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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R1-ES-2008-0079; 92210-1117-0000-FY08-B4]

RIN 1018-AW18

Endangered and Threatened Wildlife and Plants; Revised Critical Habitat for the Marbled Murrelet

AGENCY:

Fish and Wildlife Service, Interior.

ACTION:

Proposed rule.

SUMMARY:

We, the U.S. Fish and Wildlife Service (Service), propose to revise designated critical habitat for marbled murrelet (*Brachyramphus marmoratus marmoratus*) under the Endangered Species Act of 1973, as amended (Act). On May 24, 1996, we designated 3,887,800 ac (ac) (1,573,340 hectares (ha)) as critical habitat for the marbled murrelet in Washington, Oregon, and California. We are proposing to revise currently designated critical habitat for the marbled murrelet by removing approximately 254,070 ac (102,820 ha) in northern California and Oregon from the 1996 designation, based on new information indicating that these areas do not meet the definition of critical habitat. This action, if adopted in its entirety, would result in a revised designation of approximately 3,633,800 ac (1,470,550 ha) as critical habitat for the marbled murrelet. In this rule, we are further proposing, under the Act, a taxonomic revision of the scientific name of the marbled murrelet from *Brachyramphus marmoratus marmoratus* to *Brachyramphus marmoratus*.

DATES:

We will accept comments received or postmarked on or before [insert date 60 days after date of Federal Register publication]. We must receive requests for public hearings in writing at the address shown in the ADDRESSES section by [insert date 45 days after date of Federal Register publication].

ADDRESSES:

You may submit comments by one of the following methods:

• Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

• U.S. mail or hand-delivery: Public Comments Processing, Attn: RIN 1018-AW18; Division of Policy and Directives Management; U.S. Fish and Wildlife

Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT:

Ken Berg, Field Supervisor, U.S. Fish and Wildlife Service, Western Washington Fish and Wildlife Office, 510 Desmond Drive SE, Suite 102, Lacey, WA 98503-1273, telephone 360-753-9440, facsimile 360-753-9008; Paul Henson, Field Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266, telephone 503-231-6179, facsimile 503-231-6195; or Michael Long, Field Supervisor, U.S. Fish and Wildlife Service, Arcata Fish and Wildlife Office, 1655 Heindon Road, Arcata, CA 95521, telephone 707-822-7201, facsimile 707-822-8411. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we request comments or suggestions on this proposed rule. We particularly seek comments concerning:

(1) The reasons why we should or should not revise currently designated critical habitat for the marbled murrelet by removing 254,070 ac (102,820 ha) from the 1996 designation, based on new information that is the best available information indicating that these areas do not meet the definition of critical habitat;

(2) Specific information on the amount and distribution of marbled murrelet habitat;

(3) Any foreseeable economic, national security, or other potential impacts resulting from the proposed critical habitat revision, and in particular, any impacts on small entities;

(4) Our proposal to revise 50 CFR 17.11 to adopt the taxonomic clarification for the marbled murrelet to reflect the change from *Brachyramphus marmoratus* to *Brachyramphus marmoratus*; and

(5) Whether we could improve or modify our approach to revising critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the ADDRESSES section. We will not accept comments sent by e-mail or fax or to an address not listed in the ADDRESSES section. Finally, we will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the DATES section.

We will post your entire comment including your personal identifying

information on <http://www.regulations.gov>. If you provide personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment during normal business hours at the U.S. Fish and Wildlife Service, Western Washington Fish and Wildlife Office (see FOR FURTHER INFORMATION CONTACT). Maps of the proposed revised critical habitat are also available on the Internet at <http://www.fws.gov/westwafwo/>.

Background

The final rule designating critical habitat for the marbled murrelet was published in the Federal Register on May 24, 1996 (61 FR 26256), and has been posted under the Supporting Documents section for this docket in the Federal eRulemaking Portal: <http://www.regulations.gov> at Docket Number FWS-R1-ES-2008-0079. It is our intent to discuss only those topics directly relevant to the proposed revision of critical habitat in this proposed rule.

The marbled murrelet is a small seabird of the Alcidae family. The marbled murrelet's breeding range extends from Bristol Bay, Alaska, south to the Aleutian Archipelago; northeast to Cook Inlet, Kodiak Island, Kenai Peninsula and Prince William Sound; south along the coast through the Alexander Archipelago of Alaska, British Columbia, Washington, and Oregon; to northern Monterey Bay in central California. Birds winter throughout the breeding range and occur in small numbers off southern California. Marbled murrelets spend most of their lives in the marine environment where they forage in near-shore areas and consume a diversity of prey species, including small fish and invertebrates. In their terrestrial environment, the presence of platforms (large branches or deformities) used for nesting is the most important characteristic of their nesting habitat. Marbled murrelet habitat use during the breeding season is positively associated with the presence and abundance of mature and old-growth forests, large core areas of old-growth, low amounts of edge habitat, reduced habitat fragmentation, proximity to the marine environment, and forests that are increasing in stand age and height.

