

**Authorities**

The authorities of this action are the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*), the implementing Natural Resource Damage Assessment regulations found at 15 CFR Part 990, and the Framework Agreement.

Dated: April 16, 2012.

**Cynthia K. Dohner,**

*DOI Authorized Official.*

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**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service**

[FWS-R1-ES-2012-N081; 10120-1112-0000-F2]

**Draft Environmental Impact Statement and Proposed Amendment of the Washington Department of Natural Resources Habitat Conservation Plan for Forested State Trust Lands**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of intent; announcement of public scoping meetings; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), intend to conduct public scoping under the National Environmental Policy Act (NEPA) to gather information to prepare a Draft Environmental Impact Statement (DEIS) in anticipation of receiving an application for an Incidental Take Permit (ITP) amendment under section 10 of the Endangered Species Act (ESA) from the Washington Department of Natural Resources (WDNR) for their 1997 Habitat Conservation Plan (HCP) for forested State trust lands. The HCP amendment involves the proposed replacement of an interim conservation strategy for the threatened marbled murrelet (*Brachyramphus marmoratus*), which is currently being implemented under the HCP, with a long-term conservation strategy. The proposed amendment to the HCP and the ITP is exclusively limited to consideration of a long-term conservation strategy for the marbled murrelet on HCP-covered lands.

**DATES:** To ensure consideration, please send your written comments by May 21, 2012 (see **ADDRESSES** section).

Four public scoping meetings will be held to discuss the DEIS, and we will accept written comments at these meetings. These meetings will be held on the following dates and at the following locations:

1. April 30, 2012, 6–8 p.m., WDNR, Natural Resource Building, 1st Floor, 1111 Washington Street SE., Olympia, WA 98504.

2. May 3, 2012, 6–8 p.m., WDNR, Northwest Region Office, 919 N. Township Street, Sedro Woolley, WA 98284.

3. May 8, 2012, 6–8 p.m., Wahkikum County Courthouse, Pacific Cascade/River Room, 25 River Street, Cathlamet, WA 98612.

4. May 9, 2012, 6–8 p.m., WDNR, Olympic Region Headquarters, 411 Tillicum Lane, Forks, WA 98331.

**ADDRESSES:** All comments concerning the preparation of the DEIS, proposed HCP amendment, and the NEPA process may be submitted by one of the following methods to WDNR. WDNR will transmit all comments received to the Service for review and consideration:

- *Email:* [sepacenter@dnr.wa.gov](mailto:sepacenter@dnr.wa.gov).
- *U.S. Mail:* SEPA Responsible

Official, Annie Szvetecz, Washington Department of Natural Resources, SEPA Center, P.O. Box 47001, Olympia, WA 98504-7001.

**FOR FURTHER INFORMATION CONTACT:** Mark Ostwald of the Service at (360) 753-9564 (phone);

*Mark\_Ostwald@fws.gov* (email); or by U.S. mail to the U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office, 510 Desmond Dr. SE., Suite 102, Lacey, WA 98503; or, alternatively, contact Annie Szvetecz, SEPA Responsible Official, WDNR, at (360) 902-112 (phone);

*sepacenter@dnr.wa.gov* (email). In addition, information on this proposed action is also available at the WDNR's Web site at [http://www.dnr.wa.gov/ResearchScience/Topics/TrustLandsHCP/Pages/Im\\_hcp\\_marbled\\_murrelet\\_main.aspx](http://www.dnr.wa.gov/ResearchScience/Topics/TrustLandsHCP/Pages/Im_hcp_marbled_murrelet_main.aspx) and the Service's Web site at <http://www.fws.gov/wafwo/index.html>.

**SUPPLEMENTARY INFORMATION:****Meeting Location Accommodation**

Persons needing reasonable accommodations in order to attend and participate in the public scoping meetings should contact Mark Ostwald with the Service or Annie Szvetecz with the WDNR (see **FOR FURTHER INFORMATION CONTACT** above). In order to allow sufficient time to process requests, please call no later than one week before the public meeting. Information regarding this proposed action is available in alternative formats upon request.

