

<< Electronic Public Inspection

Fr. Doc. E8-4318

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R1-ES-2008-0033; 92210-1117-0000-B4]

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; finding that the revision of critical habitat should not be made.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), find that the proposed revision of critical habitat for the marbled murrelet (*Brachyramphus marmoratus*) pursuant to the Endangered Species Act of 1973, as amended, (Act), should not be made. On September 12, 2006, (71 FR 53840), we proposed to revise the May 24, 1996, designation of critical habitat for the marbled murrelet in Washington, Oregon, and California (61 FR 26256). Under the proposed revision, 3,590,642 acres (ac) (1,363,300 hectares (ha)) were proposed as critical habitat, with 3,368,950 ac (1,363,300 ha) of these lands proposed for exclusion under section 4(b)(2) of the Act. Due to uncertainties regarding Bureau of Land Management (BLM) revisions to its District Resource Management Plans in western Oregon, we have determined that it is not appropriate to revise the designation of critical habitat for the marbled murrelet at this time, as discussed below. Therefore, in accordance with the provisions of section 4(b)(6)(A)(i)(II) of the Act, we find that the proposed revision of critical habitat for the marbled murrelet should not be made. Accordingly, the May 24, 1996, final rule designating critical habitat for the marbled murrelet remains in effect (61 FR 26256).

FOR FURTHER INFORMATION CONTACT: Ken Berg, Field Supervisor, Western Washington Field Office, 510 Desmond Drive SE., Suite 101, Lacey, WA 98503-1273, telephone (360)753-9440.

SUPPLEMENTARY INFORMATION: The marbled murrelet is a small seabird of the Alcidae family. The marbled murrelet's breeding range extends from Bristol Bay, Alaska, south to the Aleutian Archipelago, northeast 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 northern Monterey Bay in central California. Birds winter throughout the breeding range and also occur in small numbers off southern California. Marbled murrelets spend most of their lives in the marine environment where they forage in near-shore areas and consume a

diversity of prey species including small fish and invertebrates. In their terrestrial environment, the presence of platforms used for nesting is the most important characteristic of the species nesting habitat. Marbled murrelet habitat use is positively associated with the presence and abundance of mature and old-growth forests, large core areas of old-growth, low amounts of edge and fragmentation, proximity to the marine environment, and increasing forest age and height.

The marbled murrelet was listed as threatened under the Act on October 1, 1992, (57 FR 45328), and critical habitat was designated on May 24, 1996 (61 FR 26256). On September 12, 2006, we proposed to revise the currently designated critical habitat for the marbled murrelet in Washington, Oregon, and California. In that proposed revision, we proposed to designate 3,590,642 acres (ac) (1,363,300 hectares (ha)) as critical habitat, and to exclude 3,368,950 ac (1,363,300 ha) of these lands under section 4(b)(2) of the Act from the final designation (71 FR 53838). On June 26, 2007, we published a notice in the Federal Register reopening the comment period and announcing the availability of a draft economic analysis on the proposed revision (72 FR 35025). The comment period was once again reopened with the publication of a notice in the Federal Register on September 5, 2007, (72 FR 50929).

Finding

This notice presents our finding pursuant to section 4(b)(6)(A)(i)(II) of the Act that a final regulation to implement the proposed revision to murrelet critical habitat should not be made at this time. The basis for this finding is described below.

Background

The Bureau of Land Management (BLM) is currently completing its Western Oregon Plan Revision (WOPR), which will result in revised Resource Management Plans for the Salem, Eugene, Coos Bay, Roseburg, and Medford Districts, and the Klamath Falls Resource Area of the Lakeview District Office. We are continuing to work cooperatively with the BLM as they develop their final management plan revisions. We recognize that the revised management plans will have significant effects on future conservation of the species. Due to uncertainties regarding these plan revisions in western Oregon, we have determined that it is not appropriate to revise the designation of critical habitat for the marbled murrelet at this time. We will continue to consider whether revisions of critical habitat for the marbled murrelet may be appropriate at some future point. Accordingly, the May 24, 1996, final rule designating critical habitat for the marbled murrelet remains in effect (61 FR 26256).

On April 8, 2002, the American Forest Resource Council (AFRC) filed a lawsuit in the case of AFRC et al. v. Secretary of the Interior, Civ. No. 02-06087 AA (D. OR) challenging the marbled murrelet critical habitat designation that was made on May 24, 1996 (61 FR 26256). The Service entered into a settlement agreement to review the critical habitat designation and make any revisions it deemed appropriate, after a revised consideration of economic and any other relevant impacts of designation. Pursuant to the settlement agreement, the Service published a proposed revision to critical habitat for the marbled murrelet on September 12, 2006 (71 FR 53838), which included minor adjustments to the original designation and proposed several

exclusions under section 4(b)(2) of the Act. The Service also developed an economic analysis that was consistent with *New Mexico Cattle Growers Association v. USFWS*, 248 F.3d 1277 (10th Cir. 2001), but because of the reasons discussed above, the Service will not be relying on this analysis to finalize critical habitat at this time. The above actions and the publication of this Federal Register notice complete the Service's obligations under the settlement agreement.

In summary, due to the uncertainty regarding the effects of current BLM Resource Management Plan revisions, we find that it is not appropriate to revise critical habitat at this time, and therefore that the proposed revision of critical habitat for the marbled murrelet should not be made. Accordingly, the May 24, 1996, final rule designating critical habitat for the marbled murrelet remains in effect (61 FR 26256).

Author(s)

The authors of this document are the staff of the Pacific Regional Office, U.S. Fish and Wildlife Service.

Authority

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

Dated: February 27, 2008.

Lyle Laverty,

Assistant Secretary for Fish and Wildlife and Parks.

6

[FR Doc. E8-4318 Filed 3-5-08; 8:45 am]

BILLING CODE 4310-55-P

<< Electronic Public Inspection