Previous Federal Actions

For additional information on previous Federal actions concerning marbled murrelet, refer to the final listing rule published in the Federal Register on October 1, 1992 (57 FR 45328), and the final rule designating critical habitat published in the Federal Register on May 24, 1996 (61 FR 26256). In the final critical habitat rule, we designated 3,887,800 ac (1,573,340 ha) of critical habitat in 32 units on Federal and non-Federal lands. On September 24, 1997, we completed the Recovery Plan for the marbled murrelet in Washington, Oregon, and California (USFWS 1997). On January 13, 2003, we entered into a settlement agreement with the American Forest Resource Council and the Western Council of Industrial Workers, whereby we agreed to review the marbled murrelet critical habitat designation and make any revisions deemed appropriate after a revised consideration of economic and any other relevant impacts of designation. On April 21, 2003, we published a notice initiating a 5-year review of the marbled murrelet (68 FR 19569), and published a second information request for the 5-year review on July 25, 2003 (68 FR 44093). The 5-year review evaluation report was finished in March 2004 (McShane et al. 2004), and the 5-year review was completed on August 31, 2004. On September 12, 2006, we published a proposed revision to

critical habitat for the marbled murrelet, which included adjustments to the original designation and proposed several exclusions under section 4(b)(2) of the Act (71 FR 53838). On June 26, 2007, we published a notice of availability of a draft economic analysis (72 FR 35025) related to the September 12, 2006, proposed critical habitat revision (71 FR 53838). On March 6, 2008, we published a notice in the Federal Register (73 FR 12067) stating that the critical habitat for marbled murrelet should not be revised at that time, which concluded our obligations under the settlement agreement.

We found that the proposed revision to marbled murrelet critical habitat should not be made due to uncertainties regarding Bureau of Land Management (BLM) revisions to its District Resource Management Plans in western Oregon. While the BLM is still revising its District Resource Management Plans in western Oregon, we have determined that there are a few areas that, due to new information that is the best available information, we believe do not meet the definition of critical habitat. Therefore, we are proposing the revisions discussed below to the 1996 critical habitat designation.

Taxonomy

Two subspecies of the marbled murrelet were previously recognized, the North American murrelet (*Brachyramphus marmoratus marmoratus*) and the Asiatic murrelet (*B. marmoratus perdix*). New published information suggests that the Asiatic murrelet is a distinct species (Friesen et al. 1996, 2005), and the American Ornithologists' Union officially recognized the long-billed murrelet (*B. perdix*) and the marbled murrelet (*B. marmoratus*) as distinct species in the Forty-first Supplement to the Checklist of North American Birds (American Ornithologists' Union 1997). Therefore, in this rule we are proposing to revise 50 CFR 17.11 to adopt the taxonomic clarification for the marbled murrelet to reflect the change from *Brachyramphus marmoratus marmoratus* to *Brachyramphus marmoratus*.

Critical Habitat

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) essential to the conservation of the species, and

(b) which may require special management considerations or protection; and

(2) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means the use of all methods and procedures that are necessary to bring any endangered species or threatened species to the point at which the measures provided under the Act are no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing activities that result in the destruction or adverse modification of critical habitat. Section 7 of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect

land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by the landowner. Where the landowner seeks or requests Federal agency funding or authorization of an activity that may affect a listed species or critical habitat, the consultation requirements of section 7 would apply. However, even in the event of a destruction or adverse modification finding, the landowner's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, habitat within the geographical area occupied by the species at the time it was listed must contain features that are essential to the conservation of the species. Critical habitat designations identify to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)). Occupied habitat that contains features essential to the conservation of the species meets the definition of critical habitat only if those features may require special management considerations or protection. Under the Act, we can designate unoccupied areas as critical habitat only when we determine that the best available scientific data demonstrate that the designation of that area is essential to the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the Federal Register on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be proposed as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all

of

the habitat areas that we may eventually determine, based on scientific data not now available to the Service, are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for recovery of the species.

Areas that support populations, but are outside the critical habitat designation, may continue to be subject to conservation actions we implement under section 7(a)(1) of the Act. They are also subject to the regulatory

protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available scientific information at the time of the agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b)(2) of the Act, we use the best scientific data available to determine areas occupied at the time of listing that contain the features essential to the conservation of the marbled murrelet. On April 21, 2003, we published a notice initiating a 5-year review of the marbled murrelet (68 FR 19569), and on July 25, 2003, we published a request for additional information related to that review (68 FR 44093). An evaluation report summarizing the biological, ecological, and population information on the marbled murrelet was completed in March 2004 (McShane et al. 2004). That report also evaluated current threats and how they may have changed since the species was listed. The 5-year status review was completed on August 31, 2004. We also reviewed the scientific data and other information that was used to finalize the 1996 critical habitat designation, which included research published in peer-reviewed articles, agency reports, unpublished data, and various Geographic Information System (GIS) data layers (e.g., land cover type information, land ownership information, topographic information). We reviewed the conservation needs of the marbled murrelet described in the recovery plan (USFWS 1997), and considered new scientific information and data that were available from State, Federal, and Tribal agencies, as well as academia and private organizations.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and the regulations at 50 CFR 424.12(b), in determining which areas occupied at the time of listing to propose as critical habitat, we consider the physical and biological features that are essential to the conservation of the species to be the primary constituent elements laid out in the appropriate quantity and spatial arrangement for conservation of the species. These include, but are not limited to:

- (1) Space for individual and population growth and for normal behavior;
- (2) Food, water, air, light, minerals, or other nutritional or physiological requirements;
- (3) Cover or shelter;
- (4) Sites for breeding, reproduction, or rearing (or development) of offspring; and
- (5) Habitats that are protected from disturbance or are representative of the historic, geographical, and ecological distributions of a species.

