Site Fidelity and Legal Harm: How *Wildlands v. Scott Timber* Reaffirms Protections for Marbled Murrelets Under the ESA

INTRODUCTION

The marbled murrelet (*Brachyramphus marmoratus)* is a small seabird native to intercoastal regions spanning from Alaska to central California.[1] Unlike most marine avian species, which predominantly nest in coastal colonies, marbled murrelets exhibit a unique nesting behavior, selecting late-successional and old-growth forests—often situated up to eighty kilometers inland—as their nesting grounds.[2] This reliance on old-growth forests has rendered murrelets particularly vulnerable to habitat loss as extensive logging has significantly reduced the availability of suitable nesting sites, confining murrelet populations to increasingly fragmented forested areas.[3] As a result, the marbled murrelet was designated as "threatened"[4] under the Endangered Species Act (ESA), spurring repeated legal challenges by environmental organizations seeking to curb logging in old-growth forests and protect the species from further decline.[5]

In *Cascadia Wildlands v. Scott Timber Co.* (*Wildlands*), the Ninth Circuit reaffirmed existing jurisprudence regarding habitat destruction as a form of "take" under the ESA.[6] The court upheld the district court's ruling that Scott Timber's proposed logging activities would unlawfully "harm" marbled murrelets by significantly modifying their nesting habitat, thereby impairing

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1. OR. DEP'T OF FISH & WILDLIFE, BIOLOGICAL ASSESSMENT OF THE MARBLED MURRELET (BRACHYRAMPHUS MARMORATUS) IN OREGON AND EVALUATION OF CRITERIA TO RECLASSIFY THE SPECIES FROM THREATENED TO ENDANGERED UNDER THE OREGON ENDANGERED SPECIES ACT 4 (2021), https://www.dfw.state.or.us/wildlife/hot_topics/docs/2021%20ODFW%20Marbled%20Murrelet%20Biological%20Assessment%20and%20Reclassification%20Criteria%20Review_ODFW_6-21-21.pdf.

2. Raphael et al., *Chapter 5: Marbled Murrelet*, *in* SYNTHESIS OF SCIENCE TO INFORM LAND MANAGEMENT WITHIN THE NORTHWEST FOREST PLAN AREA 301 (Spies et al. eds., 2018), https://www.fs.usda.gov/pnw/pubs/pnw_gtr966_chapter5.pdf.

3. *See id.* at 302-04.

4. *Id.* at 304; Miller et al., *Recent Population Decline of the Marbled Murrelet in the Pacific Northwest*, 114 CONDOR 771, 772 (2012).

5. *See, e.g.*, Cascadia Wildlands v. Scott Timber Co., 105 F.4th 1144, 1144 (9th Cir. 2024).

6. *Id.* at 1159.

essential behavioral patterns.[7] Relying on *Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*, the Ninth Circuit emphasized that "harm" under the ESA extends beyond direct mortality to include habitat degradation that foreseeably results in actual injury to a protected species.[8] The court placed particular focus on the murrelet's high site fidelity, underscoring that a species dependent on specific, long-term nesting sites can suffer significant harm from habitat destruction, even if the immediate effects are not directly observable.[9] The court also affirmed that regional scientific studies and expert testimony could serve as sufficient evidence to establish the likelihood of species presence and the foreseeability of harm.[10]

The decision has significant implications for conservation measures, land use policies, and future ESA litigation. By reinforcing the principle that gradual habitat degradation constitutes "harm" under the ESA, the ruling strengthens legal protections for species that rely on stable, long-term habitats.[11] It also sets a precedent that could influence future cases involving species with high site fidelity, making it easier for plaintiffs to demonstrate actual injury without requiring direct evidence of site-specific harm. More broadly, *Wildlands* signals a growing judicial willingness to integrate ecological principles into ESA enforcement, potentially leading to stricter regulatory scrutiny of development and resource extraction projects that encroach upon essential habitat.

