



This document is scheduled to be published in the Federal Register on 12/09/2016 and available online at <https://federalregister.gov/d/2016-29062>, and on [FDsys.gov](https://FDsys.gov)

**Billing Code 4333–15**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS–R1–ES–2016–N170; FXES1112010000–167–FF01E00000]**

**Draft Environmental Impact Statement; Amendment to the 1997 Washington State Department of Natural Resources Habitat Conservation Plan and Incidental Take Permit for the Long-Term Conservation Strategy for the Marbled Murrelet**

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

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** With the Washington State Department of Natural Resources (WDNR), we, the U.S. Fish and Wildlife Service (Service), have jointly developed a draft environmental impact statement (DEIS) addressing an amendment to the 1997 WDNR Habitat Conservation Plan (HCP) to cover implementation of a long-term conservation strategy (LTCS) for the marbled murrelet. The DEIS also addresses an amendment to the Endangered Species Act (ESA) section 10 incidental take permit (ITP) for the WDNR HCP to cover implementation of the LTCS. The DEIS is intended to satisfy the

requirements of both the National Environmental Policy Act (NEPA) and the Washington State Environmental Policy Act (SEPA). We request comments on these documents.

**DATES:** To ensure consideration, please send your written comments by **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

***Public Meetings and Webinar:*** Four public meetings will be held to solicit public comments on the DEIS. For locations, dates and times of the public meetings and webinar, see **Public Meetings and Webinar** under **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** To view documents, request further information, or submit comments, please use one of the following methods, and note that your information request or comments are in reference to the DEIS addressing an amendment to the 1997 WDNR HCP and ITP to cover implementation of a marbled murrelet LTCS:

***Viewing Documents:***

- *Internet:* You can view the DEIS on the Internet at [www.fws.gov/WWFWO/](http://www.fws.gov/WWFWO/) or [www.dnr.wa.gov/non-project-actions](http://www.dnr.wa.gov/non-project-actions).
- *Hard Copies:* There are limited numbers of hard copies of the DEIS available for distribution (see **FOR FURTHER INFORMATION CONTACT**).
- Comments and materials we receive, as well as supporting documentation we use in preparing the DEIS, will be available for public inspection by appointment, during

normal business hours, at our Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

***Submitting Comments:***

- *Email:* Comments may be submitted electronically to WDNR at [sepacenter@dnr.wa.gov](mailto:sepacenter@dnr.wa.gov). WDNR will transmit all comments received to the Service.

- *U.S. Mail:* Comments may be submitted in writing to Lily Smith, SEPA Responsible Official, Washington Department of Natural Resources, SEPA Center, P.O. Box 47001, Olympia, WA 98504–7015. WDNR will transmit all comments received to the Service.

**FOR FURTHER INFORMATION CONTACT:** Mark Ostwald, U.S. Fish and Wildlife Service, by telephone at (360) 753–9564, by email at [Mark\\_Ostwald@fws.gov](mailto:Mark_Ostwald@fws.gov), or by U.S. mail at U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office, 510 Desmond Dr., Suite 102, Lacey, WA 98503. Alternatively, contact the SEPA Center, WDNR, by telephone at (360) 902–2117, or by email at [sepacenter@dnr.wa.gov](mailto:sepacenter@dnr.wa.gov).

**SUPPLEMENTARY INFORMATION:**

With the WDNR, we, the U.S. Fish and Wildlife Service (Service), have jointly developed a draft environmental impact statement (DEIS) addressing an amendment to the 1997 WDNR Habitat Conservation Plan (HCP) to cover implementation of a long-term conservation strategy (LTCS) for the marbled murrelet (*Brachyramphus marmoratus*). The DEIS also addresses an amendment to the Endangered Species Act (ESA) section 10 incidental take permit (ITP) for the WDNR HCP to cover

implementation of the LTCS. The DEIS is intended to satisfy the requirements of both the National Environmental Policy Act (NEPA) and the Washington State Environmental Policy Act (SEPA). If approved, the proposed LTCS will replace an interim conservation strategy for the marbled murrelet, which is currently being implemented under the WDNR HCP. It is anticipated that one of the alternatives described in the DEIS will form the basis of the LTCS. The scope of the proposed amendment to the WDNR HCP and ITP, and the DEIS, are exclusively limited to consideration of the LTCS.

In addition to this notice of availability of the DEIS that the Service is publishing, the U.S. Environmental Protection Agency (EPA) is publishing a notice announcing the DEIS, as required under section 309 of the Clean Air Act (42 U.S.C. 7401 et seq.). The publication of EPA's notice is the official start of the minimum requirement for the public comment period for an EIS (see **EPA's Role in the EIS Process**).

The Service and WDNR have jointly developed a DEIS for the purpose of analyzing alternatives for the LTCS for the marbled murrelet, a seabird that was listed as threatened under the ESA in 1992. The DEIS analyses five action alternatives and a no action alternative. The DEIS does not identify a preferred alternative. The no action alternative involves continuation of the interim conservation strategy for the marbled murrelet under the WDNR HCP. If approved, the amended ITP would authorize incidental take of the marbled murrelet that may occur as a result of implementation of the LTCS over the remaining 50-year term of the WDNR HCP.