**Background**

In 1996, the WDNR released their draft HCP for forest management

activities covering 1.6 million acres of forested State trust lands within the range of the northern spotted owl (*Strix occidentalis caurina*) in Washington. A DEIS (dated March 1996) jointly developed by the Service, National Marine Fisheries Service, and the WDNR was announced in the **Federal Register** on April 5, 1996 (61 FR 15297). The DEIS analyzed reasonable management alternatives, including the HCP. A notice of availability for the Final EIS (FEIS) was published in the **Federal Register** on November 1, 1996 (61 FR 56563). On January 30, 1997, the Service issued an ITP (PRT No. 812521) for the WDNR HCP. The Service's ITP decision and the availability of related decision documents were announced in the **Federal Register** on February 27, 1997 (62 FR 8980).

The WDNR HCP commits WDNR to developing a long-term conservation strategy for the marbled murrelet (HCP IV. 39). However, during development of the HCP, it was determined that there was not enough scientific information to credibly develop a long-term conservation strategy for the marbled murrelet on WDNR lands. For that reason, the WDNR developed an interim conservation strategy for the marbled murrelet (HCP IV. 39), which is currently being implemented. The principal intent of the interim conservation strategy was to locate occupied marbled murrelet sites and not foreclose future options for long-term conservation of the marbled murrelet on WDNR lands. Briefly, the interim marbled murrelet conservation strategy included the following: (1) Suitable habitat blocks are identified, with harvest on these blocks deferred; (2) habitat relationship studies are undertaken to determine the relative importance, based on occupancy, of identified habitat blocks; (3) following completion of the habitat relationship studies, the lowest quality habitat blocks are made available for timber harvest (these areas, in the poorest quality habitats, were expected to contain about 5 percent of the murrelet-occupied sites on HCP-covered lands); (4) the higher quality habitat blocks identified from the habitat relationships study are surveyed for marbled murrelet occupancy, and occupied habitat are protected, along with some unoccupied habitat; and (5) development of a long-term conservation strategy for marbled murrelets is undertaken on WDNR lands.

For southwest Washington and the Olympic Peninsula, the WDNR has completed steps 1 through 4 listed above. For step 5, the WDNR contemplated proposing an amendment

to the WDNR HCP once the long-term conservation strategy for the marbled murrelet was submitted to the Service. An amendment to the HCP (and the ITP) involves both Federal and State action subject to NEPA (42 U.S.C. 4341) and the State Environmental Policy Act (Ch. 43.21C RCW; SEPA), respectively. On September 15, 2006, the Service published a notice in the **Federal Register** (71 FR 54515) announcing our intent to conduct public scoping for the HCP and ITP amendments in anticipation of receiving an application for an ITP amendment from the WDNR. However, a proposed HCP amendment was not submitted by the WDNR at that time.

### Proposed Action

We are now reinitiating the NEPA scoping process with this **Federal Register** notice. The Service and WDNR have determined it is appropriate to prepare the DEIS as joint lead agencies pursuant to our respective authorities under NEPA (40 C.F.R. 1501.5) and SEPA (WAC 197-11-944) and to reinitiate and expand public scoping due to the passage of time since the original scoping notice was issued.

Unlike the HCP amendment described in the September 15, 2006, **Federal Register** notice (71 FR 54515) that involved a proposed long-term conservation strategy for the marbled murrelet in southwest Washington and the Olympic Peninsula, the long-term conservation strategy discussed herein is for all WDNR lands within the range of the marbled murrelet. The WDNR and the Service both conclude that adequate information is currently available that can inform the proposal at the Statewide WDNR scale.

The WDNR's existing ITP authorizes specific levels and types of incidental take of the marbled murrelet. The current ITP was principally structured to meet the needs of the interim conservation strategy for the marbled murrelet, which the WDNR now desires to replace with a long-term strategy. It is possible that the long-term conservation strategy may warrant a revision of the ITP to address additional incidental take of the marbled murrelet not previously authorized. Accordingly, the level of take, general locations of potential incidental take, timing of incidental take, minimization and mitigation strategies, enhancement activities, and research and monitoring plans will be described in the long-term conservation strategy for the marbled murrelet and in the DEIS.

In order for the Service to evaluate WDNR's request for an ITP amendment, the WDNR must submit the proposed

long-term conservation strategy for the marbled murrelet to the Service for analysis. The Service will ultimately determine whether the WDNR HCP, as amended by the long-term conservation strategy for the marbled murrelet, satisfies the ESA section 10 permit issuance criteria and other applicable laws and/or regulations.