I. BACKGROUND

A. Legal Background

The legal framework governing *Wildlands* is based on the ESA, a statute enacted in 1973 to conserve threatened and endangered species.[12] Section 9 of the ESA prohibits the "take" of a listed species, with "take" broadly defined to include actions that "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect" listed species.[13] The U.S. Fish and Wildlife Service (FWS) has further interpreted "harm" to include significant habitat modification or degradation that "actually kills or injures" species by impairing essential behavioral patterns such as breeding, feeding, or sheltering.[14] This definition of harm was contested but

7. *Id.* at 1157.

8. *See id.* at 1156; *see also* Babbitt v. Sweet Home Chapter of Cmtys. for a Great Or., 515 U.S. 687, 708 (1995) (holding that "harm" includes "significant habitat modification or degradation that actually kills or injures wildlife").

9. *Wildlands*, 105 F.4th at 1157-58.

10. *Id.* at 1158.

11. *See* NAT'L RSCH. COUNCIL, SCIENCE AND THE ENDANGERED SPECIES ACT 72 (1995).

12. *See* 16 U.S.C. § 1531(b).

13. *Id.* §§ 1532(19), 1538(a)(1)(B).

14. *See* Endangered and Threatened Wildlife and Plants; Definition of "Harm," 64 Fed. Reg. 60727, 60727 (Nov. 8, 1999) (to be codified at 50 C.F.R. pt. 222). The Trump administration proposed a rule rescinding this definition, explaining its position that "[t]he existing regulatory definition of 'harm,' which includes habitat modification, runs contrary to the best meaning of the statutory term

ultimately upheld by the Supreme Court in *Babbitt v. Sweet Home*, which affirmed the FWS's interpretation[15] that habitat destruction constitutes a prohibited take under the ESA when it results in actual injury to a protected species.[16] In *Forest Conservation Council v. Rosboro Lumber Co.,* the Ninth Circuit clarified that the phrase "actually kills or injures" can include a "reasonably certain" threat of imminent harm to the species.[17] The Ninth Circuit has since applied the "reasonably certain" test in a manner favorable to endangered species, holding in *Marbled Murrelet v. Babbitt* that direct observations of the species in the area, combined with broader ecological evidence on the impacts of logging, were sufficient to establish a reasonably certain threat of harm.[18]

B. Case Background

The dispute in *Wildlands v. Scott Timber Co.* arose from a proposed logging project in Oregon's Benson Tract, a 355-acre parcel containing old-growth trees suitable for marbled murrelet nesting.[19] The Benson Tract was originally included within the boundaries of Elliot State Forest, an area which falls under the State of Oregon's ownership and managerial purview.[20] In 2012, Cascadia Wildlands sued the governor of Oregon and other state officials to enjoin state-sanctioned timber harvests and forestry management decisions in Elliott State Forest that Cascadia alleged resulted in the unlawful "take" of marbled murrelets under the ESA.[21] Scott Timber and several other private timber companies intervened as defendants.[22] The federal district court issued a preliminary injunction barring logging in any area of Elliott State Forest occupied by murrelets.[23] In April 2014, the State of Oregon sold the Benson Tract to Scott Timber.[24]

In June of 2014, Cascadia Wildlands sent Scott Timber an ESA citizen suit notice letter stating that the Benson Tract was likely occupied by murrelets and logging within it would contravene section 9 of the ESA.[25] Scott Timber

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'take.'" Rescinding the Definition of "Harm" Under the Endangered Species Act, 90 Fed. Reg. 16102, 16102 (Apr. 17, 2025) (to be codified at 50 C.F.R. pt. 222).

15. The ruling to uphold the FWS's decision was based on the *Chevron* doctrine, which has since been overruled by *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). While *Loper Bright* does not overturn past decisions, it could have implications for future litigation regarding the definition of "harm," and is already affecting agencies' interpretation of the ESA. *See, e.g.*, Rescinding the Definition of "Harm" Under the Endangered Species Act, *supra* note 14, at 16103.

