

potential interference issues with full-power stations.

B. Legal Basis

The authority for this *Second Further Notice* is contained in sections 1, 2, 4(i), 303, 403 and 405 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 303, and 403.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally defines the term "small entity" as encompassing the terms "small business," "small organization," and "small governmental entity." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

LPFM Radio Stations. The proposed rules and policies potentially will apply to all low power FM radio broadcasting licensees and potential licensees. The SBA defines a radio broadcasting station that has \$6.5 million or less in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational, and other radio stations. Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included. As of the date of release of this *Second Further Notice*, the Commission's records indicate that more than 1,286 LPFM construction permits have been granted. Of those permits, approximately 809 stations are on the air, serving mostly mid-sized and smaller markets. It is not known how many entities ultimately may seek to obtain low power radio licenses. Nor do we know how many of these entities will be small entities. We expect, however, that due to the small size of low power FM stations, small entities would generally have a greater interest than large ones in acquiring them.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

None.

E. Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

In this *Second Further Notice*, the Commission (1) recommends that Congress remove the requirement that LPFM stations protect full-service stations operating on third-adjacent channels; (2) seeks comment on whether to modify the LPFM technical rules to codify the second-adjacent channel waiver and displacement policies adopted in the *Third Report and Order*; (3) tentatively concludes that when implementation of a full-service station facility proposal would impact an LPFM station, the full-service station would be required to provide the LPFM station notice of its application filing, provide technical assistance in identifying alternative channels, and reimbursement for any resulting LPFM facility modifications; (4) tentatively concludes that the LPFM technical rules should be modified to permit the licensing of LPFM stations by using a contour, as opposed to a distance separation, methodology in order to expand LPFM station licensing opportunities, and (5) tentatively concludes that the Commission should retain as an alternate licensing scheme the current LPFM distance separation rule in the event that a contour rule is adopted.

In light of changed circumstances since the Commission last considered the issue of protection rights for LPFM stations from subsequently authorized full-service stations, the Commission found it necessary to consider these rule changes to avoid the potential loss of LPFM stations. The Commission considered maintaining the status quo, but rejected this idea because it would create an inappropriate burden on LPFM stations by allowing the issue of interference caused by encroaching full-service stations to go unresolved. By contrast, the *Second Further Notice* proposes a codified approach to

resolving interference issues with encroaching full-service stations, which will, in turn, allow more LPFM stations to remain on-the-air.

LPFM service has created and will continue to create significant opportunities for new small businesses by allowing small businesses to develop LPFM service in their communities. In addition, the Commission generally has taken steps to minimize the impact on existing small broadcasters. To the extent that the *Second Further Notice* imposes any burdens on small entities, these burdens are only incidental to the benefits conferred by the creation of a set of rules that would allow LPFM stations to resolve potential interference and/or displacement conflicts with encroaching full-service FM stations by making the requisite showings under the proposed rules.

F. Federal Rules Which Duplicate, Overlap, or Conflict With the Commission's Proposals

None.

List of Subjects in 47 CFR Part 73

Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8-4456 Filed 3-5-08; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R1-ES-2007-0006; 92210-1117-0000-B4]

RIN 1018-AU93

Endangered and Threatened Wildlife and Plants; Revised Proposed Designation of Critical Habitat for 12 Species of Picture-Wing Flies From the Hawaiian Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of public comment period, and notice of public hearings.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period and the scheduling of public hearings on the revised proposed rule to designate critical habitat for 12 species of Hawaiian picture-wing flies (*Drosophila aglaia*, *D. differens*, *D. hemipeza*, *D. heteroneura*, *D.*

montgomeryi, *D. mulli*, *D. musaphilia*, *D. neoclavisetae*, *D. obatai*, *D. ochrobasis*, *D. substenoptera*, and *D. tarphytrichia*) on the islands of Hawaii, Kauai, Maui, Molokai, and Oahu, under the Endangered Species Act of 1973, as amended (Act). The reopened comment period will provide the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties with an additional opportunity to submit written comments on the revised proposed rule. Comments previously submitted need not be resubmitted as they have already been incorporated into the public record and will be fully considered in any final decisions.

DATES: Written Comments: We will accept comments and information until April 25, 2008, or at the public hearings. Any comments received after the closing date may not be considered in the final decision on the designation of critical habitat.

Public Hearings: Two public hearings will be held, one on the island of Hawaii on April 8, 2008, from 7 p.m. to 8:30 p.m.; and one on Oahu on April 10, 2008, from 7 p.m. to 8:30 p.m. An informal informational session will precede each hearing from 5 p.m. to 6:30 p.m.

ADDRESSES: Written Comments: You may submit comments and materials concerning the revised proposed rule by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: RIN 1018-AU93; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222, Arlington, VA 22203.

We will not accept e-mail or faxes. We will accept written comments at the public hearing. We will post all comments on <http://www.regulations.gov>.

This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

Public Hearings: Two public hearings will be held, one on the island of Hawaii at Hilo Hawaiian Hotel, Mala Ikena Room, 71 Banyan Drive, Hilo, HI 96720; and one on the island of Oahu at Queen Kapiolani Hotel, Queen's Room, 2nd Floor, 150 Kapahulu Avenue, Honolulu, HI 96815.

