

assessment, security test and evaluation, and disaster recovery/continuity of operations plan. The Contractor shall comply with the accepted accreditation documentation.

(e) *Annual verification.* On an annual basis, the Contractor shall submit verification to the Contracting Officer that the IT Security Plan remains valid.

(f) *Warning notices.* The Contractor shall ensure that the following banners are displayed on all DOS systems (both public and private) operated by the Contractor prior to allowing anyone access to the system:

Government Warning

**\*\*WARNING\*\*WARNING\*\*WARNING\*\***

Unauthorized access is a violation of U.S. law and Department of State policy, and may result in criminal or administrative penalties. Users shall not access other user's or system files without proper authority. Absence of access controls IS NOT authorization for access! DOS information systems and related equipment are intended for communication, transmission, processing and storage of U.S. Government information. These systems and equipment are subject to monitoring by law enforcement and authorized Department officials. Monitoring may result in the acquisition, recording, and analysis of all data being communicated, transmitted, processed or stored in this system by law enforcement and authorized Department officials. Use of this system constitutes consent to such monitoring.

**\*\*WARNING\*\*WARNING\*\*WARNING\*\***

(g) *Privacy Act notification.* The Contractor shall ensure that the following banner is displayed on all DOS systems that contain Privacy Act information operated by the Contractor prior to allowing anyone access to the system:

This system contains information protected under the provisions of the Privacy Act of 1974 (Pub. L. 93-579). Any privacy information displayed on the screen or printed shall be protected from unauthorized disclosure. Employees who violate privacy safeguards may be subject to disciplinary actions, a fine of up to \$5,000, or both.

(h) *Privileged or limited privileged access.* Contractor personnel requiring privileged access or limited privileged access to systems operated by the Contractor for DOS or interconnected to a DOS network shall adhere to the specific contract security requirements contained within this contract and/or the Contract Security Classification Specification (DD Form 254).

(i) *Training.* The Contractor shall ensure that its employees performing under this contract receive annual IT security training in accordance with OMB circular A-130, FISMA, and NIST requirements, as they may be amended from time to time during the term of this contract, with a specific emphasis on rules of behavior.

(j) *Government access.* The Contractor shall afford the Government access to the Contractor's and subcontractor's facilities, installations, operations, documentation, databases and personnel used in performance of the contract. Access shall be provided to the extent required to carry out a program of IT inspection (to include vulnerability

testing), investigation and audit to safeguard against threats and hazards to the integrity, availability and confidentiality of DOS data or to the function of information technology systems operated on behalf of DOS, and to preserve evidence of computer crime.

(k) *Subcontracts.* The Contractor shall incorporate the substance of this clause in all subcontracts that meet the conditions in paragraph (a) of this clause.

(l) *Notification regarding employees.* The Contractor shall immediately notify the Contracting Officer when an employee either begins or terminates employment when that employee has access to DOS information systems or data.

(m) *Termination.* Failure on the part of the Contractor to comply with the terms of this clause may result in termination of this contract.

(End of clause)

Dated: June 13, 2007.

**Corey M. Rindner,**

*Procurement Executive, Department of State.*  
[FR Doc. 07-3116 Filed 6-25-07; 8:45 am]

**BILLING CODE 4710-24-M**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

**RIN 1018-AU91**

#### **Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Marbled Murrelet (*Brachyramphus marmoratus*)**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; reopening of comment period, notice of availability of draft economic analysis, and amended required determinations.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on the proposed designation of critical habitat for the marbled murrelet (*Brachyramphus marmoratus*) under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of the draft economic analysis for the proposed critical habitat designation and amended required determinations for the proposal. The draft economic analysis estimates the post-designation impacts associated with marbled murrelet conservation efforts in areas proposed for final critical habitat designation to range from \$69.4 million to \$1.42 billion at present value over a 20-year period in undiscounted dollars, \$38.1 million to \$535 million (\$2.22 million to \$16.8 million annualized) assuming a 3 percent discount rate, or \$24.2 million

to \$251 million (\$2.18 million to \$12 million annualized) assuming a 7 percent discount rate. We are reopening the comment period to allow all interested parties the opportunity to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted on the proposed rule need not be resubmitted as they are already part of the public record and will be fully considered in preparation of the final rule.

**DATES:** We will accept public comments until July 26, 2007.

**ADDRESSES:** If you wish to comment, you may submit your comments and materials by any one of several methods:

1. Submit written comments and information by mail or hand deliver to Ken Berg, Field Supervisor, U.S. Fish and Wildlife Service, Western Washington Fish and Wildlife Office, 510 Desmond Drive, SE., Suite 101, Lacey, WA 98503-1273.

