species were included in this critical habitat proposal.

Marbled murrelets have been observed using flight paths such as river corridors on flights inland, however, marbled murrelets have also been observed flying over ridges, cities, and agricultural areas to access inland areas (T. Hamer pers. comm. 1995). The use of flight corridors has not been shown to be essential for access to inland forested habitat.

Stand and individual tree attribute information (e.g., nest limb height; nest stand canopy height and closure; and size) was unavailable for use in proposing the boundaries of murrelet critical habitat. However, these attributes were considered in the evaluation of the primary constituent elements of murrelet critical habitat.

Issue 8: Several commenters recommended the inclusion of specific management requirements for designated critical habitat.

Service Response: A designation of critical habitat does not establish a management plan and does not impose any specific management requirements on the area designated. Critical habitat is an inventory of habitat and areas that contain the biological features essential to the conservation of the species. Management requirements for critical habitat are addressed through recovery and land management planning processes.

Issue 9: One commenter recommended keeping the public comment period open until the Service had all the information needed to propose critical habitat. Another commenter recommended waiting until the Recovery Plan was complete to designate critical habitat.

Service Response: The Act requires the Service to designate critical habitat to the maximum extent prudent and determinable, at the time of listing. If critical habitat is not determinable at the time a species is listed, the Act allows the Service up to one additional year to designate critical habitat to the maximum extent prudent. The Act and implementing regulations require the Service to employ the best available information in the designation of critical habitat, but a designation must comply with the statutory time frames.

The Act does not impose deadlines for completing recovery plans and does not provide the authority for the Service to delay designation of critical habitat while waiting for a completed recovery plan.

Issue 10: One commenter suggested that the prohibitions of take of listed species under section 9 of the Act protected occupied murrelet sites and

therefore the Service did not need to designate critical habitat.

Service Response: Section 9 of the Act prohibits the take of a listed species. The term "take" is defined in the Act as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct" (16 U.S.C. 1532(19)). A designation of critical habitat and the resulting consultation process for Federal actions under section 7 of the Act address impacts to a species which may not involve take.

Issue 11: One commenter indicated that state laws were sufficient to protect marbled murrelets and therefore critical habitat did not need to be designated.

Service Response: Current state regulations have not prevented habitat loss for the marbled murrelet. Habitat loss is considered to be one of the primary factors that has contributed to the need to list the murrelet in Washington, Oregon, and California.

Issue 12: Several commenters provided information about issues related to the listing of the species (e.g., new population numbers, whether the listed population is distinct, whether listing was premature due to lack of information, and whether the listed population is at the natural edge of the species' range).

Service Response: A proposal to designate critical habitat does not include a review of the listing determination. Comments relevant only to the listing decision were not incorporated in this proposal. Information that was pertinent to critical habitat and the biological information used in the development of the proposal were reviewed and incorporated as appropriate.

Issue 13: Several commenters indicated that an Environmental Impact Statement should be written for a designation of critical habitat.

Service Response: The Service has determined that rules issued pursuant to section 4(a) of the Endangered Species Act do not require preparation of an environmental impact statement under the National Environmental Policy Act. The Service's determination has been upheld by the 9th Circuit Court of Appeals in a decision concerning the critical habitat designation for the northern spotted owl.

Issue 14: Several commenters indicated that designation of non-Federal lands as critical habitat would result in the "taking" of private property.

Service Response: A critical habitat designation affects only actions authorized, funded, or carried out by Federal agencies. It would not result in a taking of private property.

Issue 15: Several commenters expressed concern about the ability to access private lands that lie adjacent to or are surrounded by critical habitat.

Service Response: If murrelet critical habitat is designated, issues concerning access across Federal lands could be resolved through the consultation process under section 7 of the Act.

## **National Environmental Policy Act**

The Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in conjunction with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

## **Required Determinations**

The proposed rule has been reviewed by the Office of Management and Budget under Executive Order 12866. The Department of the Interior has determined that the proposed designation of critical habitat for the marbled murrelet would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Based on the information discussed in this proposed rule concerning public projects and private activities within critical habitat units, it is not clear whether significant economic impacts would result from the proposed critical habitat designation. Also, no direct costs, enforcement costs, information collection, or recordkeeping requirements would be imposed on small entities by this proposed designation. Further, the proposed rule contains no recordkeeping requirements as defined by the Paperwork Reduction Act of 1980. Finally, the Department has assessed the effects of this rulemaking action on State, local, and Tribal governments, and the private sector pursuant to Title II of the Unfunded Mandates Reform Act of 1995. The Department has determined that this action does not compel the expenditure of \$100 million or more by any State, local or Tribal government, or any individual in the private sector. Therefore, a statement under section 202 of the Unfunded Mandates Reform Act is not required.