16. *See* Babbitt v. Sweet Home Chapter of Cmtys. for a Great Or., 515 U.S. 687, 708 (1995).

17. Forest Conservation Council v. Rosboro Lumber Co., 50 F.3d 781, 788 (9th Cir. 1995).

18. Marbled Murrelet v. Babbitt, 83 F.3d 1060, 1068 (9th Cir. 1996).

19. Wildlands v. Scott Timber Co., 105 F.4th 1144, 1149 (9th Cir. 2024).

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

surveyed the tract for murrelets, but then proceeded with its "Benson Snake" project, which entailed clear-cutting forty-nine acres of timber.[26] Cascadia Wildlands subsequently sued Scott Timber in federal court, alleging that the plan violated section 9 of the ESA and requesting the court enjoin Scott Timber from enacting it.[27] The district court granted a preliminary injunction, but the Ninth Circuit reversed, holding that the district court erred in its analysis of "irreparable harm" since it did not actually find that marbled murrelets occupied the Benson Tract and would likely suffer harm from the Benson Snake project.[28] On remand, the district court concluded that the project would "harm" and "harass" marbled murrelets in direct violation of section 9 of the ESA, thereby necessitating a permanent injunction prohibiting further activity on the project.[29] On appeal, the Ninth Circuit upheld the district court's ruling.[30]

The Ninth Circuit's opinion was rooted in the FWS's understanding of "harm," which classifies a "significant habitat modification or degradation [that] significantly impair[s] . . . breeding" as an act that "actually kills or injures wildlife."[31] This definition was further clarified in *Marbled Murrelet v. Babbitt,* where the Ninth Circuit held that logging operations that degraded murrelet nesting habitat constituted an imminent and foreseeable harm, even though the harm had not yet occurred.[32] In *Wildlands*, the court determined that Scott Timber's project would destroy forty-nine acres of forest inhabited by marbled murrelets, thus constituting a "significant habitat modification or degradation" that would substantially impair murrelet breeding by preventing their long-term use of the Benson Tract for nesting.[33] The court rejected Scott Timber's argument that logging in the tract would not harm the murrelets because the area was not "essential" for their survival: The Ninth Circuit had never required a "heightened 'essential' requirement for actual injury under the ESA," and saw no reason to reverse that position.[34]

The court also held that the Benson Snake project would "imminently" injure marbled murrelets, as scientific evidence indicated that the murrelets nesting within the tract were entirely site-faithful and would not relocate to alternative sites.[35] This finding demonstrated that Scott Timber's logging activities would result in "direct, not attenuated" injury to the marbled murrelets, therefore qualifying as "harm" under the ESA.[36] Drawing upon this analysis, the court affirmed that the contested activity would "proximately" and "foreseeably"

26. *Id.*
27. *Id.*
28. *Id.* at 1149-50.
29. *Id.*
30. *Id.* at 1159.
31. *Id.* at 1156; 50 C.F.R. § 17.3.
32. 83 F.3d 1060, 1064 (9th Cir. 1996).
33. *Wildlands*, 105 F.4th at 1157.
34. *Id.*
35. *Id.*
36. *Id.* at 1157-58.

cause actual death or injury to marbled murrelets based on the direct correlation between logging and its deterrent effects on nesting and other breeding-related activities.[37] The court concluded its opinion by upholding the decision that Scott Timber's proposed activities would result in a "take" of marbled murrelets in violation of the ESA and that the imposition of a permanent injunction was proper.[38]

II. ANALYSIS

The interpretation of "harm" under the ESA carries significant implications for species like the marbled murrelet, whose strong nest-site fidelity exacerbates their vulnerability to habitat loss. This analysis first examines the Ninth Circuit's application of "harm" under section 9 of the ESA to murrelets, particularly in view of species-specific ecological considerations. It then explores the broader implications of *Wildlands* for conservation measures, land use policies, and future ESA litigation.