2. Send comments by electronic mail (e-mail) to [MurreletCH@fws.gov](mailto:MurreletCH@fws.gov). Please see the Public Comments Solicited section below for information about electronic filing.

3. Fax your comments to 360-753-9405.

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

**FOR FURTHER INFORMATION CONTACT:** Ken Berg, Field Supervisor, Western Washington Fish and Wildlife Office, at the address listed in the **ADDRESSES** section (telephone 360-753-9440; facsimile 360-753-9405).

#### **SUPPLEMENTARY INFORMATION:**

##### **Public Comments Solicited**

We will accept written comments and information during this reopened comment period. We solicit comments on the original proposed critical habitat designation published in the **Federal Register** on September 12, 2006 (71 FR 53838), and on our draft economic analysis of the proposed designation. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why habitat should or should not be designated as critical habitat under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether the benefit of designation would outweigh threats to the species caused by designation such that the designation of critical habitat is prudent;

(2) Specific information on the amount and distribution of marbled murrelet habitat, what areas should be

included in the designations that were occupied at the time of listing that contain features essential to the conservation of the species and why, and what areas that were not occupied at the time of listing that are essential to the conservation of the species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities, and the benefits of including or excluding areas that exhibit these impacts;

(5) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments;

(6) The extent to which the description of economic impacts in the draft economic analysis is complete and accurate;

(7) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the draft economic analysis, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation;

(8) Whether the benefits of exclusion in any particular area outweigh the benefits of inclusion under section 4(b)(2) of the Act; and

(9) Economic data on the incremental effects that would result from designating any particular area as critical habitat.

If you wish to submit comments electronically, please include "Attn: RIN 1018-AU91" in the e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your message, contact us directly by calling our Western Washington Fish and Wildlife Office at 360-753-9440. Please note that the e-mail address *MurreletCH@fws.gov* will be closed at the termination of the public comment period.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment

to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours at the Western Washington Fish and Wildlife Office (see **ADDRESSES** section). Copies of the proposed critical habitat rule for the marbled murrelet and the draft economic analysis are available on the Internet at <http://www.fws.gov/westwafwo/> or by request to the Field Supervisor (see **FOR FURTHER INFORMATION CONTACT** section).

### Background

On September 12, 2006, we published a proposed rule to revise critical habitat for the marbled murrelet in Washington, Oregon, and California (71 FR 53838). For a description of Federal actions concerning the marbled murrelet that occurred prior to our September 12, 2006, proposed rule, please refer to that proposed rule and the original final critical habitat rule for the marbled murrelet (61 FR 26256; May 24, 1996).

Critical habitat is defined in section 3 of the Act as 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 essential to the conservation of the species and that may require special management considerations or protection, and 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. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act.

### Draft Economic Analysis

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. Based on the September 12, 2006, proposed rule to revise critical habitat for the

marbled murrelet (71 FR 53838), we have prepared a draft economic analysis of the proposed critical habitat designation.

The draft economic analysis is intended to quantify the economic impacts of all potential conservation efforts for the marbled murrelet; some of these costs will likely be incurred regardless of whether critical habitat is designated. The analysis quantifies economic impacts of murrelet conservation efforts associated with the following land uses: (1) Timber management, (2) development, (3) recreation, (4) other land use activities including transportation and mining, and (5) administrative costs associated with Endangered Species Act section 7 consultations.

The draft economic analysis estimates the post-designation impacts associated with murrelet conservation efforts in areas proposed for final critical habitat designation to range from \$69.4 million to \$1.42 billion at present value over a 20-year period in undiscounted dollars, \$38.1 million to \$535 million (\$2.22 million to \$16.8 million annualized) assuming a 3 percent discount rate, or \$24.2 million to \$251 million (\$2.18 million to \$12 million annualized) assuming a 7 percent discount rate.

The draft economic analysis considers the potential economic effects of actions relating to the conservation of the marbled murrelet, including costs associated with sections 4, 7, and 10 of the Act, and including those attributable to the designation of critical habitat. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for the marbled murrelet in areas containing features essential to the conservation of the species. The draft analysis considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the "opportunity costs" associated with the commitment of resources to comply with habitat protection measures (such as lost economic opportunities associated with restrictions on land use).

This analysis also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on small entities and the energy industry. This information can be used by decision-makers to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, this draft analysis looks retrospectively at costs that have been

incurred since the date the marbled murrelet was listed as threatened (57 FR 45328; October 1, 1992), and considers those costs that may occur in the 20 years following a designation of critical habitat.

