



Friends of Fairy Creek

Committed to Save Old-Growth Forest, the Habitat and Nest of the Marbled Murrelet (MaMu)

The Honourable Steven Guilbeault
Minister of Environment and Climate Change Canada
The Honourable Jonathan Wilkinson
Minister of Natural Resources

March 24, 2022

Dear Ministers Guilbeault and Wilkinson,

Re: Exercise Emergency Powers for Species at Risk - Marbled Murrelet

We bring you this urgent plea. We are asking you to exercise your emergency powers under Section 80 of the [Species At Risk Act](#) (SARA) to immediately stop all logging in Tree Farm Licence (TFL) 46, in British Columbia, until sufficient Marbled Murrelet nesting habitat has been protected to meet the federal Recovery Strategy goals.

"Emergency order 80 (1) The Governor in Council may, on the recommendation of the competent minister, make an emergency order to provide for the protection of a listed wildlife species. Obligation to make recommendation (2) The competent minister must make the recommendation if he or she is of the opinion that the species faces imminent threats to its survival or recovery." SARA Section 80

With the loss of old-growth forest throughout the coastal areas of British Columbia, there is a documented significant decline of the migratory seabird, the Marbled Murrelet (MaMu), a species at risk dependent on old-growth trees for its nest—in fact the tree is its nest.ⁱ The Marbled Murrelet is a designated species of the [Migratory Bird Convention Act](#) (MBCA) updated in 1994 regulated by the [Migratory Bird Regulations](#) (MBR) of 1994.ⁱⁱ The Act has been the law of Canada since 1917. It is axiomatic and undisputed that destruction of old-growth by logging constitutes an irreparable destruction of the MaMu nest.ⁱⁱⁱ The MaMu is also an identified species under SARA with recovery strategies prepared [in 2014](#) and [updated in 2021](#). Urgent action under your emergency powers is imperative because the Province is continuing to allow the destruction of MaMu nesting habitat, evident in the recent [Management Plan #5](#) and [Draft Forest Stewardship Plan 2022](#) of TFL 46 (Teal Cedar Products Ltd.), which plainly state the licensee's intention to harvest the remaining old-growth forest.

Research by ECCC biologists based on radar surveys (the most reliable method for tracking MaMu populations) has revealed significant long-term declines in Marbled Murrelet populations across BC. The first analysis by Bertram et al. (2015)^{iv}, a study from 1996 through 2013, indicated a 1.6% annual decline coast-wide. The more recent analysis by Drever et al. (2021)^v, using a longer time series, 1996 to 2018, shows a 2.4% annual decline coast-wide. If one applies this rate of decline since the start of the radar surveys, it shows a total decline of 46.8% by 2022 (see Table 1 in appendix). The 2014 Marbled Murrelet Recovery Strategy endorsed by ECCC set a goal of retaining 70% of the 2002 population, and the same proportion of suitable nesting habitat, old-growth forest, by 2032 (3 generations). The 2021 revision now in review has the same goals. Applying the Drever et al. (2021) rate of change, **it is clear that the Marbled Murrelet population across the coast has already declined beyond the Recovery Strategy goals** (70% retained), and the 2022 population is likely to be only 62% of the 2002 population (see Table 2 in appendix). There is overwhelming evidence from several independent studies, that there is a strong causal correlation between the number of murrelets using a watershed and the area of suitable old-growth forest nesting habitat within those watersheds (Burger 2001, Raphael et al. 2002, Burger et al. 2004, Long et al. 2011)^{vi}. When old-growth forest is logged, murrelet populations decline proportionately. The Recovery Strategy and SARA have clearly not been implemented to

Michael Coon • 548 Beach Drive, Victoria BC V8S 2M5 • Friendsoffairycreek@gmail.com

provide the necessary habitat protection for this species, and it is time for ministerial intervention to stop this obvious slide to extinction.

We need you to act immediately for all Canadians to avoid the loss of any more MaMu. Their loss is a direct result of the continued rapid logging of these 250 year old nest trees (definition of old-growth on the Coast) which is prohibited by the federal [Migratory Birds Regulations](#). Neither the Province nor the licencees, (in whose hands the public trust has been placed by the Province under their flawed professional reliance system) are enforcing Section 6 of those regulations that states that the destruction of a nest of a migratory seabird is a crime. Nor are Sections 7(1)a and 103 of the provincial [Forest Planning and Practices Regulations](#) enforced, which state that not adhering to these federal and provincial laws is a crime punishable by fines and/or incarceration. The Province and licencees have interpreted the Regulations and their related Acts to permit logging once a nesting season has ended. However, **nothing in any of the Regulations or the Acts themselves permit the disturbance of a nest based on the active or inactive use of the nest.** That concept can only be found in provincial guidelines^{vii} which carries a disclaimer^{viii} that the guidelines do not exempt the licencee from following the law. When it comes to the MaMu, the old-growth forest is their nest to which they return annually and absent steps to preserve sufficient nests, the MaMu's decline and extinction are certain to occur.