A. Understanding the Significance of the Judicial Interpretation of "Harm" in the Context of the Site-Faithful Marbled Murrelet

Site fidelity—or more specifically, nest-site fidelity—refers to the tendency of a species to consistently return to the same nesting location each reproductive cycle.[39] Although scientific research on marbled murrelet reproduction has been scarce due to the species' elusive nature—the first well-documented discovery of an arboreal nest site was not until 1974[40]—studies have indicated that they consistently return to the same stand of trees to nest each year.[41]

Given this consequential characteristic, the habitat component of the regulatory definition of "harm" holds particular weight with regard to marbled murrelet reproduction and survival. Destruction or degradation of a nesting site is not simply a loss of habitat—it disrupts murrelets' established reproductive cycle, potentially preventing breeding for multiple seasons or even leading to nest abandonment altogether.[42] This makes habitat loss especially harmful, as displaced murrelets may be reticent to locate and colonize alternative nesting sites, exacerbating population decline.[43] In *Wildlands*, expert testimony

37. *Id.* at 1158.

38. *Id.* at 1159.

39. *See* Scott Schlossberg, *Site Fidelity of Shrubland and Forest Birds*, 111 CONDOR 238, 239 (2009).

40. Harry R. Carter & Spencer G. Sealy, *Who Solved the Mystery of the Marbled Murrelet,* 86 NW. NATURALIST 2, 6 (2005).

41. Divoky et al., *Chapter 7: Breeding and Natal Dispersal, Nest Habitat Loss and Implications for Marbled Murrelet Populations*, *in* ECOLOGY AND CONSERVATION OF THE MARBLED MURRELET 84 (Ralph et al. eds., 1995).

42. *See id.*

43. *See* OR. DEP'T OF FISH & WILDLIFE, BIOLOGICAL ASSESSMENT OF THE MARBLED MURRELET (BRACHYRAMPHUS MARMORATUS) IN OREGON AND EVALUATION OF CRITERIA TO RECLASSIFY THE SPECIES FROM THREATENED TO ENDANGERED UNDER THE OREGON ENDANGERED

indicated that murrelets nesting within the Benson Tract were faithful to that area and were "not just going to go somewhere else" if their nesting habitat was destroyed.[44]

This risk is further compounded by the significant reduction and fragmentation of late-successional and old-growth forests in the Pacific Northwest.[45] Beyond providing essential foraging and nesting resources, larger, contiguous tracts of mature forests support murrelet populations by facilitating conspecific attraction—the tendency of individuals to settle near others of the same species.[46] This behavior suggests that murrelets not only require suitable nesting trees but also benefit from the presence of proximate nesting sites occupied by conspecifics. The forty-nine-acre Benson Tract exemplifies how a sufficiently large and intact area could provide critical habitat not just for individual murrelets but potentially for an entire breeding colony.[47]

B. Implications for Conservation, Land Use Policies, and Future ESA Litigation

1. Conservation

The Ninth Circuit's recognition that habitat degradation constitutes "harm" under the ESA reinforces the legal foundation for precautionary conservation measures aimed at protecting marbled murrelets. In recent decades, conservation scientists have increasingly emphasized proactive strategies that prioritize preventative management actions over reactive measures that only come into play once a species or its habitat is severely threatened.[48] This shift aligns with the ecosystem management approach, which focuses on protecting entire ecosystems and maintaining habitat integrity rather than addressing species loss in isolation.[49] The Ninth Circuit's holding in *Wildlands* reflects this principle by

SPECIES ACT, 43 (2021), https://www.dfw.state.or.us/wildlife/hot_topics/docs/2021%20ODFW%20Marbled%20Murrelet%20Biological%20Assessment%20and%20Reclassification%20Criteria%20Review_ODFW_6-21-21.pdf.

44. Wildlands v. Scott Timber Co., 105 F.4th 1144, 1157 (9th Cir. 2024).

45. *See* Strittholt et al., *Status of Mature and Old-Growth Forests in the Pacific Northwest*, 20 CONSERVATION BIOLOGY 363, 364 (2006).

