DEPARTMENT OF FORESTRY MARBLED MURRELET—RULE PROCESS

Marbled Murrelet, Thomas Hamer

Summary

- **History of statute and rules relating to Specified Resource Sites**

- **Summary of rule analysis process**

- **Department Review of the Petition for Rulemaking**

- **Summary of existing murrelet data**

- **Next Steps**

History

- **1987--HB 3396 passed**
  - **Statutes 527.710 established to implement HB3396**
- **1990--BOF passed Administrative Rules 629-680**
  - **to establish procedures for implementation of 527.710**
  - **Includes criteria and process for fish and wildlife protection rules**

History

Rule Analysis Process

- **Statutes 527.710**
  - **Authority to develop rules**

- **Division 680 Rules**
  - **Process for development of rules under ORS 527.710**

- **Division 665 Rules**
  - **Specified Resource Site rules**
  - **Protection requirements for wildlife**

Rule Analysis Process

- **Division 680 Rules**

  - **Describe required reviews to be conducted, information to be considered for possible protections**

  - **629-680-0100 describes process specific to T&E Species**

Division 680 Rules

- **Technical Report on the species is required**
- **Required content of Technical Report**
  - **1) Identify the resource site (RS)**
  - **2) Identify forest practices that conflict with RS**
  - **3) Evaluate biological consequences of conflicts**
  - **4) Propose protection requirements**

Division 680 Rules

- **Other steps in process**
  - **External review of Technical Report**
  - **Department to develop a report to the Board**
  - **Board of Forestry review**
    - **Technical Report**
    - **External Review**
    - **Department Report**
  - **BOF to accept or reject materials**
    - **If accept, commence development of rules/ protection measures**

Rule Analysis Process

- **Other Considerations**
  - **ORS 527.714 analysis**
    - **Analysis to be conducted prior to rule development**

  - **ORS 195.305 (Measure 49)**
    - **May require compensation or waiving of rules**
    - **Additional analysis needed to know if applicable**

  - **Consultation with other agencies**

Rule Analysis Process

- **Summary**
  - **Multiple statutes and rules involved**
  - **Rule development process for wildlife species**
    - **Multiple steps**
    - **Needs to be a stepwise and deliberate process**

Murrelet Rule Analysis Process

- **First step is the Technical Report**

- **Department review of petition**
  - **Does the petition have the required information to also serve as the Technical Report?**

Review of Petition for Rulemaking

- **Content of Petition**
  - **Biology and Ecology**
  - **Population Status**
  - **Potential Conflicts of Forest Practices**
  - **Inadequacies of Current Regulatory Regimes**

  - **Overall focus of petition is on protection of habitat**

Review of Petition for Rulemaking

- **Petition evaluated to determine if criteria for a technical report met**

    - 1) Identify the resource site (RS)
    - 2) Identify forest practices that conflict with RS
    - 3) Evaluate biological consequences of conflicts
    - 4) Propose protection requirements

Review of Petition for Rulemaking

- 1) Identify the resource site (RS)

Review of Petition for Rulemaking

- **1) Identify the resource site (RS)**

  - Not adequately identified
  - Habitat discussed, but the RS to be protected not clearly identified
  - Focus of discussion is on potential habitat

Review of Petition for Rulemaking

- **2) Identify forest practices that conflict with RS**
  - Partially addressed
  - Logging/ forest operations and loss of habitat discussed
  - RS not identified, so conflicts not tied to RS
  - Full discussion of forest practices and conflicts not included

Review of Petition for Rulemaking

- **3) Evaluate biological consequences of conflicts**
  - **Partially addressed**
  - **Biological consequences for loss of murrelet habitat and forest fragmentation are discussed**
  - **Some consequences not discussed in petition (e.g., disturbance)**
  - **RS not identified, so conflicts & consequences not tied to RS**

Review of Petition for Rulemaking

- **4) Propose protection requirements**
  - Proposed rule language included in petition
  - Much of what is included in the rule language is outside of the current authority of the BOF and the Department

Review of Petition for Rulemaking

- **Petition contains information on habitat and effects of forestry**

- **Does not specifically address required Technical Report components**

- **Key gaps in information**

- **Departments opinion that the petition cannot be used as the Technical Report**

- **Information in the petition can be used to inform development of a Technical Report**

Establishing an Inventory

- **November 2016 meeting**
  - **Board directed the Department to begin work to establish an inventory of marbled murrelet resource sites**

Summary of existing data

- **Cannot establish an official inventory until the BOF identifies the Resource Site**

- **ODF has a current dataset of murrelet sites**
  - **Most is from State Forest Program**
  - **Most is occupied detections—some nest trees**

Summary of existing data

Landownership Class	Number of Sites	Percentage of Sites
Public—Federal	48	6
Public—State	712	89
Public—city, county, etc.	5	< 1
Private	32	4
Total	797	

Additional T&E Species

- **ORS 527.710 (3)(a)(A)**

- **Compiled list of fish and wildlife species that are state or federally listed and that occur in Oregon's forests.**

- **Review and prioritize at future Board meeting under the Specified Resource Sites Policy Review topic**

Next Steps

- **Department to develop Technical Report**
  - –**Information in petition will be included**
  - –**Input will be sought during development**

- **Department will return in April with a detailed checklist for the murrelet process**

- **Prioritization of T&E species will be discussed during the Specified Resource Sites Policy Review topic scheduled for a future Board meeting**

03/10/2017

Recommendation

- **Recommend the Board direct the Department to develop a technical report on marbled murrelets**

- **Develop at checklist for the murrelet process**