TFL 46 is an excellent example to demonstrate the failure of both governments to protect MaMu habitat. The recent [management plan](#) of Teal Cedar Products Ltd. reports their total productive farm area is 57,239.0 ha, (page 10) with remaining old-growth at 3,867.7 ha, (Version D page 11). The licencee has not altered any of their proposed timber harvest plans to accommodate the fact that MaMu habitat has already declined below the 2032 federal recovery strategy goals. They do not mention or include the areas listed in the BC Minister's [Marbled Murrelet Order](#) of December 10, 2021. They also do not incorporate the provincial old-growth Deferrals from the June 2021 [Minister's Order](#). Even where areas were previously identified as Old Growth Management Areas, the licencee has clearcut and designated them as "recruitment areas" for "future habitat" (Cowichan Landscape Unit where nearly 4,000 ha of old-growth forest have been totally clearcut). [Supporting Information](#) Teal Cedar's FSP, approved 2017, page 11. Any future habitat is 250 years from the clearcut—not in any bird's lifetime.

Although the Province has, at the request of the Pacheedaht Band Council, temporarily deferred logging in parts of the Fairy Creek watershed, much of the old-growth forest in surrounding areas, e.g., Granite Creek, Central Walbran, Upper Camper's Creek and the Ridge have been left out of the provincial deferral areas. And in these surrounding areas, where MaMu have been observed nesting, they will soon be logging as there are already approved cutting permits for those areas. In fact, when the licencees and Province received [radar evidence](#) in June and July 2021 of active nesting in a cutblock scheduled for harvest later that fall, the licencee continued to clearcut.^{ix} Part of the TFL 46 lies in the East Vancouver Island MaMu management unit which, according to the Recovery Strategy, is at greater risk than the west Vancouver Island management unit with higher targets of preservation (90% of 2002 baseline). Despite that target, East Vancouver Island, including the portion of TFL 46 has nearly all been clearcut.

As Prime Minister Justin Trudeau mandated in his letters to you in December 2021^x, old-growth forest requires the protection of both your Ministries. British Columbia had one of its worst climate crises last spring, while emissions from the logging industry not only exceeded the national oil and gas sector but created a double jeopardy of reducing this critical temperate rainforest sink as well. Scientists from around the world released an open letter yesterday^{xi} calling for your government "to better protect Canada's climate-critical primary forests." We plea for you to take action now—for biodiversity for climate and all the other extraordinary values that these primary forests hold, so please:

- immediately stop all logging of old-growth forests in TFL46 until sufficient Marbled Murrelet nesting habitat has been protected to meet the Recovery Strategy goals;
- apply the same rationale to all of coastal British Columbia until the full requirements of the MaMu Recovery Strategy have been met;
- negotiate with the BC Provincial Government and the relevant Indigenous groups to bring an end to logging of coastal old-growth trees.

Guilbeault and Wilkinson Letter, March 24, 2022

Yours truly,

Michael Coon (M.Sc., Marine Biology) and retired Director, Land and Resource Management Planning Branch in the Ministry of Sustainable Resource Management, until 2003, Province of BC.

Friends of Fairy Creek Co-founder
(250) 598 0640 h (250) 888 0510 c

Cc'd:

The Right Honorable Justin Trudeau, P.C. , M. P. Prime Minister of Canada, Ottawa

The Right Honorable Mary Simon, Governor General

The Right Honorable Janet Austin, Lieutenant Governor

Footnotes:

ⁱ Chris Steeger, Register Professional Biologist, [March 3, 2022 correspondence](#)

ⁱⁱ [Migratory Birds Regulations](#)

“**nest** means the nest of a migratory bird or any portion thereof”

“6. Subject to subsection 5(9), **no person shall** [Emphasis added]

(a) disturb, destroy or take a nest, egg, nest shelter, eider duck shelter or duck box of a migratory bird, or

(b) have in his possession a live migratory bird, or a carcass, skin, nest or egg of a migratory bird”

ⁱⁱⁱ Drever, MC et al. (2021) Trends in Radar Counts of Marbled Murrelets *Brachyramphus marmoratus* in British Columbia (1996-2018) *Marine Ornithology* 49: 37-49 https://marineornithology.org/PDF/49_1/49_1_37-49.pdf

^{iv} Bertram, DF et al. (2015) Estimation of Coast-Wide Population Trends of Marbled Murrelets in Canada using a Bayesian Hierarchical Model. *PLoS ONE* 10(8): e0134891 <https://doi.org/10.1371/journal.pone.0134891>

^v Drever, et al. (2021)

^{vi} Burger, AE et al. (2001) Using Radar to Estimate Populations and Assess Habitat Associations of Marbled Murrelets, *Journal of Wildlife Management* 65(4): 696-715 <https://www.jstor.org/stable/3803021>

Raphael, MG et al. (2002) Landscape Relationships between Abundance of Marbled Murrelets and Distribution of Nesting Habitat, *The Condor* 104:331-342 <https://www.jstor.org/stable/1370035>