46. Betts et al., *Squeezed by a Habitat Split: Warm Ocean Conditions and Old-Forest Loss Interact to Reduce Long-Term Occupancy of a Threatened Seabird*, 13 CONSERVATION LETTERS 1, 7 (2020).

47. *See* U.S. FISH & WILDLIFE SERV., SPECIES BIOLOGICAL REPORT FOR MARBLED MURRELET (BRACHYRAMPHUS MARMORATUS) CA, OR, WA DPS 7-9 (2024), https://ecos.fws.gov/docs/recovery_plan/MAMU%20SBR_Final%20WFWO_20240723.pdf ("Local aggregations of murrelets . . . are strongly associated with landscapes that support large, contiguous areas of mature and old-growth forest.")

48. *See, e.g.*, Robin Gregory & Graham Long, *Using Structured Decision Making to Help Implement a Precautionary Approach to Endangered Species Management*, 29 RISK ANALYSIS 518, 518 (2009); Morrison et al., *Proactive Conservation Management of an Island-endemic Bird Species in the Face of Global Change*, 61 BIOSCIENCE 1013, 1013 (2011).

49. *See* Jon Welner, *Natural Communities Conservation Planning: An Ecosystem Approach to Protecting Endangered Species*, 47 STAN. L. REV. 319, 319 (1995).

affirming that the destruction of nesting habitat, particularly for species with high site fidelity, can constitute a legally cognizable harm under the ESA even before site-specific population declines are observed.[50]

The court's recognition of habitat fragmentation and degradation as legally significant factors in assessing harm under the ESA has broader implications for how habitat is evaluated under section 9. Habitat loss is not merely a matter of physical destruction but is also connected to diminished functionality, wherein fragmentation, degradation, and increased human disturbance contribute to long-term declines in survival and reproductive success.[51] The court specifically addressed this in the context of the negative "edge effect"[52] associated with old-growth forest fragmentation, which reduces fecundity and lowers nest success in marbled murrelets.[53] Although the jurisprudential acknowledgment of ecological dynamics in *Wildlands* is not an explicit shift toward an ecocentric approach, it may suggest the Ninth Circuit's increasing openness to a more sophisticated interpretation of habitat quality that moves beyond a simplistic focus on outright habitat removal to recognize the complex interactions that sustain species viability.

Finally, the Ninth Circuit's opinion in *Wildlands* underscores the critical role of scientific evidence in legal determinations. Because the plaintiffs sought a preliminary injunction before logging operations had directly impacted murrelets in the Benson Tract the evidence of harm was largely inferential, relying on correlative regional studies and expert testimony rather than site-specific empirical data.[54] This reflects a broader challenge inherent in legal decision making, particularly in environmental law: Scientific evidence is often uncertain, inferential, or probabilistic, making it difficult to reconcile with the law's preference for clear, conclusive determinations.[55] In *Winter v. Natural Resource Defense Council,* the Supreme Court held that a party seeking a preliminary injunction must establish that it is likely to succeed on the merits (among other stipulations).[56] The Ninth Circuit, however, has adopted the "serious questions" test—a "sliding scale variant" of the *Winter* test that requires

50. *See Wildlands*, 105. F.4th at 1157-58.

51. *See* Heinrichs et al., *Habitat Degradation and Loss as Key Drivers of Regional Population Extinction*, 335 ECOLOGICAL MODELING, 64, 64, 73 (2016).

52. *See generally* Lauren Porensky & Truman Young, *Edge-Effect Interactions in Fragmented and Patchy Landscapes*, 27 CONSERVATION BIOLOGY 509 (2013) (defining an ecological edge as a boundary or transition zone between two adjacent habitat types; the anthropocentric creation of such edges can modify a broad range of ecological parameters within one or both habitats, thereby producing an adverse "edge effect" on resident species).

53. *Wildlands*, 105 F.4th at 1158.

54. *See id.*

55. *See* Eric Biber, *Which Science? Whose Science? How Scientific Disciplines Can Shape Environmental Law*, 79 U. CHI. L. REV. 471, 477 (2012).