In 2008, the WDNR released a technical report entitled *Recommendations and Supporting Analysis of Conservation Opportunities for the Marbled Murrelet Long-Term Conservation Strategy* ([http://www.dnr.wa.gov/Publications/lm\\_mamu\\_sci\\_team\\_report.pdf](http://www.dnr.wa.gov/Publications/lm_mamu_sci_team_report.pdf)) (Report). This Report was developed by an interagency scientific team of marbled murrelet experts and focused on marbled murrelet conservation in southwest Washington and the Olympic Peninsula. The Report: Characterized marbled murrelet ecology and life history, recommended landscape conservation approaches for WDNR lands, described marbled murrelet habitat assessment methods, reported marbled murrelet habitat assessment results, and described adaptive management concepts. The Report provided recommendations and analysis for the WDNR and the Service to consider while the WDNR develops a long-term conservation strategy for the marbled murrelet on the lands it manages.

### Statutory Requirements

Section 9 of the ESA (16 U.S.C. 1538) and implementing regulations prohibit the taking of animal species listed as endangered or threatened. The term "take" is defined under the ESA (16 U.S.C. 1532(19)) to mean "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." "Harm" is defined by the Service to include significant habitat modification or degradation where it actually kills or injures listed species by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering (50 CFR 17.3). "Harass" is defined by the Service as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding or sheltering (50 CFR 17.3).

Section 10 of the ESA and implementing regulations specify requirements for the issuance of ITPs to non-Federal landowners for the incidental take of endangered and threatened species. Such take must be incidental to otherwise lawful activities,

not appreciably reduce the likelihood of the survival and recovery of the species in the wild, and the impacts of the take on the listed species must be minimized and mitigated by the permittee to the maximum extent practicable. An applicant for an ITP must prepare a HCP describing the impacts that will likely result from such taking, the conservation program for minimizing and mitigating those take impacts, the funding available to implement the conservation program, the alternatives considered by the applicant to avoid such taking, and the reason(s) such alternatives are not being implemented.

NEPA requires that Federal agencies conduct an environmental analysis of their proposed actions to determine if the actions may significantly affect the human environment. Under NEPA, a reasonable range of alternatives to a proposed action is developed and considered in the Federal agency's environmental review. Alternatives considered for analysis in an EIS such as the one contemplated herein may include: Variations in the location, amount, and type of conservation; variations in the amount of active forest management; adaptive management and variations in adaptive management; variations in permit duration; or a combination of these elements and others, and no action. In addition, an EIS will identify any potentially significant direct, indirect, and cumulative impacts on biological resources, land use, air quality, water quality, water resources, socioeconomic, and other environmental issues that could occur with the implementation of the proposed action and alternatives. For potentially significant impacts, the EIS may identify avoidance, minimization, or mitigation measures to reduce these impacts, where feasible, to a level below significance.

### Scoping Meetings

See **DATES** above for the dates, times and locations of the public scoping meetings for development of a DEIS for amending the WDNR HCP and ITP. The purpose of the scoping process is to seek the public's views regarding the appropriate range of alternatives that should be analyzed in the DEIS, the need, purpose, and objectives of the proposal, the impacts that should be considered, and existing environmental information relevant to the analysis. The scoping meetings will allocate time for presentations by the Service and the WDNR, followed by informal questions and discussions. To ensure that a full range of issues related to the anticipated amendment are identified, we

encourage written comments from interested parties.

### Public Comments

The primary purpose of the scoping process is for the public to assist the Service and WDNR in developing the DEIS by identifying important issues and alternatives related to WDNR's proposed HCP amendment. To constructively guide the development of the DEIS, the WDNR and Service jointly identified the Need, Purpose, and Objectives of the proposed action to be consistent with those of the current WDNR HCP as follows:

- *Need:* To obtain long-term certainty for timber harvest and other management activities on forested State trust lands and to contribute to long-term conservation for the marbled murrelet, consistent with commitments in the 1997 Habitat Conservation Plan.
- *Purpose:* To develop a long-term habitat conservation strategy for marbled murrelets on forested State trust lands in the six west-side planning units, subject to DNR's fiduciary responsibility to the trust beneficiaries as defined by law and the Service's responsibilities under the ESA.