Burger, AE et al. (2004) Application of Radar Surveys in the Management of Nesting Habitat of Marbled Murrelets *Brachyramphus marmoratus*. *Marine Ornithology* 32: 1-11
https://www.researchgate.net/publication/239615413_Application_of_radar_surveys_in_the_management_of_nesting_habitat_of_Marbled_Murrelets_Brachyramphus_marmoratus

Long JA et al. (2011) Estimating 30-year change in Coastal Old-Growth Habitat for a Forest-Nesting Seabird in British Columbia, Canada. *Endangered Species Research* 14: 49-59

^{vii} BC [Guidelines](#) to reduce risk to migratory birds

^{viii} BC [Guidelines](#)

"Disclaimer: This information provides an overview of your obligations and does not replace relevant laws and regulations. You must adhere to all federal, provincial and/or territorial laws, regulations and conditions of permits...This information does not authorize you to harm or kill migratory birds or to disturb, destroy or take nests or eggs under the Migratory Birds Regulations... We do not have the authority to prescribe or recognize specific avoidance or mitigation measures for specific circumstances or activities. It is your responsibility to evaluate risks and determine the most appropriate avoidance or mitigation measures required."

^{ix} Failure to respond to [radar and birder confirmation of MaMu](#) presence and nesting 7/7/2021

^x Prime Minister Mandate Letters December 16, 2021

"Work with the Minister of Environment and Climate Change to help protect old-growth forests, notably in British Columbia..." [Mandate Letter](#)

"Work with the Minister of Natural Resources to help protect old-growth forests, notably in British Columbia..." [Mandate Letter](#)

^{xi} <https://naturecanada.ca/news/press-releases/scientists-raising-the-alarm-on-canadas-primary-forests/>

Appendix

Table 1. Expected decline in coast-wide Marbled Murrelet population based on Drever et al. (2021) applied to the range of this analysis and extrapolated to 2022.

Decline per year	0.024		Drever et al. (2021; Table 3)
Year	Remaining	Lost	
1996	100	0	
1997	97.6	2.4	
1998	95.258	4.742	
1999	92.971	7.029	
2000	90.740	9.260	
2001	88.562	11.438	
2002	86.437	13.563	
2003	84.362	15.638	
2004	82.338	17.662	
2005	80.362	19.638	
2006	78.433	21.567	
2007	76.550	23.450	
2008	74.713	25.287	
2009	72.920	27.080	
2010	71.170	28.830	
2011	69.462	30.538	
2012	67.795	32.205	
2013	66.168	33.832	
2014	64.580	35.420	
2015	63.030	36.970	
2016	61.517	38.483	
2017	60.041	39.959	
2018	58.600	41.400	Drever et al. (2021) to here
2019	57.193	42.807	
2020	55.821	44.179	
2021	54.481	45.519	
2022	53.174	46.826	Extrapolation to 2022

In 2022 the expected MaMu population would be 53.2% of the 1996 population – or has lost 46.8% since 1996. If one considers the goal of the SARA-compliant 2014 Recovery Strategy (retain 70% of the population and the same proportion of nesting habitat by 2032) we have already passed that goal.

Table 2. Expected decline in coast-wide Marbled Murrelet population based on Drever et al. (2021) applied to the initiation of the 2014 Recovery Strategy (Environment Canada 2014).

Year	Remaining	Lost	
2002	100.000	0.000	Decline 0.024 annually
2003	97.600	2.400	
2004	95.258	4.742	

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2005	92.971	7.029	
2006	90.740	9.260	
2007	88.562	11.438	
2008	86.437	13.563	
2009	84.362	15.638	
2010	82.338	17.662	
2011	80.362	19.638	
2012	78.433	21.567	
2013	76.550	23.450	
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2015	72.920	27.080	
2016	71.170	28.830	
2017	69.462	30.538	
2018	67.795	32.205	Drever et al. (2021) to here
2019	66.168	33.832	
2020	64.580	35.420	
2021	63.030	36.970	
2022	61.517	38.483	Extrapolation to 2022

Quotes from Drever et al. (2021)

"Using radar count data from 1996 to 2013, Bertram et al. (2015) found a negative overall trend of -1.6%/yr (95% credibility interval: -3.2%, 0.01%), which was interpreted as moderate evidence for a coast-wide decline in the abundance of Marbled Murrelets. In this update, we included more recent data to 2018 and found this negative population trajectory continued during the additional five years with a trend of -2.4%/yr, a trend that is statistically significant ...

"Radar counts of murrelets have been repeatedly correlated with the amount of old-growth nesting habitats (Raphael et al. 2002, Burger et al. 2004), and Long et al. (2011) found that the extent of old-growth nesting habitats decreased throughout British Columbia over a 30-year period from 1987 to 2008...

"These results indicate that the marine heatwave did not strongly affect forest-bound murrelets and are consistent with the hypothesis that ongoing loss of terrestrial nesting habitat is associated with population declines of Marbled Murrelets in British Columbia." (p.46)
