

# **Logging in Marbled Murrelet Habitat on Queen Charlotte Islands/Haida Gwaii**

**Complaint Investigation 050625**



**FPB/IRC/114**

**October 2005**

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# Executive Summary

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## Background

This investigation addresses a complaint, from the Gowgaia Institute, that the Husby Group of Companies (the licensee) is harvesting areas that should be reserved for marbled murrelets. The areas in question are in the Eden Lake landscape unit, on Haida Gwaii/Queen Charlotte Islands. The licensee included those areas in a forest development plan (FDP) that was approved by the district manager of the Ministry of Forests and Range (MOFR).

Marbled murrelet are listed as ‘threatened’ by the Committee on the Status of Endangered Wildlife in Canada, and are also on BC’s ‘red list’ of threatened or endangered species. A conservation assessment recommended retaining 69 percent of suitable habitat for the area that covers all of the Queen Charlotte Islands; but proposed no specific target for the Eden Lake or other landscape units. The recommended target has not been approved by either the federal or provincial governments.

The approved harvesting areas are in the non-contributing land base—the area identified through a timber supply analysis as unavailable or unattractive for timber harvesting. However, as technology and market conditions change, many of the forests thought to be inoperable have become more attractive to licensees for harvesting. The complainant suspects that the licensee is now targeting suitable habitat in the non-contributing land base before it is protected through the completion of landscape-level planning initiatives or, in the interim, a deputy minister’s order. The Board investigated whether the areas in question should have been reserved from timber harvesting, and whether approval of the licensee’s forest development plan was reasonable.

The province can maintain suitable habitat, in part, through the designation of “old growth management areas” and “wildlife habitat areas,” or by a deputy minister’s order in the interim period before those designations are made. There is non-binding government direction to favour designating such areas in the non-contributing land base, in order to provide for conservation needs while minimizing the impact on timber supply. However, restricting habitat conservation measures to the non-contributing land base could conceivably eliminate suitable management options that address both marbled murrelet conservation and timber needs. In other words, harvesting in the non-contributing land base is not, in itself, necessarily contrary to sound forest management.

At the time of this complaint, planning processes for old growth management areas and wildlife habitat areas had not been completed for the Eden Lake landscape unit. To maintain conservation options in the interim, the Deputy Minister of Environment specified, as an objective for the Queen Charlotte Islands Forest District, an area equal to the entire amount of suitable habitat in the non-contributing land base.

Of the 1400 hectares of logging proposed by the licensee in the non-contributing land base, only 30 hectares was in habitat suitable for marbled murrelet. That small proportion suggests that the licensee is not intentionally targeting the non-contributing land base for harvesting, to reduce the amount of suitable habitat that must be protected when forest stewardship plans are prepared.

Approval of the FDP increased risk to marbled murrelet by reducing and fragmenting available habitat, and decreasing the amount of habitat that licensees must manage for under the deputy minister's order and forest stewardship plans. On the other hand, the licensee had also committed to conserving an equal amount of suitable habitat in the contributing land base for the duration of the FDP. Furthermore, sufficient habitat remained to achieve the targets of the conservation assessment, should government decide to apply that target to the Eden Lake landscape unit.

On balance, the Board found the district manager's conclusion that approval presented an acceptable risk to marbled murrelet was reasonable. It was appropriate for the district manager to be satisfied that approval of the FDP would adequately manage and conserve marbled murrelet.

## **Board Commentary**

The non-contributing land base is of growing importance to both timber and conservation interests, since options for logging and habitat conservation are increasingly limited elsewhere. Government policy and guidebooks encourage establishing conservation options in the non-contributing land base. However, that approach could unnecessarily constrain management options that address both conservation and development needs. Agencies and licensees should consider the entire land base when planning conservation and development options, as the Ministry of Forests and Range and the licensee did here.

Harvesting of suitable marbled murrelet habitat, whether in the non-contributing or contributing land base, will reduce future management options. Such harvesting can potentially undermine the still-to-be-completed landscape-level planning initiatives. Where harvesting of suitable habitat is approved in exchange for commitments to retain options elsewhere, those commitments must be meaningful and durable. The Board encourages the licensee and government agencies to work together, to ensure that all such commitments carry through to the completion of landscape-level planning processes, not just for the term of the FDP.

