DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AC33

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Marbled Murrelet

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Supplemental proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service originally proposed to designate critical habitat for the marbled murrelet (*Brachyramphus marmoratus marmoratus*) in Washington, Oregon, and California on January 27, 1994 (59 FR 3811). Based on comments received on the original proposal and additional information, the Service has amended the proposed designation of critical habitat for the marbled murrelet, listed as a threatened species under the Endangered Species Act (Act).

The marbled murrelet is a small seabird of the Alcidae family that forages in the near-shore marine environment and nests in large trees in coniferous forest along the coast. Located primarily on Federal land, and to a lesser extent on State, county, city, and private lands, this amended critical habitat proposal would provide additional protection requirements under section 7 of the Act with regard to activities that are funded, authorized, or carried out by a Federal agency. Section 4 of the Act requires the Service to designate critical habitat for listed species on the basis of the best scientific information available and to consider the economic and other relevant impacts of including particular areas in the designation.

DATES: Comments from all interested parties must be received by October 10, 1995. The Service will hold five public hearings on this proposal. The dates and locations for the hearings are included in the Public Comments Solicited section, under the **SUPPLEMENTARY INFORMATION** caption.

ADDRESSES: Comments and materials concerning this proposal should be sent to the State Supervisor, U.S. Fish and Wildlife Service, Oregon State Office, 2600 SE 98th Avenue, Suite 100, Portland, Oregon, 97266. The complete file for this proposal is available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Russell Peterson, State Supervisor, U.S. Fish and Wildlife Service, see ADDRESSES section or telephone 503– 231–6179 or FAX 503–231–6195.

SUPPLEMENTARY INFORMATION:

Background

Previous Federal Actions

On January 15, 1988, the U.S. Fish and Wildlife Service (Service) received a petition to list the North American subspecies of the marbled murrelet (Brachyramphus marmoratus marmoratus) in Washington, Oregon, and California as a threatened species under the Endangered Species Act. On October 17, 1988, the Service published a finding that the petition had presented substantial information to indicate that the requested action may be warranted (53 FR 40479). Because of the increased research effort and new information available, the status review period was reopened, with the concurrence of the petitioners, from March 5, 1990, through May 31, 1990 (55 FR 4913).

On June 20, 1991, the Service published a proposal to list the marbled murrelet in Washington, Oregon, and California as a threatened species (56 FR 28362). The comment period was reopened for 30 days on January 30, 1992, to gather the most updated information about the species (57 FR 3804). Following an order by the U.S. District Court for the Western District of Washington denying a 6-month extension, the Service published the final rule listing the marbled murrelet in Washington, Oregon, and California as a threatened species (57 FR 45328, Oct. 1, 1992). In February 1993, the Service appointed a Recovery Team to develop a recovery plan for the marbled murrelet.

On November 2, 1993, the U.S. District Court for the Western District of Washington granted a motion by the plaintiffs in *Marbled Murrelet* v. *Babbitt* to compel a proposed designation of critical habitat. In the ruling, the court ordered the Secretary of the Interior to propose designating critical habitat for the marbled murrelet no later than January 21, 1994, and to make a final designation of critical habitat as soon as reasonably possible under applicable law.

On January 27, 1994, the Service published a proposed rule for the designation of critical habitat for the marbled murrelet (59 FR 3811). Public comment was due by April 27, 1994. On March 14, 1994, the Service received a request for a public hearing. To allow additional comment, the public comment period was reopened for 30 days on May 9, 1994. The public hearing was conducted on May 24, 1994, in North Bend, Oregon. Based on comments received from the Recovery Team, other comments, and additional information, the Service has significantly amended its proposed critical habitat designation. Therefore, the Service is requesting public comment on all aspects of this amended proposal, including the draft economic analysis. The draft Recovery Plan for the marbled murrelet (USFWS 1995) is being released for public comment simultaneously with this proposal.

Ecological Considerations

The marbled murrelet is a small seabird of the Alcidae family. The North American subspecies ranges from the Aleutian Archipelago in Alaska, eastward 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 central California. Some wintering birds are found in southern California. A separate subspecies (Brachyramphus marmoratus perdix) occurs in Asia. Though recent genetic analysis indicates that the North American subspecies may warrant full specific status (Friesen et al. 1994), a status change has not yet been recognized.

Marbled murrelets spend most of their lives in the marine environment where they feed primarily on small fish and invertebrates in near-shore marine waters. They forage by pursuit diving in waters generally up to 80 meters (260 feet) deep and 0.3 to 2 kilometers (0.2 to 1.2 miles) off-shore. Pairs are often seen diving simultaneously, which researchers suggest may increase foraging efficiency (Strachan et al. 1995). Courtship behaviors have been observed at sea although copulation rarely has been witnessed. Marbled murrelets also aggregate, loaf, preen, and exhibit wing-stretching behaviors on the water.

Marbled murrelets nest inland, typically in large-diameter old-growth trees in low-elevation forests with multi-layered canopies (Hamer and Nelson 1995b). Marbled murrelets have been found occasionally on rivers and inland lakes (Carter and Sealy 1986; Strachan *et al.* 1995).

Marbled murrelets appear to be solitary in their nesting habits but are frequently detected in groups in the forest (USFWS 1995). Two nests discovered in Washington during 1990 were located within 46 meters (150 feet) of each other (Hamer and Cummins 1990), and two nests discovered in Oregon during 1994 were located within 33 meters (100 feet) of each other (K.