We derive the specific PCEs required for the marbled murrelet from the biological needs of the species as described in the Background section of the final rule designating critical habitat for the marbled murrelet. The PCEs identified in the May 24, 1996, final critical habitat designation (61 FR 26254)

have not been revised for purposes of this proposal, and remain applicable to this proposed revision of critical habitat for the marbled murrelet.

Criteria Used To Identify Critical Habitat

The criteria used to identify critical habitat areas described in the May 24, 1996, Federal Register remain applicable to this proposed revision of critical habitat for the marbled murrelet. These include suitable nesting habitat, information on presence/absence and occupancy, proximity to marine foraging habitat, large contiguous blocks of nesting habitat, rangewide distribution, and adequacy of existing protection and management (61 FR 26265).

Summary of Changes From Previously Designated Critical Habitat

Approximately 254,070 ac (102,820 ha) of critical habitat that was designated in the May 24, 1996, final rule is being proposed for removal under this revision:

(1) Critical habitat boundaries in southern Oregon and northern California would be revised based on extensive studies demonstrating that the distribution of likely nesting birds is not as far inland as delineated in 1996. Approximately 191,370 ac (77,450 ha) of critical habitat would be removed from the designation based on this new information;

(2) Approximately 62,700 ac (25,370 ha) of critical habitat designated farther than 35 miles (mi) (56.3 kilometers (km)) from the coast would be removed in Douglas and Lane counties, Oregon. These areas do not meet the criteria used to identify critical habitat in the 1996 designation, specifically the proximity to marine foraging habitat. Removing these acres from the designation would conform to the marbled murrelet recovery plan's recommendation for protection of suitable nesting habitat within 35 mi (56.3 km) of the Pacific Ocean shoreline (USFWS 1997, p. 127, 131). This area is where the majority of known occupied marbled murrelet sites are found in Oregon (USFWS 1997, pp. 127, 131) ;

(3) We are using a more efficient method of providing legal descriptions of critical habitat for the specific areas proposed in this rule. Instead of using the Public Land Survey System (e.g., identification of boundaries using township and range information), we are presenting UTM (Universal Transverse Mercator) data points generated through GIS (Geographic Information System) mapping. While we are providing maps of the affected units, we are not including the textual descriptions in this proposed rule; these descriptions will be provided in the final rule revising designated critical habitat for the marbled murrelet.

Proposed Revised Critical Habitat Designation

We are proposing to revise the 1996 final designation of critical habitat for the marbled murrelet to reflect the removal of 3 critical habitat units and revision of 12 critical habitat units totaling approximately 254,070 ac (102,820 ha) as follows:

Approximately 191,370 ac (77,450 ha) in zone 2 in northern California and southern Oregon would be removed where extensive surveys have demonstrated marbled murrelets are very unlikely to be found (Hunter et al. 1997, pp. 16-25; Schmidt et al. 2000, pp. 16-22; U.S. Forest Service and Bureau of Land Management 2002, p. 16.). Zone 2 includes areas from 35 miles (56.3 km) to 50 miles (80.5 km) from marine environments (FEMAT 1993, p. IV-24). Both of these studies acknowledge that it is possible that marbled murrelets may occasionally use some portion of the study areas; however, if the species does occur, the

number of individuals is probably very low. Accordingly, it appears that the habitat in these areas does not contain the physical and biological features in the necessary spatial configuration that is essential for the conservation of the species. Therefore, we believe these areas do not meet the definition of critical habitat.

Approximately 62,700 ac (25,370 ha) of critical habitat in Douglas and Lane Counties, Oregon, would be removed where critical habitat was designated farther than 35 miles (56.3 km) from the coast. These areas do not meet the criteria used to identify critical habitat in the 1996 designation, specifically the proximity to marine foraging habitat. This action would be consistent with the marbled murrelet working team recommendations to the Forest Ecosystem Management Assessment Team (FEMAT) for the majority of occupied sites in Oregon (FEMAT 1993, p. IV-23). This proposal would also better conform with the marbled murrelet recovery plan recommendations, by limiting critical habitat to the areas where the majority of known occupied murrelet sites are found (USFWS 1997, p. 127, 131).

Areas that would be removed from the 1996 critical habitat designation are in Douglas and Lane counties, Oregon (inland of Coos Bay, Oregon), and in northern California and southern Oregon. All other critical habitat units that were designated in the May 24, 1996, final rule contain the physical and biological features considered essential to the conservation of the species.

Other than minor adjustments and/or those units specifically identified in this proposed rule, where a critical habitat unit includes Federal lands within the boundaries of a Late Successional Reserve (LSR) established by the Northwest Forest Plan, the areas included within the LSR boundaries as they existed on May 24, 1996, remain designated as critical habitat. The critical habitat areas described below reflect our current best assessment of areas that no longer meet the definition of critical habitat for the marbled murrelet in Zone 2. To better understand the location of these proposed areas, refer to the maps included in this proposed rule or at our Western Washington Field Office's internet site at <http://www.fws.gov/westwafwo/>.

