

manner provided in 28 U.S.C. 1781–1784.

(f) *Service.* (1) The party requesting issuance of a subpoena shall arrange for service.

(2) A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law.

(3) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Board as a sufficient ground for striking the testimony of the witness and the evidence the witness has produced.

(g) *Contumacy or refusal to obey a subpoena.* In case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a U.S. District Court, the Board will apply to the Court through the Attorney General of the United States for an order requiring the person to appear before the Board or a member thereof to give testimony or produce evidence or both. Any failure of any such person to obey the order of the Court may be punished by the Court as a contempt thereof.

§ 955.36 Effective Dates and Applicability.

These revised rules govern proceedings in all cases docketed by the Board on or after a date determined by the Board.

Stanley F. Mires,

Chief Counsel, Legislative.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R1–ES–2008–0079; 92210–1117–0000]

RIN 1018–AW18

Endangered and Threatened Wildlife and Plants; Revised Critical Habitat for the Marbled Murrelet

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period for submitting comments on our July 31, 2008 proposed revised designation of critical habitat for the marbled murrelet (*Brachyramphus marmoratus*) under the Endangered Species Act of 1973, as amended (Act). The reopened comment period will provide all interested parties with an additional opportunity to submit written comments on the proposed rule. Comments previously submitted for the proposed revised critical habitat designation need not be resubmitted; they have already been incorporated into the public record and will be fully considered in any final decisions.

DATES: We will accept comments from all interested parties until March 13, 2009. Any comments received after the closing date may not be considered in the final decision on the revised designation of critical habitat.

ADDRESSES: You may submit comments 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: FWS–R1–ES–2008–0079; 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 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).

FOR FURTHER INFORMATION CONTACT: Ken Berg, Field Supervisor, Western Washington Fish and Wildlife Office, 510 Desmond Drive, SE, Suite 102, Lacey, WA 98503–1273, telephone (360) 753–9440, facsimile (360) 753–9008; Paul Henson, Field Supervisor, Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266, telephone (503) 231–6179, facsimile (503) 231–6195; or Michael Long, Field Supervisor, Arcata Fish and Wildlife Office, 1655 Heindon Road, Arcata, CA 95521, telephone (707) 822–7201, facsimile (707) 822–8411. 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

We intend that any final action resulting from the proposed rule will be

as accurate and as effective as possible. Therefore, we request comments or suggestions on the proposed revised designation of critical habitat for the marbled murrelet (*Brachyramphus marmoratus*).

We particularly seek comments concerning:

(1) The reasons why we should or should not revise currently designated critical habitat for the marbled murrelet by removing 254,070 ac (102,820 ha) from the 1996 designation, based on new information that is the best available information indicating that these areas do not meet the definition of critical habitat;

(2) Specific information on the amount and distribution of marbled murrelet habitat;

(3) Any foreseeable economic, national security, or other potential impacts resulting from the proposed critical habitat revision, and in particular, any impacts on small entities;

(4) Our proposal to revise 50 CFR 17.11 to adopt the taxonomic clarification for the marbled murrelet to reflect the change from *Brachyramphus marmoratus* to *Brachyramphus marmoratus*; and

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

You may submit your comments and materials concerning the proposed revised designation of critical habitat for the marbled murrelet 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.

If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, 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. We will post all hardcopy submissions on <http://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed revised designation of critical habitat for the marbled murrelet, 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, Western Washington Fish and

Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

On May 24, 1996, we designated 3,887,800 acres (ac) (1,573,340 hectares (ha)) as critical habitat for the marbled murrelet in Washington, Oregon, and California. On July 31, 2008, we published a proposed rule in the **Federal Register** (73 FR 44678) to revise critical habitat for the marbled murrelet. Under the proposed revised designation of critical habitat, we would remove approximately 254,070 ac (102,820 ha) in northern California and Oregon from the 1996 designation, based on new information indicating that these areas do not meet the definition of critical habitat. This action, if adopted in its entirety, would result in a revised designation of approximately 3,633,800 ac (1,470,550 ha) as critical habitat for the marbled murrelet. In the proposed rule, we also proposed a taxonomic revision of the scientific name of the marbled murrelet from *Brachyramphus marmoratus marmoratus* to *Brachyramphus marmoratus*. We are reopening the comment period to accept peer review comments into the administrative record; however, all interested parties may submit comments and materials on the proposed revised designation of critical habitat for the marbled murrelet. Previously submitted comments for this proposed rule need not be resubmitted. Those comments have been incorporated into the public record and will be fully considered in our final determination.

