Washington and the Tribes instituted area closures in a number of areas with high densities of marbled murrelets to reduce the potential for entanglement. In addition, efforts are underway to evaluate modified gillnets designed to reduce seabird entanglement, as well as research to evaluate the fisheries/ murrelet overlap and factors that affect entanglement. Educational programs that provide material to fisherman on marbled murrelet identification and distribution have been implemented. Through section 7 consultation, observer programs were required in 1993 and 1994 to evaluate and quantify the extent of marbled murrelet mortality in purse seine and gillnet salmon fisheries (U.S. Fish and Wildlife Service 1995a, 1995b, 1995c).

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as—"(i) the specific areas within the geographical area occupied by the species, at the time it is listed * * * on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed * upon determination * * * that such areas are essential for the conservation of the species." 16 U.S.C. 1532(5)(A). The term "conservation," as defined in section 3(3) of the Act, means "* * * to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this (Act) are no longer necessary * * *'' 16 U.S.C. 1532(3).

Role in Species Conservation

The use of the term "conservation" in the definition of critical habitat indicates that its designation should include habitat crucial to a species' eventual recovery and delisting. However, when critical habitat is designated at the time a species is listed or before a recovery plan is completed, the Service frequently does not know all of the habitat areas that are essential for a species' recovery. Thus, the Act provides that critical habitat designations may be revised from time to time (16 U.S.C. 1533 (a)(3)(B)).

The designation of critical habitat is one of several measures available to contribute to the conservation of a listed species. Critical habitat helps focus conservation activities by identifying areas that contain essential habitat features (primary constituent elements), thus alerting the public to the importance of an area in the species' conservation. Critical habitat also identifies areas that may require special management or protection. The identification of these areas may be helpful in planning land use activities and highlighting critical areas for consideration in developing habitat conservation plans for section 10 incidental take permit applications. The added emphasis on these areas for conservation of the species may shorten the time needed to achieve recovery.

Critical habitat receives consideration under section 7 of the Act with regard to actions carried out, authorized, or funded by a Federal agency. As such, designation may affect non-Federal lands only where such a Federal nexus exists. Federal agencies must insure that their actions do not result in destruction or adverse modification of critical habitat. Aside from this added consideration under section 7. the Act does not provide any additional protection to lands designated as critical habitat. Designating critical habitat does not create a management plan for the areas; does not establish numerical population goals or prescribe specific management actions (inside or outside of critical habitat); and does not have a direct effect on areas not designated as critical habitat. Specific management recommendations for critical habitat are addressed in recovery plans, management plans, and in section 7 consultation.

Primary Constituent Elements

A designation of critical habitat begins by identifying areas where the physical and biological features essential to conservation of a species are found. In determining which areas to designate as critical habitat, the Service considers those physical and biological features that are essential to a species' conservation and that may require special management considerations or protection. Such physical and biological features, as stated in 50 CFR 424.12, include, but are not limited to, the following:

(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, rearing of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The Service is required to base critical habitat designations on the best scientific data available (50 CFR 424.12). In proposing to designate critical habitat for the marbled murrelet in Washington, Oregon, and California, the Service has reviewed its overall approach to the conservation of the species. For a thorough discussion of the ecology and life history of this subspecies, see the Service's Biological Report (Marshall 1988), the final listing rule published in the Federal Register on October 1, 1992 (57 FR 45328), The Status and Conservation of the Marbled Murrelet in North America (Carter and Morrison 1992), the draft Recovery Plan (USFWS 1995), the Ecology and Conservation of the Marbled Murrelet (Ralph et al. 1995a), and the Ecological Considerations section of this proposed rule.

The Service has determined that the physical and biological habitat features (referred to as the primary constituent elements) associated with the terrestrial environment that support nesting, roosting, and other normal behaviors are essential to the conservation of the marbled murrelet and require special management considerations.

Within areas essential for marbled murrelet nesting, the Service has focused on the following primary constituent elements: (1) individual trees with potential nesting platforms, (2) forested areas surrounding and contiguous to potential nest trees with canopy height of at least one-half the site-potential tree height, (3) forested areas of at least one-half the sitepotential tree height regardless of the presence of potential nest platforms. These primary constituent elements are essential to provide and support suitable nesting habitat for successful reproduction of the marbled murrelet.

Individual nest trees include large trees, generally more than 81 centimeters (32 inches) dbh with the presence of potential nest platforms or deformities such as large or forked limbs, broken tops, dwarf mistletoe infections, witches brooms, or other formations providing platforms of sufficient size to support adult murrelets. Because marbled murrelets do not build nests, moss or detritus may be important to cushion or hold the egg. Platforms should have overhead cover for protection from predators and weather, which may be provided by overhanging branches, limbs above the nest area, or branches from neighboring trees. Based on current information from Washington, Oregon, and California, nests have been found in Douglas-fir, coastal redwood, western hemlock,