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TABLE 1. Areas Proposed for Removal by State

Units

Areas Removed from Designated Critical Habitat

Acres

Hectares

<ROW RUL="s&qdrt"><ENT I="01" O="xl">California<ENT O="xl">143,487
58,068

<ROW RUL="s&qdrt"><ENT I="01" O="xl">Oregon <ENT O="xl">110,585
44,752

<ROW RUL="s&qdrt"><ENT I="01" O="xl">Washington<ENT O="xl">0
0

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102,821

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TABLE 2. Areas Proposed for Removal by Critical Habitat Unit and Ownership.

Critical Habitat Unit Name from 1996 Designation

Ownership

Acres Removed

Hectares Removed

<ROW RUL="s&qdrt"><ENT I="01" O="xl">CA-01d<ENT O="xl">USFS<ENT O="xl">19,363
7,836

<ROW RUL="s&qdrt"><ENT I="01" O="xl">CA-01e<ENT O="xl">USFS<ENT O="xl">28,168
11,400

<ROW RUL="s&qdrt"><ENT I="01" O="xl">CA-10a<ENT O="xl">USFS<ENT O="xl">35,935
14,543

<ROW RUL="s&qdrt"><ENT I="01" O="xl">CA-11b<ENT O="xl">USFS<ENT O="xl">8,540
3,456

<ROW RUL="s&qdrt"><ENT I="01" O="xl">CA-11c<ENT O="xl">BLM<ENT O="xl">2,644
1,070

<ROW RUL="s&qdrt"><ENT I="01" O="xl">CA-11d<ENT O="xl">USFS<ENT O="xl">61,558
24,912

<ROW RUL="s&qdrt"><ENT I="01" O="xl">OR-03-c<ENT O="xl">BLM<ENT O="xl">146
59

<ROW RUL="s&qdrt"><ENT I="01" O="xl">OR-04-e<ENT O="xl">BLM<ENT O="xl">6,557
2,654

<ROW RUL="s&qdrt"><ENT I="01" O="xl">OR-04-f<ENT O="xl">BLM<ENT O="xl">20,736
8,391

<ROW RUL="s&qdrt"><ENT I="01" O="xl">OR-04-g<ENT O="xl">BLM<ENT O="xl">2,780
1,125

<ROW RUL="s&qdrt"><ENT I="01" O="xl">OR-04-i<ENT O="xl">BLM<ENT O="xl">25,616
10,366

<ROW RUL="s&qdrt"><ENT I="01" O="xl">OR-04-j<ENT O="xl">BLM<ENT O="xl">480
194

<ROW RUL="s&qdrt"><ENT I="01" O="xl">OR-06-d<ENT O="xl">BLM<ENT O="xl">9,170
3,711

<ROW RUL="s&qdrt"><ENT I="01" O="xl">OR-07-d<ENT O="xl">USFS<ENT O="xl">26,524
10,734

<ROW RUL="s&qdrt"><ENT I="01" O="xl">OR-07-f<ENT O="xl">BLM<ENT O="xl">1,032
418

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1,951

<ENT I="01" O="xl"> <ENT O="xl">TOTALS<ENT O="xl">254,071
102,821

California. The following designated critical habitat units are being proposed for removal or revision from the 1996 designation, based on extensive surveys that have demonstrated murrelets are very unlikely to be found using the area. These units or portions thereof no longer meet the definition of critical habitat: CA-01-d (portion), CA-01-e (portion), CA-10-a (entire), CA-11-b (portion), CA-11-c (entire), and CA-11-d (entire).

Oregon. The following designated critical habitat units are being proposed for removal or revision from the 1996 critical habitat designation, based on extensive surveys that have demonstrated murrelets are very unlikely to be found using the area. These units or portions thereof no longer meet the definition of critical habitat where they extend into Oregon: CA-01-e (entire) and CA-10-a (entire), and units OR-04-g (portion), OR-07-d (portion), and OR-07-f (portion).

Oregon. The following critical habitat units in Douglas and Lane Counties, Oregon have been proposed for removal or revision where critical habitat was designated farther than 35 miles inland from the coast, based on the FEMAT murrelet zone 1 line. The marbled murrelet recovery plan, completed in 1997 (USFWS 1997), recommended limiting critical habitat to areas less than 35 miles from the coast, where the majority of known occupied murrelet sites are found. These units or portions thereof no longer meet the definition of critical habitat: OR-03-c (portion), OR-04-e (portion), OR-04-f (portion), OR-04-i (portion), OR-04-j (portion) and OR-06-d (portion).

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Decisions by the 5th and 9th Circuit Court of Appeals have invalidated our definition of destruction or adverse modification (50 CFR 402.02) (see Gifford Pinchot Task Force v. U.S. Fish and Wildlife Service, 378 F.3d 1059 (9th Cir. 2004) and Sierra Club v. U.S. Fish and Wildlife Service et al. 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the PCEs to be functionally established) to serve its intended conservation role for the species.

