

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17****RIN 1018-AC33****Endangered and Threatened Wildlife and Plants; Notice of Availability of Regulatory Flexibility Analysis for the Designation of Critical Habitat for the Marbled Murrelet****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule; document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces availability of a Regulatory Flexibility Analysis examining the effects on small entities of the designation of critical habitat for the marbled murrelet. This is the Regulatory Flexibility Analysis for the final rule published on May 24, 1996 (61 FR 26251).

ADDRESSES: Requests for copies of the Regulatory Flexibility Analysis should be directed to the State Supervisor, U.S. Fish and Wildlife Service, 2600 S.E. 98th Avenue, Suite 100, Portland, OR 97266.

FOR FURTHER INFORMATION CONTACT: Russell D. Peterson, Oregon State Supervisor, at the above address, telephone (503) 231-6179.

SUPPLEMENTARY INFORMATION:**Background**

On January 27, 1994, the Service published a proposed rule for the designation of critical habitat for the marbled murrelet (59 FR 3811). The Service significantly amended its proposed critical habitat designation and published a supplemental proposed rule on August 10, 1995 (60 FR 40892). Based on the Service's interpretation of Public Law 104-6 as prohibiting the expenditure of funds for making a final determination of critical habitat, the record was closed and the comments archived at the end of the public comment period. On February 29, 1996, a Federal Judge ordered the Service to complete the final designation by May 15, 1996. The final rule was published on May 24, 1996 (61 FR 26251).

Section 3(5) of the Endangered Species Act defines critical habitat as those specific areas which contain physical or biological features essential to the conservation of the species and which may require special management considerations or protection (16 U.S.C. 1532(5)). Designations of critical habitat are made upon the basis of the "best scientific data available" after taking into account the economic and other relevant impacts of specifying any area as critical habitat (16 U.S.C. 1533(b)(2)). The final critical habitat for the marbled murrelet identified 32 critical habitat

units encompassing approximately 1,582,600 hectares (3,907,660 acres) of Federal and non-Federal lands.

When the final rule was published, the Department of the Interior found that timely compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) was impracticable in light of the emergency situation resulting from the court order. Completion of a Regulatory Flexibility Analysis was deferred. The analysis has now been completed, and it concludes that the designation of critical habitat for the marbled murrelet will not have a significant impact on a substantial number of small entities. There is a limited effect on small entities from critical habitat designation on Federal lands or the issuance of Federal permits, and there is only a minor effect on regional timber supply from the application of Washington State Forest Practices tied to Federal critical habitat designation.

Authority

Authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) and the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Dated: November 20, 1996.

Rowan W. Gould,

Acting Director, Fish and Wildlife Service.
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