#### Objectives:

1. **Trust Mandate:** Generate revenue and other benefits for each trust by meeting DNR's trust responsibilities, including: Making trust property productive, preserving the corpus of the trust, exercising reasonable care and skill in managing the trust, acting prudently with respect to trust property, acting with undivided loyalty to trust beneficiaries, and acting impartially with respect to current and future trust beneficiaries.

2. **Marbled Murrelet Habitat:** Provide forest conditions in strategic locations on forested trust lands that minimize and mitigate incidental take of marbled murrelet resulting from DNR's forest management activities. In accomplishing this objective, we expect to make a significant contribution to maintaining and protecting marbled murrelet populations.

3. **Active Management:** Promote active, innovative and sustainable management on the forested trust land base.

4. **Operational Flexibility:** Provide flexibility to respond to new information and site-specific conditions.

5. **Implementation Certainty:** Adopt feasible, practical, and cost-effective actions that are likely to be successful and can be sustained throughout the life of the HCP.

The Service requests that comments be specific. In particular, we request information regarding:

- Baseline environmental conditions in the plan area;
- Need, Purpose, and Objectives identified above;
- Other possible alternatives that meet the Need, Purpose, and Objectives;
- Direct, indirect, and cumulative impacts that implementation of a proposed amendment or other alternatives that are based upon the Need, Purpose, and Objectives could have on marbled murrelets and other species, and their communities and habitats;
- Marbled murrelet ecology;
- Potential adaptive management and/or monitoring provisions;
- Funding issues;
- Other plans or projects that might be relevant to this proposed project;
- Minimization and mitigation concepts;
- Any other information pertinent to evaluating the effects of the proposed action on the human environment.

Comments regarding these issues as they relate to management of WDNR lands for marbled murrelet conservation should be submitted by one of the methods listed in **ADDRESSES**.

The WDNR and the Service intend to develop an initial set of conceptual alternatives to aid in the assessment of the appropriate range of alternatives to be analyzed in the DEIS. The conceptual alternatives are intended to broadly describe different approaches to the long-term conservation strategy for the marbled murrelet on WDNR HCP-covered lands for the purpose of public feedback prior to refinement of alternatives in the DEIS. We intend to provide the public the opportunity to comment on the initial set of conceptual alternatives before completing the selection of the range of alternatives that will be formally presented in the DEIS. We do not expect to publish a notice in the **Federal Register** for this opportunity. To enable the public to comment on conceptual alternatives before the DEIS is published, the Service and the WDNR will announce this opportunity on our respective web sites (see **FOR FURTHER INFORMATION CONTACT**) and in other forms of media, and we will also send notification to people who respond to this scoping notice, attend our public scoping meeting attendees, or requests to be notified.

The DEIS is expected to be completed and available to the public in the winter of 2012. Once the DEIS is prepared, there will be an additional opportunity announced for public comment on all aspects and content of the DEIS through a **Federal Register** notice of availability.

### Public Availability of Comments

All comments and materials we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Comments and materials we receive will be available for public inspection by appointment, during normal business hours, at our office (see **FOR FURTHER INFORMATION CONTACT**).

### Authority

The environmental review of this proposed action will be conducted in accordance with the requirements of NEPA, the Council on Environmental Quality Regulations (40 CFR 1500–1508), other applicable Federal laws and regulations, and policies and procedures of the Service. This notice is being furnished in accordance with 40 CFR 1501.7 of NEPA to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives to be addressed in the DEIS.

Dated: April 2, 2012.

#### Richard Hannan,

*Deputy Regional Director, Pacific Region, U.S. Fish and Wildlife Service, Portland, Oregon.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS-R8-ES-2012-N050; FF08E00000-FXES1112080000F2-123-F2]

#### Proposed Low-Effect Habitat Conservation Plan for the Bay Checkerspot Butterfly and Serpentine Grasslands, City of San Jose, Santa Clara County, CA

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability: request for comment.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, have received an application from Hoa Cam Tieu (applicant) for a 3-year incidental take permit for three species under the Endangered Species Act of 1973, as amended (Act). The application