If a species is listed or critical habitat is designated, section 7(a) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define Reasonable and prudent alternatives at 50 CFR 402.02 as alternative actions identified during consultation that:

- Can be implemented in a manner consistent with the intended purpose of the action,

- Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

- Are economically and technologically feasible, and

- Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the destruction or adverse modification of critical habitat. Reasonable

and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Federal activities that may affect marbled murrelet or its designated critical habitat will require section 7 consultation under the Act. Activities on State, Tribal, local or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 et seq.) or a permit from us under section 10 of the Act), or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are subject to the section 7 consultation process. Federal actions not affecting marbled murrelet or its designated critical habitat, and actions on State, Tribal, local or private lands that are not federally funded, authorized, or under permit, do not require section 7 consultations. Currently designated marbled murrelet critical habitat (see 50 CFR 17.95(b)) will remain designated critical habitat until this proposal is finalized. Therefore, any Federal activities that may affect currently designated critical habitat will be subject to section 7 consultation requirements.

Application of the Adverse Modification Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or would retain its current ability for the PCEs to be functionally established. Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that appreciably reduces the conservation value of critical habitat for the marbled murrelet.

The range of the marbled murrelet has been subdivided by the Recovery Team into six Marbled Murrelet Conservation Zones (USFWS 1997, pp. 125-130), based on the need for potentially different recovery actions in various portions of the marbled murrelet's range, and the need to maintain well-distributed populations. These zones include Puget Sound (Zone 1), Western Washington Coast Range (Zone 2), Oregon Coast Range (Zone 3), Siskiyou Coast Range (Zone 4), Mendocino (Zone 5), and the Santa Cruz Mountains (Zone 6). Marbled murrelets within the conservation zones are likely to interact across zone boundaries at some level. Generally, the conservation role of marbled murrelet critical habitat units is to support nesting, roosting, and other normal behaviors (61 FR 26256). It is also necessary to produce and maintain viable marbled murrelet populations that are well distributed throughout the respective Conservation Zones (USFWS 1997 p. 116). Specific goals are described in the recovery plan, but generally include maintaining occupied sites and suitable nesting habitat for marbled murrelets. Because it will take 50 or more years to develop new nesting habitat, the short-term focus is on retaining and/or increasing terrestrial habitat (USFWS 1997 p. vi).

For a wide-ranging species such as the marbled murrelet, where multiple critical habitat units are designated, each unit has a Regional Conservation Zone (RCZ) and range-wide role in contributing to the conservation of the species. The basis for an adverse modification opinion would be whether a proposed action appreciably reduces the ability of critical habitat to remain functional to serve its identified conservation role at the RCZ and rangewide levels. Thus, an adverse modification finding would be based upon a broader inquiry than an assessment of adverse effects at the local unit level. The loss or modification of portions of critical habitat to an extent that the affected unit(s) would not

be likely to adequately support sufficient numbers of nesting murrelets may represent destruction or adverse modification of marbled murrelet critical habitat.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that are carried out, funded, or authorized by a Federal agency and may affect marbled murrelet critical habitat require consultation on its effects to marbled murrelet critical habitat. Activities in critical habitat for the marbled murrelet vary in degree of impact on critical habitat from those with no effect, to those with short-term adverse effects but long-term beneficial effects, to those with adverse effects but that do not destroy or adversely modify critical habitat, and finally to those that may destroy or adversely modify critical habitat. In all cases, the current condition of the critical habitat, both locally and rangewide, and specific parameters of the action will determine the level of effect.

A variety of activities that disturb or remove PCEs may adversely affect, though not necessarily adversely modify, marbled murrelet critical habitat as that term is used in section 7 consultations. These include, but are not limited to:

(1) Removal, modification, or fragmentation of forested areas that directly impact nesting structures, nesting substrate, and the vertical and horizontal cover provided by the surrounding forest. Fragmentation of forested areas can result in habitat isolation and increased edge, which negatively impacts the quality of the remaining nesting habitat primarily through increased predation; modification of the microclimate; and potential windthrow of nest trees. Any action resulting in the removal of a potential nest tree is likely to result in an adverse effect to critical habitat. Federal actions primarily affecting marbled murrelet nesting habitat include timber harvest, salvage logging, and hazard tree removal. Indirect harvest-related effects of Federal actions could include windthrow caused by harvest. In addition, road construction, recreational or other developments, and fuels reduction projects may also result in these types of effects.

(2) New and existing human activity, including recreation, agriculture, and urbanization, adjacent to and within forested areas can result in loss or modification of the PCEs. Interior forest nests in contiguous stands far from human activity appear to experience the least predation, and public lands that are easily accessible have higher levels of human use, with resultant activities that are attractive to corvids (Marzluff et al. 1996). The other factor which appears to increase predation rates is higher levels of landscape fragmentation (Marzluff et al. 1996).

The following activities may have adverse effects on murrelet critical habitat PCEs:

(1) Removal or degradation of individual trees with potential nesting platforms, or the nest platforms themselves, that results in a significant decrease in the value of the trees for future nesting use. Moss may be an important component of nesting platforms in some areas.

(2) Removal or degradation of trees adjacent to trees with potential nesting platforms that provide habitat elements essential to the suitability of the

potential nest tree or platform, such as trees providing cover from weather or predators.

(3) Removal or degradation of forested areas with a canopy height of at least 1/2 the site-potential tree height and, regardless of contiguity, within 0.8 km (0.5 mi) of individual trees containing potential nest platforms. This includes removal or degradation of trees currently unsuitable for nesting that contribute to the structure/integrity of the potential nest area (i.e., trees that contribute to the canopy of the forested area). These trees provide the canopy, stand conditions, and protection from predation important for marbled murrelet nesting.