Ultimately, adequate conservation of marbled murrelet habitat will only be achieved by setting, and spatially designating, conservation targets and objectives. Accordingly, the Board encourages:

1. The Ministry of Environment (MOE) and the licensee to continue improving their inventory on the amount and quality of habitat.
2. MOE and MOFR to set marbled murrelet habitat conservation objectives at the regional and landscape unit-level.
3. The Ministry of Agriculture and Lands (MOAL) and MOE to meet those objectives through the designation of old growth management areas and/or wildlife habitat areas, considering the entire land base without necessarily restricting options relative to the non-contributing land base, as delineated for timber supply review purposes.

## **Recommendation**

The Board requests that agencies and the licensee report back by April 30, 2006, on progress made towards completing the preceding three initiatives.

# The Investigation

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In February 2005, the Board received a complaint from the Gowgaia Institute (the complainant) that the Husby Group of Companies (the licensee) is harvesting in areas that should be reserved for marbled murrelets. The complaint concerns the Eden Lake landscape unit of the licensee's Haida Gwaii/Queen Charlotte Islands operations.

The Board investigated whether the area in question should have been reserved from timber harvesting, and whether approval of the licensee's 2004-2008 forest development plan (FDP) under the *Forest Practices Code of British Columbia Act*<sup>1</sup> (the Code) was reasonable.

## Background

### Marbled Murrelet and the Planning Environment

Marbled murrelets are small seabirds that live along the Pacific Coast of North America. The species has been listed as 'threatened' by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) since 1990, due to declining population trends. Marbled murrelets are also on BC's 'red list' of species that are threatened or endangered.

Marbled murrelets typically nest on thick masses of moss found on large-diameter branches of various species of conifers. The nest sites tend to be in structurally-complex forest because marbled murrelets, being poor fliers, need canopy openings beside and below nest sites for access. Large, mossy branches in complex forest stands occur in old forests (more than 140 years old), especially those below 1000 metres in elevation.<sup>2</sup>

Recovery targets for marbled murrelet habitat protection are recommended by a three-part conservation assessment.<sup>3</sup> The conservation assessment provides targets for suitable habitat to address the federal *Species at Risk Act*, but the targets have not been approved by either the federal or provincial governments. The recommended target is set at 69 percent of suitable habitat for the conservation region that covers all of the Queen Charlotte Islands. If the target were applied to the Eden Lake landscape unit, a total of 8,100 hectares of suitable murrelet habitat would need to be conserved there. However, the conservation target allows for variations within individual landscape units and watersheds, and does not propose specific targets for the Eden Lake or other landscape units. The target for the conservation region could

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<sup>1</sup> In January 2004, the *Forest and Range Practices Act* (FRPA) replaced the *Forest Practices Code of British Columbia Act* (the Code) as British Columbia's forest practices legislation. However, the harvesting in question was part of a forest development plan and the Forest Practices Code applies in this case.

<sup>2</sup> Marbled Murrelet Recovery Team, in review. Marbled Murrelet Conservation Assessment 2003, Part B—Marbled Murrelet Recovery Team advisory document on conservation and management. Canadian Wildlife Service, Delta, BC. p. 17-20

<sup>3</sup> A.E Burger, *Conservation Assessment of Marbled Murrelets in British Columbia, A Review of the Biology, Populations, Habitat Associations and Conservation*. Technical Report Series No. 387. Canadian Wildlife Service, Pacific and Yukon Region, British Columbia, 2002.

conceivably be achieved with a lesser contribution from the Eden Lake landscape unit, given suitable habitat in nearby parks and other areas reserved from harvesting.

The conservation assessment describes suitable habitat in terms of biogeoclimatic units, preferred elevations, size, spatial distribution and connectivity. The province can maintain suitable habitat, in part, through the designation of old growth management areas. Old growth management areas are part of the province's ecosystem approach to managing biological diversity. Ecosystems are managed to provide a range of habitat conditions that are assumed to provide habitat suitable for all native species.

However, that ecosystem approach may not be adequate to conserve species such as marbled murrelet, whose habitats are particularly susceptible to loss or damage from forest practices. Therefore, government officials can designate threatened and other susceptible species as identified wildlife, and conserve such species through the establishment of wildlife habitat areas. Resource agencies can then establish wildlife measures to be applied within those wildlife habitat areas.

