



Frequently Asked Questions About Marbled Murrelet Critical Habitat

What action is the Fish and Wildlife Service taking?

The Service is proposing to revise the 1996 critical habitat designation for the marbled murrelet, a threatened species protected under the Federal Endangered Species Act.

Why is the Service revising its earlier critical habitat designation for this species?

We originally designated critical habitat for the marbled murrelet in Washington, Oregon, and California on May 24, 1996 (61 FR 26256). In 1997, we completed a recovery plan for the species, and in 2003, we completed a 5-Year Status Review of the species. This proposal is in response to a settlement agreement with the American Forest Resource Council reached on January 13, 2003, and incorporates the latest information about the marbled murrelet, its habitat and regulatory and voluntary efforts that provide protection to the species and its habitat.

What is critical habitat?

Critical habitat designates areas that contain habitat essential for the conservation of a threatened or endangered species and which may require special management considerations. A designation does not set up a preserve or refuge, and has no specific regulatory impact on landowner actions on private land that do not involve federal agency funds, authorization, or permits. However, landowners must consult with the Service before taking actions on their property that could harm or kill protected species or destroy their habitat, regardless of whether critical habitat has been designated.

Critical habitat is determined after taking into consideration the economic impact it could cause, as well as any other relevant impacts. The Secretary may exclude any area from critical habitat if the benefits of exclusion outweigh the benefits of inclusion, as long as the exclusion would not result in the extinction of the species.

What is being proposed critical habitat for the marbled murrelet?

The Service is proposing to designate, if all proposed exclusions are finalized, 221,692 acres in coastal Washington, Oregon, and California. These critical habitat areas are our best assessment of areas determined to be occupied, containing the primary constituent elements, requiring special management, and found to be essential to the conservation of the marbled murrelet. The proposed designation consists of 14 units: Northwest Washington, Southwest Washington, Washington Cascades, Northwest Oregon, Central Oregon, Southwest Oregon, Hebo, Coquille, Yaquina, Elliott, Del Norte/Northern Humboldt, Southern Humboldt, Mendocino, and Santa Cruz Mountains.

Less than 1 percent of this proposed designation after the proposed exclusions is federal land; 80 percent is city, county, or state land; and 19 percent private land.

The following are brief descriptions of proposed units, not including proposed exclusions. These units include areas of known murrelet occupancy, as well as areas assumed by land management agencies to be occupied by murrelets and managed accordingly; contain features essential to the conservation of the species; and, to our knowledge, have no management specified that would provide for maintaining marbled murrelet habitat.

Maps and descriptions of the proposed areas can be found at <http://www.fws.gov/pacific/marbledmurrelet>

Washington

Northwest Washington: Parcel of private land in Grays Harbor County (1,775 ac).

Southwest Washington: Parcels in Grays Harbor, Pacific, and Wahkiakum Counties, comprised of lands owned or administered by Grays Harbor County (1,565 ac), Washington State Parks (359 ac), Bureau of Land Management (1,151 ac), and private (18,822 ac).

Washington Cascades: Parcels in Whatcom, Skagit, Snohomish, King, Pierce, and Lewis Counties, comprised of lands owned or administered by private individuals or companies (2,168 ac), The Nature Conservancy (502 ac) and the Lummi Indian Nation (545 ac).

Oregon

Northwest Oregon: Parcels in Tillamook and Clatsop Counties, comprised of State land administered by the Oregon Department of Forestry (ODF), Oregon State Parks (69,603 ac), and private (374 ac).

Hebo: Parcels in Lincoln and Tillamook Counties, comprised of State land administered by Oregon Parks and Recreation Department (1,063 ac).

Yaquina: Parcels in Lincoln, Benton, and Polk Counties, comprised of State land administered by the Oregon Department of Forestry (12,079 ac).

California

Del Norte/Northern Humboldt: A private timber company (650 ac) parcel known as the Miracle Mile Habitat Complex in Del Norte County.

Southern Humboldt: Parcels in southern Humboldt County, comprised of lands owned or administered by the California Department of Fish and Game (925 ac); California Department of

Parks and Recreation, including Humboldt Redwoods State Park and Grizzly Creek State Park (39,958 ac); and Van Duzen County Park (167 ac).

Mendocino: Parcels in Mendocino County, comprised of lands owned or administered by California Department of Parks and Recreation (including Admiral William Standley State Recreation Area), Montgomery Woods State Reserve, and Russian Gulch State Park (2,621 ac); a portion of California Department of Forestry and Fire Protection's Jackson Demonstration State Forest (5,467 ac); and private timber company lands along the Ten Mile River and Alder Creek (1,043 ac).

Santa Cruz Mountains: Parcels in San Mateo and Santa Cruz Counties, comprised of lands owned or administered by the California Department of Parks and Recreation, including Butano, Portola, Big Basin Redwoods, Wilder Ranch, and Henry Cowell State Parks, Ano Nuevo State Reserve, and University of California Regents (34,718 ac); California County Parks, including Huddart, Pescadero Creek, and Sam McDonald (7,990 ac); San Francisco City lands (978 ac; 391 ha); and private lands (17,510 ac).

Were other areas identified as proposed critical habitat?