Beneficial actions may also adversely affect, but would not be expected to adversely modify, critical habitat, since they would promote the development or improve the functional quality of critical habitat for the marbled murrelet. This could include: (1) Thinning under potential nest trees to protect the tree's nesting structures from competing trees, which would help maintain suitable nesting habitat; (2) Thinning in younger stands to speed their attainment of 1/2 site-potential tree height in the vicinity of potential nest trees, which would benefit the function of marbled murrelet critical habitat by decreasing fragmentation, maintaining microclimate of potential nest trees, and reducing the effects of predation. Actions that promote the development of potential nest trees, while maintaining the integrity of the forest stand, would also be beneficial to the function of critical habitat by increasing future nesting habitat, and providing replacement habitat for existing nest stands that may be lost to such natural events as wildfire and windthrow.

Some thinning activity may have short-term adverse effects but long-term beneficial impacts. For example, actions in existing critical habitat designed to create canopy diversity or promote the development of future nest trees may open the canopy for a short time, resulting in some potential increase in predation. However, if such effects are short-lived, current nesting habitat is not removed, and the prescription speeds the development of suitable nest trees where such trees are limited, the result may be a long-term improvement in critical habitat condition.

For a proposed action to result in destruction or adverse modification of critical habitat, it must affect the designated critical habitat to an extent that the affected unit(s) no longer serves its intended conservation role for the species or no longer retains its current ability for the primary constituent elements to be functionally established. Proposed actions requiring a section 7 consultation must be evaluated individually, in light of the baseline condition of the critical habitat unit and RCZ, unique history of the area, and effect of the impact on the critical habitat unit relative to its regional and range-wide role in the conservation of the species. The loss or substantial reduction of viable populations throughout one or more RCZs, or even a major part of an RCZ, could lead to genetic and demographic isolation of parts of the population.

All of the units designated as critical habitat contain features essential to the conservation of the marbled murrelet. All units are within the geographic range of the species, were occupied or likely to be occupied by the species at the time of listing, and are likely to be used by the marbled murrelet. Federal agencies already consult on activities in areas currently occupied by the marbled murrelet, or if the species may be affected by the action, to ensure that their actions do not jeopardize the continued existence of the marbled murrelet.

Activities that have little to no effect in one critical habitat unit or RCZ may cause serious effects in another, due to differences in existing conditions and the conservation function of critical habitat. Therefore, the Service cannot provide a detailed description of the threshold for future actions that would result in the destruction or adverse modification of critical habitat applicable throughout the range of the designated critical habitat in this proposed rule. However, we fully anticipate that some projects may be proposed in critical habitat that will adversely affect PCEs, and, in some cases, may include removal of stands of 1/2 site-potential tree height while not reaching the level of destruction or adverse modification of critical habitat. For example, the harvest of relatively small stands of trees that contribute to the function of PCEs (e.g., stands with a canopy of 1/2 site-potential tree height within 0.5 mile (0.8 km) of a potential nest tree) in a critical habitat unit with a large number of potential nest trees and a high proportion of surrounding forest cover most likely will not appreciably reduce the ability of critical habitat to remain functional at the RCZ and rangewide scales.

Actions that adversely affect forest stands that are not within 0.5 mile (0.8 km) of individual trees with potential nesting platforms would probably not adversely modify critical habitat, even if they occur within the boundaries of the area designated as critical habitat. Activities that do not affect the PCEs or the ability for the PCEs to be functionally established are unlikely to be affected by the designation. However, even though an action may not adversely affect or adversely modify critical habitat, it may still affect marbled murrelets (e.g., through disturbance) and may, therefore, still be subject to consultation under section 7 of the Act.

If you have questions regarding whether specific activities may constitute destruction or adverse modification of critical habitat, contact a Field Supervisor listed under FOR FURTHER INFORMATION CONTACT.

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that, [T]he Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat. We have considered the potential economic impacts of this proposed critical habitat revision based on information in our 2007 economic analysis (described in 72 FR 35025), and are not proposing to exclude any areas under section 4(b)(2) because of economic, national security, or other considerations. However, to ensure our final determination is based on the best available information, we are hereby soliciting comments on any foreseeable economic, national security, or other potential impacts resulting from this proposed revised designation of critical habitat, and in particular, any potential impacts on small entities, and whether the benefits of exclusion of a particular area outweighs the benefits of inclusion.

Application of Section 4(a)(3)(B)(i) of the Act

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides: The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources

management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.' There are no areas owned or controlled by the Department of Defense within the areas being proposed for this revised critical habitat designation.

Peer Review

In accordance with our joint policy published in the Federal Register on July 1, 1994 (59 FR 34270), we are obtaining the expert opinions of at least three appropriate independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our revised critical habitat designation is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period on our specific assumptions and conclusions in this proposed designation of revised critical habitat.

We will consider all comments and information we receive during this comment period on this proposed rule during our preparation of a final determination. Accordingly, our final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal if we receive any requests for hearings. We must receive your request for a public hearing within 45 days after the date of this Federal Register publication. Send your request to an address listed in FOR FURTHER INFORMATION CONTACT. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the Federal Register and local newspapers at least 15 days before the first hearing.

