5/2003. Response indicates that nonpeer reviewed data will be considered but greater weight will be given to studies that have been peer reviewed. Leonard Email 4/7/2003.
- “AFRC has told Manson that there is ‘incontrovertible’ data showing this is one continuous population with no differences, and that any splitting of the species is purely and only a policy call.” Mulder Email 5/27/2003. Notes also that AFRC wanted to delay status review due to new information coming out.
- Julie MacDonald requests scientific papers on murrelets. MacDonald Email 6/2/2003.
- “Please do not proceed with this pending instructions from the Assistant Secretary. We have serious concerns with the information used to arrive at

the conclusions.” MacDonald Email 5/17/2004; MacDonald Email 4/28/2004 (similar statement).

- MacDonald Email 8/4/2004 asking for copies of scientific studies.
- Staff email following up “on Julie’s question about whether EDAW had considered all recent (including unpublished) information,” noting that she asked about particular researchers whose “work has not been thought highly of by the current research community and has not been cited much in recent years.” Mulder Email 8/4/2004.
- Email documents a conversation between one of the researchers, Craig Manson, and Julie MacDonald indicating that the owl status review was obvious and not challengeable but recommending a recovery team. As for murrelets, the research claimed the EDAW document was flawed and biased and other points of view not considered, but that “he didn't think peer review would help (now why is that we may wonder?).” Mulder Email 8/10/2004.

3. Timber Industry Influence on Status Review Process

The timber industry group American Forest Resource Council (“AFRC”) was consulted on the process for conducting the status review and provided recommendations for scientific reviewers. Dinkins Fax 4/8/2003; Notes of Meeting with AFRC 5/2003; Riley Email 5/8/2003; Engbring Email 3/21/2003.

Initially, AFRC insisted on contracting out the status review (because they didn’t trust FWS scientists). Notes of Meeting 5/2003; Riley Email 5/8/2003. As a result of a meeting with Steven Griles, Ann Klee, and Carol Dinkins [attorney for timber company Maxxam] Ann asked that FWS integrate the involvement of independent outside experts into the status review. Frazer Email 3/26/2003. But when they didn’t like the result, they sought external reviews and touted the rejected researchers’ data. On March 29, 2004, Julie MacDonald asks for the list of experts reviewing the EDAW report.

4. Murrelet Status Review as One Piece of Timber Industry Wish-List

The Bush administration agreed to timber industry demands to try to increase logging from Northwest forests. On the marbled murrelet and northern spotted owl, “Plaintiffs [AFRC] will get what they want for the 5-year status review and critical habitat. ... Put as positive a spin as possible. Show the plaintiffs that we’re willing to concede [] on as many issues as we can, in order to accommodate their desire for increased timber harvest.” Ann Klee Meeting Notes 11/14/02. On the BLM lands in Oregon (known as O&C lands), “We can still get 1 billion board feet of timber if we choose the option that adjusts the riparian reserve with adaptive management.” Ann Klee Meeting Notes 11/14/02.