As stated earlier, we solicit data and comments from the public on this draft economic analysis, as well as on all aspects of the proposal. We may revise the proposal or its supporting documents to incorporate or address new information received during the comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

#### **Required Determinations—Amended**

In our September 12, 2006, proposed rule (71 FR 53838), we indicated that we would be deferring our determination of compliance with several statutes and Executive Orders until information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders was available in the draft economic analysis. Those data are now available for our use in making these determinations. In this notice we are affirming the information contained in the proposed rule concerning Executive Order (E.O.) 13132; E.O. 12988; the Paperwork Reduction Act; and the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951). Based on the information made available to us in the draft economic analysis, we are amending our Required Determinations, as provided below, concerning E.O. 12866 and the Regulatory Flexibility Act, E.O. 13211, E.O. 12630, and the Unfunded Mandates Reform Act.

#### **Regulatory Planning and Review**

In accordance with E.O. 12866, this document is a significant rule because it may raise novel legal and policy issues. However, on the basis of our draft economic analysis, we do not anticipate that the designation of critical habitat for the marbled murrelet would have an annual effect on the economy of \$100 million or more or affect the economy in a material way. Due to the timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed the proposed rule or accompanying draft economic analysis.

Further, E.O. 12866 directs Federal agencies promulgating regulations to evaluate regulatory alternatives (Office

of Management and Budget, Circular A-4, September 17, 2003). Pursuant to Circular A-4, once it has been determined that the Federal regulatory action is appropriate, and then the agency will need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement pursuant to the Act, we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts pursuant to section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat providing that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or combination thereof, in our designation constitutes our regulatory alternative analysis.

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

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, whenever an agency is required to 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 effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. In our proposed rule, we withheld our determination of whether this designation would result in a significant effect as defined under SBREFA until we completed our draft economic analysis of the proposed designation so that we would have the factual basis for our determination.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and

mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for the marbled murrelet would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (e.g., timber management activities). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies; non-Federal activities are not affected by the designation. If this proposed critical habitat designation is made final, Federal agencies must consult with us under section 7 of the Act if their activities may affect designated critical habitat.

In our draft economic analysis of the proposed critical habitat designation, we evaluated the potential economic effects on small entities resulting from the protection of the marbled murrelet and its habitat related to the listing of the species and the proposed designation of its critical habitat. Small timber management interests were identified as entities that could be affected by the proposed rule. Impacts described in Section 4 and Appendix B of the draft economic analysis are predominantly decreased land values associated with precluding timber harvest in areas proposed for final critical habitat for the marbled murrelet. These impacts would be expected to be born by the current landowners at the time of final critical habitat designation. The potentially affected timber acres are

few relative to the total timberland area in the counties containing areas proposed for critical habitat. As a result, regional businesses that support or are supported by the timber companies (e.g., sawmills and logging operations) are not expected to be measurably affected by murrelet conservation. Please refer to our draft economic analysis of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

*Executive Order 13211—Energy Supply, Distribution, and Use*

On May 18, 2001, the President issued E.O. 13211 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. This proposed designation of critical habitat for the marbled murrelet is considered a significant regulatory action under E.O. 12866 due to its potential raising of novel legal and policy issues. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute “a significant adverse effect” when compared without the regulatory action under consideration. The draft economic analysis finds that none of these criteria are relevant to this analysis. Thus, based on the information in the draft economic analysis, energy-related impacts associated with the marbled murrelet conservation activities within proposed critical habitat are not expected. As such, the proposed designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use, and a Statement of Energy Effects is not required.

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

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), 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 Tribal 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; Aid to Families with Dependent Children 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 of the Act. 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. However, 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 large Federal entitlement programs on to State governments.

(b) We do not believe that the proposed designation will significantly or uniquely affect small governments, because it will not produce a Federal mandate of \$100 million or greater in any year; that is, it is not a “significant regulatory action” under the Unfunded Mandates Reform Act. The proposed designation of critical habitat imposes no obligations on State or local governments. As such, a Small Government Agency Plan is not required.

*Executive Order 12630—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 proposing critical habitat for the marbled murrelet. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that require Federal funding or permits to go forward. In conclusion, the designation of critical habitat for the marbled murrelet does not pose significant takings implications.

**Authors**

The authors of this notice are the staff of the Division of Endangered Species, Pacific Region, U.S. Fish and Wildlife Service.

**Authority**

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

Dated: June 12, 2007.

**David M. Verhey,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 07–3134 Filed 6–21–07; 4:37 pm]

**BILLING CODE 4310–55–P**