56. Winter v. Nat. Res. Def. Council, 555 U.S. 7, 20 (2008).

a lesser showing of the likelihood of success on the legal claims.[57] This standard points towards a more flexible allowance of scientific evidence that is unavoidably inferential or uncertain and perhaps would not have passed the more stringent *Winter* test. While the scientific evidence presented by the plaintiffs in *Wildlands* was arguably strong enough to establish a likelihood of succeeding on the merits of the claim, its inferential and non-site-specific nature reflected the court's predilection for upholding a more lenient standard when it comes to legal certainty. In the context of fast-moving and often irreversible environmental harm, retaining a flexible standard that allows courts to act on credible, though not definitive, scientific evidence is not merely doctrinally defensible but necessary to ensure that legal protections remain responsive to ecological realities rather than immobilized by the inevitable evidentiary uncertainties that accompany predictions of future harm.

2. Land Use Policies

Land use choices play a decisive role in whether habitat remains viable for listed species, depending on the nature and extent of the use. *Wildlands* illustrates that the ESA can be applied to restrict habitat-degrading activities even when its more traditional procedural safeguards do not apply. One such safeguard is section 7, which requires federal agencies to consult with the FWS to ensure that proposed federal actions do not "destroy or adversely modify" areas formally designated as critical habitat.[58] But section 7 only applies where a federal agency action is involved, and the habitat has been designated as "critical."[59] In *Wildlands*, neither condition was met: The logging project did not involve a federal agency action, and the Benson Tract was not designated as critical habitat.[60] Yet the Ninth Circuit still found that habitat fragmentation and degradation could constitute "harm" under section 9's prohibition of take. This suggests that the ESA's protective reach is not limited to the section 7 consultation process and that section 9 may increasingly operate as a substantive backstop in land use contexts where no consultation duty exists, but the affected habitat remains essential to a species' survival and reproductive success.

Additionally, the court's recognition of ecological phenomena such as "edge effects" further expands the types of land use impacts that may trigger ESA liability, even in the absence of direct mortality or physical destruction of the habitat.[61] By treating fragmentation-induced reductions in fecundity and nest success as legally cognizable "harm," *Wildlands* extends the ESA's reach to indirect but biologically significant forms of habitat degradation. This reasoning

57. Flathead-Lolo-Bitterroot Citizen Task Force v. Montana, 98 F.4th 1180, 1190 (9th Cir. 2024).

58. 16 U.S.C. § 1536(a)(2)

59. *See id.*

60. Cascadia Wildlands v. Scott Timber Co., 618 F. Supp. 3d 1038, 1054 (D. Or. 2022).

61. *See generally* Porensky & Young, *supra* note 52.

could have practical consequences for environmental permitting and project-level review: Activities such as logging, road building, and energy or housing development may be subject to heightened scrutiny where they create ecological conditions—such as predation risk or loss of interior-forest microclimate—that impair a listed species' long-term viability.[62] In such cases, agencies or courts could require mitigation measures, including buffer zones and connectivity corridors, to reduce these indirect impacts.[63] These measures may be especially relevant where plaintiffs cannot show immediate, site-specific harm sufficient to support injunctive relief, but where the broader ecological effects of a project pose a foreseeable and cumulative threat to a listed species.

3. Future ESA Litigation

A key question for future litigation is whether courts will assess climate change as a factor that can exacerbate anthropogenic harm inflicted on ESA-listed species. Rising temperatures, shifting precipitation patterns, and increased frequency of extreme weather events such as wildfires are fundamentally altering ecosystems, often at a pace faster than many species can adapt.[64] This is particularly consequential for nest-site-faithful species like the marbled murrelet, which will have difficulty altering nesting adaptability within a rapid timeframe.[65] Wildfires have already decimated old-growth forest habitat in the Pacific Northwest;[66] such factors could potentially necessitate judicial consideration of the cumulative harm inflicted on species when combined with the challenged anthropogenic activity.