FOR FURTHER INFORMATION CONTACT: Patrick Leonard, Field Supervisor, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Blvd., Room 3-122, Honolulu, HI 96850; telephone 808-

792-9400; facsimile 808-792-9581. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this revised proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions on this revised proposed rule from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties. We particularly seek comments concerning:

(1) The reasons why we should or should not designate habitat as "critical habitat" under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether the benefit of designation is outweighed by the threats to each species caused by their respective designations such that the designation of critical habitat is not prudent;

(2) Specific information on:

- The physical and biological features that are essential to the conservation of the 12 Hawaiian picture-wing flies and why;
- The amount and distribution of *Drosophila aglaia*, *D. differens*, *D. hemipeza*, *D. heteroneura*, *D. montgomeryi*, *D. mulli*, *D. musaphilia*, *D. neoclavisetae*, *D. obatai*, *D. ochrobasis*, *D. substenoptera*, and *D. tarphytrichia* habitat;
- What areas occupied at the time of listing and that contain the features essential for the conservation of each of the species we should include in their respective designations and why;
- What areas not occupied at the time of listing are essential to the conservation of each of the species and why;

(3) Land use designations and current or planned activities in the areas being proposed as critical habitat and their possible impacts on proposed critical habitat for each species;

(4) Any foreseeable economic, national security, or other potential impacts resulting from the revised proposed designation and, in particular, any impacts on small entities, and the benefits of including or excluding areas that exhibit these impacts;

(5) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments;

(6) Information on management plans and partnerships, including: (a) The

benefits provided by a management plan; (b) how the plan addresses the physical and biological features in the absence of designated critical habitat; (c) the specific conservation benefits to the 12 Hawaiian picture-wing flies; (d) the certainty of implementation of the management plans; and (e) the benefits of excluding from the critical habitat designation the areas covered by the management plan. We are particularly interested in knowing how partnerships may be positively or negatively affected by a designation, or through exclusion from critical habitat, and costs associated with the designation; and

(7) Our proposed exemption of 78 acres (ac) (31 hectares (ha)) of lands currently managed under the U.S. Army's Oahu Integrated Natural Resources Management Plan (INRMP), and whether this INRMP provides a benefit to the species and, therefore, exempts these lands from designation.

You may submit your comments and materials concerning the revised proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section. We will accept written comments at the public hearings. We will not accept anonymous comments; your comment must include your first and last name, city, State, country, and postal (zip) code. Finally, we will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** section.

We will post your entire comment—including your personal identifying information—on <http://www.regulations.gov>. If you provide personal identifying information in addition to the required items specified in the previous paragraph, such as your street address, phone number, or e-mail address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the revised proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Comments and information submitted during the initial comment period on the revised proposed rule need not be resubmitted as they will be incorporated

into the public record as part of that comment period and will be fully considered in preparation of the final rule.

Background

On November 28, 2007, we published a revised proposed rule in the **Federal Register** (72 FR 67428) to designate critical habitat for 12 Hawaiian picture-wing flies. Several of the critical habitat units overlap, and the revised proposed designation totals 9,238 ac (3,738 ha) within 32 occupied units on the islands of Hawaii, Kauai, Maui, Molokai, and Oahu. Of these lands, we are exempting 78 ac (31 ha) of land from the proposed critical habitat revision under section 4(a)(3)(B)(i) of the Act that are covered by the U.S. Army Garrison Hawaii Oahu Training Areas Natural Resource Management (Final Report, August 2000) and the Oahu Integrated Natural Resource Management Plan 2002–2006 (Army 2000) which has been determined to provide a benefit for the species.

An economic analysis identifying estimated impacts associated with the revised proposed critical habitat designation for the 12 Hawaiian picture-wing flies is being developed. When this analysis is completed, we will provide a separate notice informing the public of its availability and the opportunity for public comment.

Critical habitat is defined in section 3(5)(A) of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time of listing in accordance with the Act, on which are found those physical or biological features:

(a) Essential to the conservation of the species and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time of listing if the Secretary determines that those areas are essential for the conservation of the species.

For each species, if the revised proposed critical habitat designation is finalized, section 7(a)(2) of the Act would require that Federal agencies ensure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of the species or result in the destruction or adverse modification of critical habitat.

Section 4(b)(2) of the Act requires that we designate or revise critical habitat on the basis of the best scientific and commercial data available, after taking into consideration economic, national

security, and any other relevant impacts of specifying any particular area as critical habitat.

Public Hearings

Section 4(b)(5)(E) of the Act requires a public hearing be held if any person requests it within 45 days of the publication of a proposed rule. In response to requests from the public, the Service will conduct two public hearings for this critical habitat proposal on the dates and at the addresses and times identified in the **DATES** and **ADDRESSES** sections above.

Persons wishing to make an oral statement for the record are encouraged to provide a written copy of their statement and present it to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration. There are no limits on the length of written comments submitted to us. If you have any questions concerning the public hearing, please contact the Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Persons needing reasonable accommodations in order to attend and participate in the public hearings should contact Mike Richardson, Pacific Islands Fish and Wildlife Office, at 808–792–9400 as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the hearing date. Information regarding this notice is available in alternative formats upon request.

Author

The author of this document is the staff of the Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

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

Dated: February 22, 2008.

Lyle Laverty,

Assistant Secretary for Fish and Wildlife and Parks.

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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