

Agenda Item No.:	8
Work Plan:	Private Forests Work Plan
Topic:	Forest Practices Act (FPA) Rule Policy Review
Presentation Title:	Rule Process Relating to Marbled Murrelet Sites
Date of Presentation:	April 25, 2018
Contact Information:	Lena Tucker, Division Chief, Private Forests Division 503-945-7482, Lena.L.Tucker@oregon.gov Jennifer Weikel, Wildlife Biologist, Private Forests Division 503-945-7398, Jennifer.weikel@oregon.gov

SUMMARY

The Board of Forestry (Board) will receive an update on work relating to the rule analysis process for marbled murrelets. The update includes a summary of a draft technical report on the marbled murrelet, as well as a summary of the anticipated next steps for this project.

CONTEXT

The Board’s 2011 Forestry Program for Oregon strives to conserve diverse native plant and animal populations and protect and improve their habitats in Oregon's forests (Goal E). The Board’s *2011 Forestry Program for Oregon* supports an effective, science-based, and adaptive FPA as a cornerstone of forest protection on private lands in Oregon. The Board also promotes a variety of non-regulatory tools, such as landowner recognition, incentives, easements, exchanges, and technical assistance, to help implement the forest-related elements of the Oregon Conservation Strategy (Objective E-4).

BACKGROUND

In June 2016, the Board received a Petition to Initiate Rulemaking under specified resource site rules for the marbled murrelet. In November 2016, the Board directed the Department to initiate a rule analysis for marbled murrelets and as one of the initial steps for this project, to develop a technical report on marbled murrelets (Oregon Administrative Rule (OAR) 629-680-0100).

ANALYSIS

The Department has prepared a draft technical report on marbled murrelets (Attachment 1). Input was requested and received during the development of the technical report from agency experts on murrelets Oregon Department of Fish and Wildlife (ODFW) and United States Fish and Wildlife Service (USFWS), from department staff, and from stakeholders and tribal governments. Input received is available upon request.

The marbled murrelet is a seabird that spends most of its life at sea, but nests primarily in trees in Oregon. While most nesting is limited to old growth conifer forests, they are also known to nest in residual old trees within younger stands and in younger hemlock-dominated stands heavily infested with mistletoe in NW Oregon. Nests are located on a suitable platform, usually on a large, mossy, horizontal tree branch in the mid to upper portion of the tree (about 100 feet above the ground on average).

Marbled murrelets have narrow habitat requirements and are secretive in nature when inland. They primarily visit their nest sites at dawn and dusk when they are less likely to be detected by potential predators. They are difficult to detect and nests are extremely difficult to find. Because of this, there are still key gaps in our knowledge of habitat use by this species, especially birds in Oregon.

The relationship between marbled murrelet nest site selection, nest success, and landscape characteristics is complicated and available information does not allow us to determine any consistent relationships. There is little information available in Oregon. Research across the entire range of the species has found various patterns for how landscape pattern (i.e., amount and fragmentation of suitable habitat) impacts murrelets. There is some evidence that murrelets may tend to locate nests near forest edges (natural and human-created), but that in some situations they experience lower rates of nest success near edges, especially human-created “hard” edges.

Oregon population surveys indicate the population trend is likely stable. Results for the state-wide population trends for Oregon indicate an increase of +1.7% per year (95% CI from -0.3% to +3.7%) between 2000 and 2015. The data indicates an upward trend in Oregon, however because the confidence interval overlaps zero and this trend was not statistically significant (P=0.088) there is uncertainty about the actual trend.

Criteria required under OAR 629-680-0100 (1) (a) are addressed in the draft technical report.

1) Identification of the resource site

Unlike existing birds with rules under the FPA that are highly visible or that have established methods to locate nests, marbled murrelet nests are extremely challenging to locate and there is no efficient and effective method to locate nests. Additional work and subsequent decisions by the Board will be needed to define the resource site for marbled murrelets. Thus, the technical report includes information for a range of possible options for the definition of a resource site. In addition to actual nest sites, another option is to include locations of occupied detections as a proxy for nest sites and resource sites. A third possible option is presence of suitable habitat as a resource site. In this context, the habitat would be presumed occupied by the species until additional work is conducted to determine the area is not actually suitable nesting habitat (e.g., trees with suitable nesting platforms are not present) or not occupied by murrelets (i.e., as determined through surveys).

2) Identify forest practices that conflict with resource sites

3) Identify the biological consequences of those conflicts

Because marbled murrelets nest in forested environments, conflicts between forest practices and marbled murrelets are likely to occur. Most conflicts will occur from forest harvesting with conflicts likely due to loss of nests during logging or due to disturbance to nesting birds. Potential biological risks or consequences may range from loss of adults, eggs, or chicks due to felling of active nest trees to increased risks to nesting birds from

increased exposure to the elements or increased risk of depredation of nests by predators. Disturbance of normal nesting activities from operations occurring in close proximity to nesting birds may result in loss of productivity due to adults or chicks flushing from the nest or failed feeding attempts (which can negatively impact survival of chicks).

4) Identify protection measures

Protection strategies for marbled murrelets may vary greatly depending on the Board's decision regarding definition of a resource site. A range of possible general protection strategies for this species are discussed in this technical report including prescriptive and programmatic approaches. Prescriptive approaches would describe best management practices to protect sites and could be codified as regulatory or non-regulatory. Programmatic approaches include use of Safe Harbor Agreements and Stewardship Agreements to encourage voluntary protection and development of suitable habitat for marbled murrelets.

Future policy work is needed to inform the Board's decision making process for this rule analysis. Subsequent to the development of the Division 680 rules, other changes in forest policy have occurred that will need to be considered. These include, creation of the Oregon Revised Statute (ORS) 527.714 statute which set requirements for review prior to development of new rules under the Forest Practices Act and Measure 49 which allows for waivers or requires compensation for new rules that result in an economic impact to private landowners.

As per OAR 629-680-0100 (1) (b), this technical report must undergo a formal expert review. Feedback from the expert review will be summarized and included in a subsequent report that will be delivered to the Board. The department anticipates that participation in the expert review may include representation from academia, forest industry, conservation, tribal and government entities.

RECOMMENDATION

The Department recommends the Board direct staff to initiate the expert review of the technical report.

NEXT STEPS

The Department will initiate an expert review of the technical report. The primary steps for this project were presented to the Board in April 2017 and are noted in Attachment 2. Results of the expert review will be summarized and presented to the Board at a later meeting. Following the presentation of the expert review results to the Board, the technical report will be revised, or an amendment to the technical report will be created. The final technical report will then be presented to the Board at a later meeting.

ATTACHMENTS

1. Draft Technical Report on Marbled Murrelets.
2. Updated checklist of next steps for the marbled murrelet rule analysis project