Although wildlife habitat area designation is theoretically available as a management tool, current government policy limits its use. Policy limits the impact of total wildlife habitat areas on the timber harvesting land base, such that they do not constrain more than one percent of the timber supply (unless a land use plan specifies otherwise).<sup>4</sup> When establishing old growth management areas, the *Landscape Unit Planning Guide* (LUPG) recommends using the "non-contributing land base" first. The non-contributing land base is the area identified through a timber supply analysis, by the chief forester, as unavailable or unattractive for timber harvesting. It includes areas that are considered inoperable for conventional timber harvesting due to challenging terrain and/or the cost of harvesting; sensitive terrain areas; environmentally sensitive areas; riparian management areas; problem forest types; unclassified roads, trails and landings; and areas not managed for timber supply.

Together, the LUPG and government policy provide non-binding guidance that favours establishing old growth management areas and wildlife habitat areas in non-contributing areas, thereby limiting potential timber supply impacts. To keep options available in the non-contributing areas, the regional manager of the Ministry of Forests and Range (MOFR; previously the Ministry of Forests) encouraged licensees to avoid proposing large-scale harvesting in the non-contributing land base until old growth management areas have been delineated.<sup>5</sup>

Where old growth management areas and wildlife habitat areas have not yet been delineated, the Deputy Minister of Environment can maintain conservation options in the interim, by order of the *Forest and Range Practices Act* (FRPA). For the Queen Charlotte Islands Forest District, the deputy minister specified the objective of an amount of suitable habitat equal to the entire

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<sup>4</sup> *Clarification and Interim Direction on Marbled Murrelet Conservation in British Columbia*, January 30, 2001.

<sup>5</sup> Regional Manager letter to major forest licensees, April 12, 2001.

amount of suitable habitat in the non-contributing land base,<sup>6</sup> which totalled 1,500 hectares. Licensees, when submitting a forest stewardship plan (FSP), must specify and achieve results or strategies consistent with that objective. However, licensees need not submit FSPs until 2007, when the transition to FRPA is scheduled to be completed. Until then, non-binding guidance continues to favour establishing conservation areas in the non-contributing land base for conservation purposes, but there is no actual requirement to protect suitable marbled murrelet habitat there.

In 2001, the Ministry of Environment (MOE)<sup>7</sup> led development of a plan with 16 options for marbled murrelet wildlife habitat areas. In total, these options would achieve the recommended conservation assessment targets within the Eden Lake landscape unit. The options were based in part on ground-truthing and audio-visual detection surveys. The deputy minister designated two of these options as wildlife habitat areas in April 2003. These wildlife habitat areas, in conjunction with two other wildlife habitat areas designated for northern goshawk, used up the entire one percent timber supply budget available for wildlife habitat areas (under policy) in the landscape unit. Nevertheless, the designated wildlife habitat areas fell short of achieving the recommended targets for marbled murrelet for the landscape unit.

In late fall 2004, the Ministry of Agriculture and Lands (MOAL),<sup>8</sup> initiated planning to spatially locate old growth management areas in the Eden Lake landscape unit. At the time of writing, draft OGMAs are being prepared, but had not yet been established for the landscape unit.

MOE is currently refining the inventory of marbled murrelet habitat through ground-truthing and new assessment protocols.

### **Approval of the 2004-2008 FDP**

In late 2003, the licensee proposed harvesting 1400 hectares in the non-contributing land base, in the Eden Lake landscape unit. Those cutblocks overlapped about 30 hectares of marbled murrelet habitat rated as suitable (class 2) to very suitable (class 1).

MOFR expressed concern that the licensee had proposed cutblocks in suitable habitat, without prescribing specific conservation measures for marbled murrelet. The licensee believed that the proposal did not put marbled murrelet at risk, given the amount of habitat remaining in the district. However, to expedite approval, the licensee deleted the cutblocks that included suitable marbled murrelet habitat in the non-contributing land base, and requested a decision on the remaining portion. In October 2004, the district manager approved that portion of the FDP.

In November 2004, the licensee again proposed harvesting the previously removed cutblocks located in the non-contributing land base. The licensee committed to conserving an equal

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<sup>6</sup> Deputy Minister's order of December 14, 2004.

<sup>7</sup> Formerly called the Ministry of Environment, Lands and Parks. This report refers to the ministry by its new name, the Ministry of Environment.

<sup>8</sup>The Ministry of Sustainable Resource Management at the time. Land use planning responsibility has since been transferred to the new Ministry of Agriculture and Lands, and this report refer to the new ministry.



amount of suitable habitat (i.e., class 1 and 2) in the contributing land base for the duration of the FDP, and to also retain suitable habitat and work towards a timely establishment of old growth management areas. The licensee's submission now included additional analysis and commitments. Satisfied by the analysis and commitments, the district manager approved the cutblocks on January 25, 2005. The complainant, concerned about the potential impact of the approval on marbled murrelet, complained to the Board on February 18, 2005.