The *Wildlands* ruling could have various implications for other threatened and endangered species, particularly those facing similar habitat fragmentation pressures. The northern spotted owl, for example, relies on old-growth forests and has suffered declining populations due to logging, competition from invasive species, and habitat degradation—threats that closely parallel those faced by the marbled murrelet.[67] Future litigation may build on *Wildlands* to strengthen legal protections for other old-growth-dependent species, reinforcing the principle that even incremental habitat loss can constitute actionable harm under the ESA. By affirming that foreseeable, long-term habitat degradation qualifies as "harm," *Wildlands* may set a critical precedent for cases addressing broader

62. *See id.*

63. *See* Hamaide et al., *Nature Reserve Optimization with Buffer Zones and Wildlife Corridors for Rare Species*, 2 SUSTAINABILITY ANALYTICS & MODELING 1, 2 (2022).

64. *See* Weiskopf et al., *Climate Change Effects on Biodiversity, Ecosystems, Ecosystem Services, and Natural Resource Management in the United States,* 733 SCI. TOTAL ENV'T 2, 6 (2020).

65. *See* Merkle et al., *Site Fidelity as a Maladaptive Behavior in the Anthropocene*, 20 FRONTIERS ECOLOGY & THE ENV'T 187, 187-88 (2022).

66. *See* Reilly et al., *Cascadia Burning: The Historic, but not Historically Unprecedented*, *2020 Wildfires in the Pacific Northwest, USA*, 13 ECOSPHERE 1, 2 (2022).

67. *See* Franklin et al., *Range-Wide Declines of Northern Spotted Owl Populations in the Pacific Northwest: A Meta-Analysis*, 259 BIOLOGICAL CONSERVATION 2, 2 (2021).

ecosystem-wide impacts of habitat fragmentation and loss.

Finally, it is important to recognize the potential influence of the political process on the trajectory of future ESA litigation. In April 2025, the Trump Administration advanced a regulatory proposal to narrow the definition of "harm" under section 9 of the ESA, specifically excluding habitat degradation from its scope.[68] This proposal draws upon the reasoning of the dissent in *Babbitt v. Sweet Home*, which argued that extending the definition of harm to encompass adverse habitat modification exceeded the statutory text.[69] Whether this regulatory shift will prompt legal challenges or judicial reinterpretation remains to be seen, but it underscores the continued tension between administrative discretion and statutory interpretation in the ESA's application.

CONCLUSION

The *Wildlands* decision reinforces the capacity of the ESA to protect species whose survival depends on stable, long-term habitat conditions, such as the marbled murrelet. By recognizing habitat degradation—and the ecological processes that accompany it—as a form of legally cognizable "harm," the Ninth Circuit reaffirmed that the ESA's protections extend beyond direct mortality to encompass the functional integrity of habitat essential to a species' life cycle. The court's willingness to credit regional scientific studies, expert testimony, and predictive ecological evidence reflects a growing judicial acceptance of the realities of environmental science, where harm is often incremental, probabilistic, and difficult to observe at the moment it begins. By affirming that foreseeable, long-term habitat degradation may constitute a prohibited take, the ruling broadens a litigation pathway for protecting non-designated but ecologically critical habitat, an issue likely to become more pressing as habitat loss is compounded by climate change, fragmentation, and cumulative landscape-level stressors.

More broadly, the case underscores a tension that is only likely to deepen in future ESA litigation: whether courts will continue to adapt legal standards to reflect ecological complexity, or whether administrative or political shifts will narrow the statute's reach. As species face accelerating environmental pressures, *Wildlands* offers a timely reminder that the effectiveness of the ESA will depend not only on statutory text, but on courts' willingness to interpret "harm" in a way that meaningfully accounts for how species actually experience habitat loss.

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68. Rescinding the Definition of "Harm" Under the Endangered Species Act, *supra* note 14, at 16103.

69. *Id.*; Babbitt v. Sweet Home Chapter of Cmtys. for a Great Or., 515 U.S. 687, 715 (1995).