## **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, that was jointly developed by the Service, National Marine Fisheries Service, and the WDNR to address the issuance of ITPs for the HCP, was announced in the **Federal Register** on April 5, 1996 (61 FR 15297). The 1996 DEIS analyzed reasonable alternatives, including the HCP, for forest management activities on forested State trust lands that would be covered by the ITPs. 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).

## **Interim Conservation Strategy**

The WDNR HCP (see [www.dnr.wa.gov/programs-and-services/forest-resources/habitat-conservation-state-trust-lands](http://www.dnr.wa.gov/programs-and-services/forest-resources/habitat-conservation-state-trust-lands)) commits the WDNR to developing a LTCS for the marbled murrelet (HCP IV. 39). At the time the HCP was prepared, it was determined that development of a LTCS was not possible due to a lack of scientific information. For this reason, the WDNR developed an interim conservation strategy for the marbled murrelet, which is currently being implemented. The proposed amendment to the WDNR HCP is the final step of the process for development of the LTCS.

Briefly, the interim conservation strategy for the marbled murrelet includes the

following components:

(1) Identification of blocks of suitable marbled murrelet habitat on which timber harvest would be deferred;

(2) Implementation of a habitat relationship study using marbled murrelet occupancy surveys to determine the relative importance of forested habitats;

(3) Based on the findings of the habitat relationship study, identification of the lowest quality habitat blocks to be made available for timber harvest (these areas, in the poorest quality habitats, were expected to contain about 5 percent of the marbled murrelet-occupied sites on HCP-covered lands);

(4) Implementation of surveys of higher quality habitat blocks identified by the habitat relationship study to determine marbled murrelet occupancy, and protection of murrelet-occupied habitats, along with some unoccupied habitat; and

(5) Development of a LTCS for the marbled murrelet on WDNR lands.

To inform the development of the DEIS addressing the amendment of the WDNR HCP and ITP to cover a LTCS for the marbled murrelet, we conducted four public scoping meetings in 2012 (77 FR 23743). In 2013, the WDNR, for the purposes of SEPA, conducted four additional public meetings to provide more opportunity for comment on the conceptual alternatives. Service staff attended all of the 2012 and 2013 public meetings. We received substantial public comments during public scoping. These comments were considered in the development of the DEIS.

### **Endangered Species Act Section 9 Requirements**

Section 9 of the ESA prohibits take of fish and wildlife species listed as

endangered or threatened under section 4 of the ESA. Under the ESA, the term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)). The term “harm,” as defined in our regulations, includes significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). The term “harass” is defined in our regulations as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

However, under specified circumstances, the Service may issue permits that authorize take of federally listed species, provided the take is incidental to, and not the purpose of, an otherwise lawful activity. Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32, respectively. Section 10(a)(1)(B) of the ESA contains provisions for issuing ITPs to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

- (1) The taking will be incidental;
- (2) The applicant will prepare a conservation plan that, to the maximum extent practicable, identifies the steps the applicant will take to minimize and mitigate the impact of such taking;
- (3) The applicant will ensure that adequate funding for the plan will be provided;
- (4) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and

(5) The applicant will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the plan.

### **National Environmental Policy Act Compliance**

The proposed amendment of the WDNR ITP and the 1997 WDNR HCP to cover a marbled murrelet LTCS is a Federal action that triggers the need for compliance with NEPA (42 U.S.C. 4321 *et seq.*). We and WDNR have jointly developed the DEIS for the purpose of analyzing the environmental impacts of implementing alternatives for the marbled murrelet LTCS under the HCP and ITP. Five action alternatives and a no-action alternative are analyzed in the DEIS. The DEIS does not identify a preferred alternative. WDNR manages approximately 1.3 million acres within 55 miles of marine waters, which is the known inland limit of the nesting range for the marbled murrelet. The alternatives in the DEIS are restricted to implementation within this area. To appreciate the details of the alternatives, it is necessary to review the DEIS (see **ADDRESSES** for access to the DEIS). However, each of the alternatives in the DEIS is briefly summarized below.

The alternatives represent a range of approaches to long-term marbled murrelet habitat conservation on WDNR lands. The alternatives differ in the amount and location of WDNR-managed forest land designated for long-term conservation of the murrelet, and also include a variety of conservation measures proposed to protect marbled murrelet habitat. The alternatives also differ in the amount and quality of marbled murrelet habitat removed through timber harvest.

The acres of forest land proposed for continued conservation under the alternatives for an amended WDNR HCP include those lands already protected as long-term forest cover by WDNR, such as old-growth forests, high-quality spotted owl habitat, riparian areas, natural areas, and other conservation commitments included in the 1997 HCP and in WDNR's Policy for Sustainable Forests. These areas provide conservation benefits to the marbled murrelet, either by supplying current and/or future nesting habitat or by providing security to that habitat from predation, disturbance, and other threats. The alternatives also designate additional forestlands with specific importance for marbled murrelet conservation, and these are referred to as Special Habitat Areas, Emphasis Areas, or Marbled Murrelet Management Areas, depending on the alternative and conservation approach. All of alternatives considered in the DEIS protect known marbled murrelet nest sites.