## Issues Investigated

The complainant believes that government is not adequately conserving suitable marbled murrelet habitat. The complainant is frustrated with the slow pace of conservation efforts, noting that only two wildlife habitat areas for marbled murrelet conservation, and no old growth management areas have been established, despite the Code being in effect for 10 years. The complainant expected that suitable habitat would be conserved in the non-contributing land base. However, the complainant suspects that the licensee is now targeting suitable habitat in the non-contributing land base before it is protected through the completion of landscape-level planning initiatives or, in the interim, the deputy minister's order.

The licensee maintains that it can review harvesting opportunities across the entire forest land base. The licensee finds that, due to other resource constraints, it is forced to consider harvesting opportunities wherever they exist, including in the non-contributing land base. Lastly, the licensee questions the location of the non-contributing land base, which was defined by ministry staff alone. The licensee believes that enough habitat remains in the Eden Lake landscape unit and surrounding areas to provide for marbled murrelet.

MOFR's view is that the approval provides a creative solution to timber and conservation interests, allowing harvesting in the non-contributing land base, in exchange for a commitment to conserve suitable habitat within the timber harvesting land base.

## Discussion

Several of the Board's previous reports comment on the slow pace of landscape-level planning initiatives, such as the establishment of old growth management areas and wildlife habitat areas.<sup>9</sup> The Board will explore this recurring theme further in a special investigation. Consequently, this complaint investigation did not examine the timeliness of such planning initiatives for the Eden Lake landscape unit.

Of the 1400 hectares of harvesting proposed by the licensee in the non-contributing land base, only 30 hectares were located in suitable marbled murrelet habitat. The Board finds that this small amount of harvesting does not support allegations that the licensee is targeting the non-contributing land base for harvesting, to reduce the amount of habitat that will have to be protected under the section 7 order, when forest stewardship plans are prepared.

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<sup>9</sup> Most recently in: *Harvesting in the Winslow Goat Winter Range, Complaint Investigation 040617, March 2005.*

The government policy, the LUPG, and the regional manager's advice all encourage establishing conservation areas in the non-contributing land base. The intent is presumably to provide for conservation needs while impacting timber supply as little as possible. However, as technology and market conditions change, many forests thought to be inoperable have become more attractive to licensees for harvesting. Also, marbled murrelet seek out stands that meet their habitat needs, regardless of whether they are in the non-contributing land base. It follows that the non-contributing land base, identified only for the purpose of timber supply analysis, has limited value as a tool for making forest management decisions. Restricting both logging and habitat conservation to the non-contributing land base could conceivably eliminate suitable management options that address both marbled murrelet conservation and timber harvesting needs. Therefore, harvesting in the non-contributing land base is not, in itself, necessarily contrary to sound forest management. The appropriateness of harvesting such areas depends largely on the resulting risk to the range of forest resources, including marbled murrelet.

The Board reviewed MOFR's risk assessment to determine whether it was reasonable for the district manager to be satisfied that the FDP would adequately manage and conserve marbled murrelets for the portion of the FDP that included cutblocks with suitable habitat in the non-contributing land base.

### **Was approval of the FDP appropriate?**

Before approving an FDP, a district manager must be satisfied that it adequately manages and conserves the forest resources in the FDP area (section 41(1)(b) of the Code). Marbled murrelet habitat is a forest resource in the area of the FDP.

In making a determination under section 41(1)(b), a statutory decision maker should consider policies and guidance, but must make up his or her mind independently. The statutory decision maker must weigh all available information to determine relevance and importance, and then consider risk in making the final approval decision. The statutory decision maker's caution and deliberation before being satisfied should match the importance of each forest resource, and the potential risk created by the proposed forest practices. When the Board looks at such approval decisions, it considers whether the decision falls within a range of reasonable alternatives. If so, the Board accepts the decision as valid.

Approval of the FDP increases risk to marbled murrelet in several ways. First, it reduces the amount of marbled murrelet habitat that licensees must manage for under the deputy minister's order and forest stewardship plans. That could undermine the presumed intent of the order—to maintain conservation options pending the completion of landscape-level planning.