Required Determinations

Regulatory Planning and Review (E.O. 12866)

The Office of Management and Budget (OMB) has determined that this rule is not significant under Executive Order (E.O.) 12866. OMB bases its determination upon the following four criteria:

- (1) Whether the rule will have an annual effect of \$100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.
- (2) Whether the rule will create inconsistencies with other Federal agencies' actions.
- (3) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.
- (4) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA, 5 U.S.C. 601, et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency must publish a notice of rulemaking for any proposed or final

rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

This proposed revision would result in an approximate 254,070 acre (102,820 ha) reduction in the critical habitat acreage that was designated in the May 24, 1996, final rule (61 FR 26256). No critical habitat will be added under this proposed revision, and the reductions occur exclusively on Federal lands. Accordingly, we do not believe that it will have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.), we make the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both Federal

intergovernmental mandates'' and Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)-(7). Federal intergovernmental mandate'' includes a regulation that would impose an enforceable duty upon State, local, or [T]ribal governments'' with two exceptions. It excludes a condition of Federal assistance.'' It also excludes a duty arising from participation in a voluntary Federal program,'' unless the regulation relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would increase the stringency of conditions of assistance'' or place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. Federal private sector mandate'' includes a regulation that would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding

duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) This proposed revision would result in an approximate 254,070 ac (102,820 ha) reduction in the critical habitat acreage that was designated in the May 24, 1996, final rule (61 FR 26256). All of these acres are on Federal lands. Accordingly, we do not believe that it will significantly or uniquely affect small governments because small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. This proposed revision would remove a portion of the designated critical habitat, removing the need to consult on effects to critical habitat for those removed areas. Therefore, a Small Government Agency Plan is not required.

Takings

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of this revised designation of critical habitat for the marbled murrelet in a takings implications assessment. The takings implications assessment concludes that this revised designation of critical habitat for the marbled murrelet does not pose additional takings implications for lands within or affected by the original 1996 designation.

Federalism

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. We believe that the revised designation of critical habitat for the marbled murrelet will have little incremental impact on State and local governments and their activities, since the removal of 254,070 ac (102,820 ha) of currently designated critical habitat would impose no additional restrictions beyond any that may already be in place.

Civil Justice Reform

In accordance with E.O. 12988 (Civil Justice Reform), this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have issued this proposed critical habitat revision in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the marbled murrelet.

Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA)

It is our position that, outside the jurisdiction of the United States Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA (42 U.S.C. 4321 et seq.) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the Federal Register on October 25, 1983 (48 FR 49244). This assertion was upheld by the United States Court of Appeals for the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the ADDRESSES section. To better help us revise the rule, your comments should be as specific as possible.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, *Government-to-Government Relations with Native American Tribal Governments* (59 FR 22951), E.O. 13175 and the Department of the Interior's manual at 512 DM 2 we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (*American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act*), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes.

This proposed revision would result in an approximate 254,070 ac (102,820 ha) reduction in the critical habitat acreage that was designated in the May 24, 1996, final rule (61 FR 26256). None of the areas proposed for removal are on tribal lands.

Energy Supply, Distribution, or Use

On May 18, 2001, the President issued an Executive Order (E.O. 13211; *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*) on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when

undertaking certain actions. We do not expect this proposed rule to significantly affect energy supplies, distribution, or use, since it would involve removing approximately 254,070 ac (102,820 ha) of critical habitat from the existing critical habitat designation. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited in this rulemaking is available online at <http://www.fws.gov/westwafwo/> or upon request from the Field Supervisor, Western Washington Fish and Wildlife Office (see FOR FURTHER INFORMATION CONTACT).

Author(s)

The primary author(s) of this package are staff from the Pacific Region Ecological Services Offices.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

<Q P="03" />

Proposed Regulation Promulgation

<REGTEXT TITLE=" 17" PART=" 17">

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17 [AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority:

16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Public Law 99-625, 100 Stat. 3500; unless otherwise noted.

2. In 17.11(h), revise the entry for Murrelet, marbled under BIRDS in the List of Endangered and Threatened Wildlife to read as follows: 17.11 Endangered and threatened wildlife.

<STARS />

(h) * * *

<GPOTABLE COLS="8" OPTS="L2,i1" CDEF="xls30,r30,r30,r30,r30,r30,r30,r30">

Species

Common name

Scientific name

Historic range

Vertebrate population where endangered or threatened

Status

When listed

Critical habitat

Special rules

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(B.C.)<ENT O="xl">U.S.A. (CA, OR, WA)<ENT O="xl"> T<ENT O="xl"> 479<ENT O="xl">  
17.95 (b)  
NA
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3. In 17.95(b), amend the entry for Marbled Murrelet'' as follows:
 - a. Revise the heading to read as set forth below;
 - b. Revise paragraph 3 to read as set forth below;
 - c. Remove the index map for Oregon (General configuration of final critical habitat in Oregon) and replace it with the map titled Critical Habitat for the Marbled Murrelet (Brachyramphus marmoratus) in Oregon, as set forth below;
 - d. Remove the index map for California (General configuration of final critical habitat in California) and replace it with the index map titled Critical Habitat for the Marbled Murrelet (Brachyramphus marmoratus) in California, as set forth below;
 - e. Remove the critical habitat description and map for Unit OR03c and add in its place a new map for Unit OR03c as set forth below;
 - f. Remove the critical habitat description and map for Unit OR04e and add in its place a new map for Unit OR04e as set forth below;