Alternative A is the no-action alternative and it continues the interim conservation strategy for the marbled murrelet. Alternative B primarily relies on protecting occupied marbled murrelet sites without additional conservation approaches. Alternatives C, D, E, and F focus new conservation in important areas for the marbled murrelet, protecting more habitat in these areas than is protected under the no action alternative. Each alternative designates a different amount of land for conservation of the marbled murrelet. Alternative F protects the most habitat for the murrelet within the analysis area.

### **EPA's Role in the EIS Process**

The EPA is charged under section 309 of the Clean Air Act to review all Federal agencies' EISs and to comment on the adequacy and the acceptability of the environmental impacts of proposed actions in the EISs.

EPA also serves as the repository (EIS database) for EISs prepared by Federal agencies and provides notice of their availability in the Federal Register. The EIS database provides information about EISs prepared by Federal agencies, as well as EPA's comments concerning the EISs. All EISs are filed with EPA, which publishes a notice of availability on Fridays in the **Federal Register**.

For more information, see <http://www.epa.gov/compliance/nepa/eisdata.html>. You may search for EPA comments on EISs, along with EISs themselves, at <https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search>.

### **Public Comments and Webinar**

The Service and WDNR are committed to providing access to these meetings for all participants. The public meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Brian G. Bailey, Outreach Manager, Legislative Session Coordinator, Washington State Department of Natural Resources, at 360-902-1715, and Mark Ostwald, U.S. Fish and Wildlife Service, at 360-753-9564. To allow sufficient time to process requests, please call at least 7 working days prior to the public meeting dates.

Four public meetings will be held to provide an overview of the DEIS and an opportunity for public comment. The public meeting dates, times, and locations are:

- Tuesday, January 10, 2017, 6 p.m. to 8 p.m., WDNR, Northwest Region Office, NW Conference Center, 919 N Township Street, Sedro Woolley, WA 98284.
- Thursday, January 12, 2017, 6 p.m. to 8 p.m., Whitman Middle School Auditorium, 9201 15th Avenue NW, Seattle, WA 98117.
- Tuesday, January 17, 2017, 6 p.m. to 8 p.m., Port Angeles High School, Commons-Lunch Room, 304 E Park Avenue, Port Angeles, WA 98362.
- Thursday, January 19, 2017, 6 p.m. to 8 p.m., Julius A. Wendt Elementary School, Multi-purpose Room, 265 S 3rd Street, Cathlamet, WA 98612.

*Public Webinar Information:* A public webinar will provide an overview of the DEIS. The public webinar date, time, and link are:

- Tuesday, January 24, 2017, 2 p.m. to 3 p.m., the link for accessing the webinar will be available [at www.dnr.wa.gov/mmltcs](http://www.dnr.wa.gov/mmltcs).

### **Public Comments**

You may submit your comments and materials by one of the methods listed in the **ADDRESSES** section. We specifically request information, views, and opinions from the public on the alternatives for the marbled murrelet LTCS and identification of any other aspects of the human environment not already identified in the DEIS that may be affected, pursuant to NEPA regulations in the Code of Federal Regulations (CFR) at 40 CFR 1506.6.

### **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 personally identifiable information in your comments, you should be aware that your entire comment—including your personally identifiable information—may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety. Comments and materials we receive, as well as supporting documentation we use in preparing the FEIS, will be available for public inspection by appointment, during normal business hours, at our Washington Fish and Wildlife Office (see **ADDRESSES**).

### **Next Steps**

We expect to receive a permit application from WDNR requesting an amendment of their ITP and HCP to cover the LTCS for the marbled murrelet. It is anticipated that one of the alternatives analyzed in the DEIS will form the basis of the LTCS that would be implemented under the HCP. An interim conservation strategy for the marbled murrelet is currently being implemented under the HCP. The HCP amendment for the LTCS is intended to replace the interim conservation strategy for the marbled murrelet. We will evaluate that request, associated documents, and public comments in reaching a final decision on whether the application for a permit amendment meets the requirements of section 10 of the ESA. We will prepare responses to public comments and publish a

notice of availability for the FEIS. The FEIS will identify the preferred alternative for the LTCS for the marbled murrelet and analyze its impact on the human environment. We will also evaluate whether the proposed permit action would comply with section 7 of the ESA by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to approve the proposed amendment of the WDNR ITP and HCP. If the ESA section 10 issuance requirements are met, we will approve the amendment of the ITP and HCP. We will issue a record of decision and approve or deny the ITP and HCP amendment request by WDNR no sooner than 30 days after publication of the EPA's notice of availability of the FEIS.

### **Authority**

We provide this notice in accordance with the requirements of section 10(c) of the ESA and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA and its implementing regulations (40 CFR 1506.6).

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

[FR Doc. 2016-29062 Filed: 12/8/2016 8:45 am; Publication Date: 12/9/2016]