Author

The primary authors of this document are the staff members of the Division of Endangered Species, Pacific Region, 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 4, 2009.

Jane Lyder,

Assistant Deputy Secretary, Department of the Interior.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R1-ES-2007-0024; 92220-1113-0000-C6]

RIN 1018-AU96

Endangered and Threatened Wildlife and Plants; Removing the Hawaiian Hawk From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of availability of draft post-delisting monitoring plan; reopening of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the draft post-delisting monitoring plan (draft PDM Plan) for the Hawaiian hawk (*Buteo solitarius*) and the reopening of the public comment period for the proposed rule to remove (delist) the Hawaiian hawk from the Federal List of Endangered and Threatened Wildlife. If the proposed rule to delist the Hawaiian hawk is made final, we intend to monitor the hawk, in cooperation with the State of Hawaii and other conservation partners, through island-wide surveys every 5 years for a period of 20 years, from 2012 to 2032. We are soliciting review and comment on this draft PDM plan from local, State, and Federal agencies, and the public. We are also reopening the comment period on the proposed rule to ensure that the public has full access to the draft PDM Plan while commenting on the proposed rule.

DATES: Comments from all interested parties on the Hawaiian hawk draft PDM Plan and proposed rule must be received on or before April 13, 2009.

ADDRESSES: The draft PDM Plan may be downloaded from our Web site at <http://www.fws.gov/pacificislands>. To request a copy of the draft PDM Plan, write to our Pacific Islands Fish and Wildlife Office, U.S. Fish and Wildlife Service, 300 Ala Moana Blvd., Rm. 3-122, Box 50088, Honolulu, Hawaii 96850; or call 808-792-9400, or send an e-mail request to karen_marlowe@fws.gov. Specify whether you want to receive a hardcopy by U.S. mail or an electronic copy by e-mail.

You may submit comments 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-AU96; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

Although you may request a copy of the draft PDM plan via e-mail or fax, we will not accept comments on the draft PDM or the proposed rule via e-mail or fax. 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).

FOR FURTHER INFORMATION CONTACT: Patrick Leonard, Field Supervisor, Pacific Islands Fish and Wildlife Office, P.O. Box 50088, Honolulu, HI 96850; (telephone 808-792-9400). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Background

We published the proposed rule to delist the Hawaiian hawk, due to recovery, on August 6, 2008, with a 60-day comment period that closed on October 6, 2008 (73 FR 45680). Several studies have shown that range-wide population estimates have been stable for at least 20 years and this species is not threatened with becoming endangered throughout all or a significant portion of its range in the foreseeable future.

Section 4(g)(1) of the ESA requires that we implement a system, in cooperation with the States, to effectively monitor, for not less than 5 years, the status of all species that have been recovered and delisted. Additionally, we are to make prompt use of the emergency listing authority under section 4(b)(7) of the ESA if the recovered species is presented with significant risk to its well being. In order to meet the ESA's monitoring requirements, and to facilitate that efficient collection of data, we have designed a draft plan to detect changes in the status of the Hawaiian hawk.

The Hawaiian hawk draft PDM Plan was developed in cooperation with the Hawaii Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW), the National Park Service (NPS), and the U.S. Geological Survey, Biological Resources Discipline (USGS-BRD). Our Pacific Islands Fish and Wildlife Office (PIFWO) will have the lead agency responsibility for this monitoring effort, and will coordinate