- g. Remove the critical habitat description and map for Unit OR04f and add in its place a new map for Unit OR04f as set forth below;
- h. Remove the critical habitat description and map for Unit OR04g and add in its place a new map for Unit OR04g as set forth below;
- i. Remove the critical habitat description and map for Unit OR04i and add in its place a new map for Unit OR04i as set forth below;
- j. Remove the critical habitat description and map for Unit OR04j and add in its place a new map for Unit OR04j as set forth below;
- k. Remove the critical habitat description and map for Unit OR06d and add in its place a new map for Unit OR06d as set forth below;
- l. Remove the critical habitat description and map for Unit OR07d and add in its place a new map for Unit OR07d as set forth below;
- m. Remove the critical habitat description and map for Unit OR07f and add in its place a new map for Unit OR07f as set forth below;
- n. Remove the critical habitat description and map for Unit CA01d and add in its place a new map for Unit CA01d as set forth below;
- o. Remove the critical habitat description and map for Unit CA01e and add in its place a new map for Unit CA01e as set forth below;
- p. Remove the critical habitat description and map for Unit CA10a;
- q. Remove the critical habitat description and map for Unit CA11b and add in its place a new map for Unit CA11b as set forth below;
- r. Remove the critical habitat description and map for Unit CA11c; and
- s. Remove the critical habitat description and map for Unit CA11d.

17.95

Critical habitat fish and wildlife.

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(b) Birds.

<STARS />

Marbled Murrelet (*Brachyramphus marmoratus*)

<STARS />

3. A description of the critical habitat units follows. Where a critical habitat unit includes Federal lands within the boundaries of a Late Successional Reserve (LSR) established by the Northwest Forest Plan, the areas included within the LSR boundaries as they existed on May 24, 1996, remain designated as critical habitat. Critical habitat units do not include non-federal lands covered by a legally operative incidental take permit for marbled murrelets issued under section 10(a) of the Act.

<STARS />

[Insert Index Map Critical Habitat for the Marbled Murrelet (*Brachyramphus*

marmoratus) in Oregon]

[Insert Index Map Critical Habitat for the Marbled Murrelet (Brachyramphus marmoratus) in California]

Unit OR03c: Benton County, Oregon. From USGS 1:24,000 scale quadrangle: Airlie South.

[Insert Map Unit OR-03-c]
<STARS />

Unit OR04e: Douglas County, Oregon. From USGS 1:24,000 scale quadrangles: Callahan and Tyee.

[Insert Map OR-04-e]

Unit OR-04-f: Douglas County, Oregon. From USGS 1:24,000 scale quadrangles: Garden Valley, Kellogg, Putnam Valley, Tyee, Tyee Mountain, Yellow Butte and Yoncalla.

[Insert Map OR-04-f]

Unit OR-04-g: Douglas County, Oregon. From USGS 1:24,000 scale quadrangle: Putnam Valley.

[Insert Map OR-04-g]

Unit OR-04-i: Douglas and Lane Counties, Oregon. From USGS 1:24,000 scale quadrangles: Beaver Creek, Crow, Drain, High Point, Letz Creek, Noti, Putnam Valley and Veneta.

[Insert Map OR-04-i]

Unit OR-04-j: Douglas and Lane Counties, Oregon. From USGS 1:24,000 scale quadrangles:

[Insert Map OR-04-j]
<STARS />

Unit OR-06-d: Coos and Douglas Counties, Oregon. From USGS 1:24,000 scale quadrangles: Camas Valley, Mt Gurney, Reston and Tenmile.

[Insert Map OR-06-d]
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Unit OR-07-d: Curry and Josephine Counties, Oregon. From USGS 1:24,000 scale quadrangles: Biscuit Hill, Buckskin Peak, High Plateau Mountain, O'Brien and Shelly Creek Ridge.

[Insert Map OR-07-d]

Unit OR-07-f: Curry and Josephine Counties, Oregon. From USGS 1:24,000 scale quadrangles: Brandy Peak, Kelsey Peak, Marial and Silver Peak.

[Insert Map OR-07-f]
<STARS />

Unit CA-01-d: Siskiyou County, California. From USGS 1:24,000 scale quadrangles: Prescott Mountain, Bear Peak, Clear Creek, Chimney Rock, Dillon Mountain.

[Insert Map CA-01-d]

Unit CA-01-e: Del Norte County, California. From USGS 1:24,000 scale quadrangles: Takilma, Broken Rib Mountain, Polar Bear Mountain

[Insert Map CA-01-e]

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Unit CA-11-b: Humboldt County, California. From USGS 1:24,000 scale quadrangles: Hennessy Peak, Sims Mountain.

[Insert Map CA-11-b]

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<Q P="04" />

Dated: July 22, 2008

Lyle Laverty

Assistant Secretary for Fish and Wildlife and Parks.

<Q P="04" />

[FR Doc. 08?????? Filed ???08; 8:45 am]BILLING CODE 4310-55-S

</PRORULE>

[FR Doc. 2008-17343 Filed 07/30/2008 at 8:45 am; Publication Date: 07/31/2008]