The Service has identified 3,590,642 acres in the three states as proposed critical habitat but is proposing to exclude 3,368,950 acres that already are protected under other regulations or plans, such as the Northwest Forest Plan, state and tribal management plans and habitat conservation plans. An additional 1,574,210 acres were considered but not included in the proposal because they already are managed in ways that meet the needs of the marbled murrelet. These include federal wilderness areas, tribal conservation easements and Redwood state and national parks.

We are not proposing critical habitat units in marine areas, consistent with the approach taken in 1996, because, while they are important to the life history of the birds, we are unable to define specific areas essential to the conservation of the species.

For more information on the areas identified as proposed critical habitat, the areas proposed for exclusions and the areas proposed for critical habitat if the proposed exclusions are finalized, see the proposed rule in the Federal Register.

How did the Service determine what should be proposed as critical habitat for marbled murrelets?

The Service used many sources as the basis for its proposed designation. The marbled murrelet recovery plan and the 2004 status review helped identify areas that contain the physical and biological features essential for the conservation of marbled murrelets.

We are proposing occupied areas that currently have primary constituent elements essential to the conservation of the species and that require special management and are not already covered by management plans, other regulations, conservation easements or habitat conservation plans. Primary constituent elements are physical and biological features that are essential to the conservation of the species.

Based on our current knowledge of the life history, biology, and ecology of the species and the requirements of the habitat to sustain the essential life history functions of the species, we have determined that the marbled murrelet's primary constituent elements are: 1) forested stands containing trees with potential nesting platforms, and 2) the surrounding forested areas within 0.5 mi (0.8 km) of these stands with a canopy height of at least one-half the site-potential tree height. The site potential tree height is the average maximum height for trees given the local growing conditions and is based on species-specific site index tables.

Criteria Used To Identify Critical Habitat

- (1) The presence of primary constituent elements.
- (2) Habitat within the inland range of the marbled murrelet.
- (3) Large, contiguous blocks of nesting habitat.
- (4) Sites occupied by marbled murrelets.
- (5) Maintenance of rangewide distribution.

All the areas proposed as critical habitat for marbled murrelets are within the historic geographic range of the species and contain enough of those physical or biological features essential to the conservation of the species for the species to be able to carry out normal biological functions.

Are there areas being proposed as critical habitat where marbled murrelets are not currently known to occur?

This rule proposes only occupied habitat as critical habitat, where occupied is defined to include both documented and assumed occupancy. Areas of assumed occupancy are those without specific records (e.g. areas where ground surveys have not been conducted), but which are considered by the Forest Service and the Bureau of Land Management as very likely to be occupied and which are managed accordingly.

How is this marbled murrelet critical habitat designation different from the earlier designation?

The proposed critical habitat designation is a result of the Department of the Interior's recognition of ongoing conservation activities, laws, regulations, and economic impacts. Areas where there is existing management sufficient to protect marbled murrelet habitat and where additional regulatory control would add little benefit were not included in the proposal. As always, the designation seeks to encourage voluntary conservation efforts by exempting Habitat Conservation Plans, conservation agreements and other voluntary conservation vehicles. Voluntary conservation agreements provide more protection and benefit to species that we can accomplish with rigid regulatory rules.

The proposal also recognizes ongoing conservation efforts resulting from other statutes or regulatory schemes, such as the Northwest Forest Plan, which provide protections to important nesting habitat for marbled murrelets.

These revisions rely on legal authorities and requirements provided in the Endangered Species Act (ESA). In crafting the ESA, Congress provided guidance for the exercise of discretion by the

Secretary of the Interior in making critical habitat decisions, which we have applied in this proposal.

We removed areas determined after additional study not to contain the necessary elements needed to conserve marbled murrelets. We removed areas known to be not occupied by marbled murrelets. And we are proposing to exclude areas covered by the following types of plans:

- 1) Legally operative Habitat Conservation Plans (HCPs) that cover marbled murrelets;
- 2) Draft HCPs that cover marbled murrelets and have undergone public review and comment;
- 3) Tribal conservation plans that cover marbled murrelets;
- 4) State conservation plans that cover marbled murrelets;
- 5) National Wildlife Refuge System Comprehensive Conservation Plans;
- 6) Conservation efforts of federal agencies, tribal governments, businesses, organizations or individuals that positively affect the species' status.

How will marbled murrelets benefit from this designation?

Critical habitat receives protection under Section 7 of the Endangered Species Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a federal agency or occurring on federal land. In cases where marbled murrelets occur, much of this protection is already occurring as a result of the species being listed as a threatened species. Consultation under Section 7 of the Act does not apply to activities on private or other non-federal lands that do not involve a federal nexus such as funding or permits.

Who will be affected by a critical habitat designation?

Federal agencies are required to consult with the Service on actions they carry out, fund, or authorize that might affect critical habitat. It is important to note that in most cases this is already occurring under the section 7 interagency consultation requirements of the Endangered Species Act. Non-federal entities, including private landowners, will only be affected where a federal nexus exists that involves federal funding, permitting, or authorization to occur.

In most cases, consultation under section 7 of the Endangered Species Act is already occurring where links between activities on private lands and Federal funding, permitting, or authorization exist and species are present.

Who will not be affected?

A critical habitat designation does not affect non-federal entities when there is not a federal nexus. For example, many activities normally conducted by a landowner or operator of a business not involving federal funding, permitting, or authorization would not be affected.

How long does a critical habitat designation remain in effect?

A critical habitat designation remains in effect until the species is de-listed.