

Agenda Item No.:	4
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:	November 8, 2018
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SUMMARY

This update on work relating to the rule analysis process for marbled murrelets includes a summary of a draft technical report on the marbled murrelet, as well as a summary of comments received during the expert review of the draft technical report.

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). The draft technical report (attachment 2) was developed and given to the Board in April, 2018. At that meeting, the Board directed the Department to conduct a review of the draft technical report by experts.

ANALYSIS

At the April 2018 meeting, the Department’s presentation was cut short due to time constraints. Thus, this agenda item will include both a summary of the content of the draft technical report (originally planned for April) along with a summary of the comments received during the expert review.

The marbled murrelet spends most of its life at sea, but nests in trees. While most nesting occurs in mature and 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 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 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.

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

1) Identification of the resource site

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. 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. Most conflicts will occur from forest harvesting 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 of depredation of nests by predators. Disturbance of normal nesting activities from forest practices 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 the draft 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 sets requirements for review prior to development of rules that would result in new or increased standards 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), the technical report must undergo a formal expert review. The department selected six reviewers from a range of backgrounds & perspectives including two from research (one government/academic and one private-industry), and one each from private forestlands, conservation organizations, tribal and nonfederal public lands. A project charter was developed to describe the background of the project, the expectation and timeline for the expert review, and set sideboards for comments to be considered in-scope or out-of-scope (appendix 2 in attachment 1).

No major topic areas were identified as missing from the draft technical report. Reviewers recommended 33 citations be added to the draft technical report: two for newly published documents and six for publications already used but recommended to be cited in additional report areas. Reviewers recommended added content to the draft technical report, however much of it was related to topics already included in the report, was information presented during earlier reports to the Board, or was determined to be out of scope (as per the project charter). Reviewers identified multiple topics where they determined scientific information was misinterpreted or additional clarity is needed. Lastly some reviewers provided comments on the scientific merit of the policy options identified in the technical report. The Department's report on the expert review summarizes the comments received and also identifies areas where conflicting input was given between reviewers (Attachment 1). The Department's response to comments are included in the summary report for most topic areas. Reviewer comments are included in Attachment 4.

The reviewers provided a range of comments and input on the technical report. The range of comments as well as conflicting comments on the same topic reflects uncertainty in the science regarding this species as well as differing interpretations of the information that is available.

RECOMMENDATION

This is an informational item only.

NEXT STEPS

The final technical report will be developed using input received during the expert review. The final technical report, along with any other pertinent information, will be presented to the Board at a later meeting, anticipated for spring 2019. At that time the Board shall review and accept or reject the information presented (as directed in OAR 629-680-0100)(c)).

ATTACHMENTS

1. Summary of Input Received During the Expert Review of the Draft Marbled Murrelet Technical Report
2. Marbled Murrelet Technical Report Draft
3. Marbled Murrelet Rule Analysis, Expert Review of Draft Technical Report: Project Charter
4. Expert Review of the Draft Marbled Murrelet Technical Report Comments
5. Marbled Murrelet Board of Forestry Rule Analysis Project Updated Checklist