However, MOFR noted that while the licensee proposed harvesting suitable habitat in the non-contributing land base, it had also committed to conserving an equal amount of suitable habitat (i.e., class 1 and 2) in the contributing land base for the duration of the FDP.

Furthermore, the licensee committed to work with government to establish old growth management areas, and wildlife habitat areas, in a timeframe set out by government, and

acceptable to the licensee. Also, MOAL had committed to establishing old growth management areas as quickly as possible. Finally, the district manager explained that he would consider, for any subsequently proposed FDP amendments, the licensee's commitments and the pace of conservation efforts. For those reasons, MOFR viewed those commitments as providing a similar level of certainty, and achieving the same end result, as the deputy minister's order. The Board agrees that the commitments would mitigate risk, but notes that the licensee's short-term commitments do not ensure that conservation options will be maintained until the completion of landscape-level planning.

The approval of the FDP also increases risk to marbled murrelet by reducing total habitat available over the landscape. The reduction could potentially affect the ability to achieve the recommended conservation assessment target (to maintain 69 percent of suitable habitat over the conservation region). Regardless, the licensee had demonstrated to MOFR that approval of the plan would leave about 8,100 hectares of class 1 and 2 marbled murrelet habitat, enough to achieve the conservation assessment target in the Eden Lake landscape unit. Therefore, MOFR concluded that approval of the FDP would retain adequate options for establishing further old growth management areas with suitable habitat.

Finally, MOFR recognized that approval of the FDP would increase risk by potentially precluding some of the best options for habitat conservation. Three cutblocks overlapped draft wildlife habitat areas that have confirmed marbled murrelet occupied behaviour. MOFR recognized that approval of the FDP would fragment those areas, possibly reducing their usefulness as habitat. While designation of the licensee's proposed old growth management areas would protect areas rated as having similar (i.e., class 1 and class 2) suitability, MOFR noted that these areas do not have confirmed marbled murrelet occupied behaviour.

MOFR's documented risk analysis does not quantify the risk resulting from fragmenting habitat areas with confirmed occupied behaviour. The documented risk analysis also does not address whether the distribution of the remaining suitable habitat would allow for establishing meaningful marbled murrelet reserve areas. MOFR maintains that its risk analysis included consideration of the impact of habitat fragmentation, but the Board was unable to determine how the district manager weighed habitat fragmentation in his approval decision. In the Board's opinion, better documentation of fragmentation risk was warranted, given that a threatened species is at issue.

In summary, approval of the FDP increased risk to marbled murrelet by reducing and fragmenting available habitat, and reducing the amount of habitat that licensees must manage for under FRPA and the deputy ministers' order. However, adequate habitat remained to achieve the targets of the conservation assessment, should government decide to apply that target to the Eden Lake landscape unit. Risk was further mitigated by licensee commitments to retain suitable habitat and work towards the timely establishment of old growth management areas. On balance, the district manager's conclusion that approval presented an acceptable risk to marbled murrelet was reasonable. Consequently, it was appropriate for the district manager

to be satisfied that approval of the FDP would adequately manage and conserve marbled murrelet.

## **Conclusions**

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The Board found no evidence that the licensee is targeting the non-contributing land base for harvesting to reduce the amount of suitable marbled murrelet habitat that will have to be protected when forest stewardship plans are prepared.

Harvesting in the non-contributing land base is not, in itself, necessarily contrary to sound forest management. The appropriateness of harvesting such areas depends largely on the resulting risk to the range of forest resources, including marbled murrelet.

In this case, the district manager's conclusion that approval presented an acceptable risk to marbled murrelet was reasonable. It was appropriate for the district manager to be satisfied that approval of the FDP would adequately manage and conserve marbled murrelet.

## **Recommendation**

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Ultimately, adequate conservation of marbled murrelet habitat will only be achieved by setting, and spatially designating, conservation targets and objectives. Accordingly, the Board encourages:

1. The Ministry of Environment (MOE) and the licensee to continue improving their inventory on the amount and quality of habitat.
2. MOE and MOFR to set marbled murrelet habitat conservation objectives at the regional and landscape unit-level.
3. Ministry of Agriculture and Lands (MOAL) and MOE to meet those objectives through the designation of old growth management areas and/or wildlife habitat areas, considering the entire land base without necessarily restricting options relative to the non-contributing land base, as delineated for timber supply review purposes.

The Board requests that agencies and the licensee report back by April 30, 2006, on progress made towards completing the preceding three initiatives.