



AGENDA ITEM SUMMARY

BACKGROUND

In July 2021, the Oregon Fish and Wildlife Commission reclassified the Marbled Murrelet from threatened to endangered under the Oregon Endangered Species Act (OESA). The purpose of this agenda item is for the Commission to determine the role of Department-owned lands in the conservation of Marbled Murrelets. Staff will also provide an update on the determinations of roles by other state land owning and managing agencies in the conservation of the Marbled Murrelet.

The most direct effect of listing a species as threatened or endangered under the OESA is through management decisions on state-owned, managed, or leased lands. The OESA requires that state agencies comply with survival guidelines adopted by the Commission (or alternative process as described in ORS 496.182(3)) and requires particular state agencies to develop plans for the management and protection of endangered species (ORS 496.182(8), OAR 635-100-0140(6)). Survival guidelines are quantifiable and measurable guidelines necessary to ensure the survival of individual members of the species (OAR 635-100-0100(13)). Survival guidelines serve as interim protection measures until endangered species management plans are developed, completed, and approved by applicable state agencies (required within 18 months of uplisting) and then subsequently reviewed and approved by the Commission (required within 24 months of uplisting) (ORS 496.182(8)(a)(C), (D)).

The OESA and administrative rules require that within four months of the listing decision, the Commission, in consultation and cooperation with the state land owning and managing agencies, determines which land owning or managing agencies can play a role in conservation of the species (ORS 496.182(8)(a)). In November 2021, the Commission determined that ten state agencies that own, manage or lease lands, can play a role in the conservation of the Marbled Murrelet on their respective state lands and subsequently notified those agencies of their obligation to develop endangered species management plans. The agencies are: Oregon Department of Fish and Wildlife (Department or ODFW); Oregon Department of Forestry (ODF); Oregon Parks and Recreation Department (OPRD); Oregon Department of State Lands (ODSL); Oregon Department of Transportation (ODOT); Oregon Military Department (OMD); Oregon Department of Corrections (ODOC); Oregon Department of Aviation (ODA); Oregon Youth Authority (OYA); and Oregon Watershed Enhancement Board (OWEB).

Following the Commission's determination of the agencies that can play a role in the conservation of the Marbled Murrelet, each agency is required to determine the role its state land will serve in the conservation of the Marbled Murrelet. An agency's role may include, but is not limited to:

- Conservation (i.e., the use of methods and procedures necessary to bring the marbled murrelet to the point at which the measures provided under ORS 496.171 to 496.182 are no longer necessary. These measures and procedures include, but are not limited to, activities associated with scientific resource management such as research, census taking, law enforcement, habitat acquisition and maintenance, habitat protection, and restoration, propagation, and transplantation);
- Contribution toward conservation; or
- Take avoidance, as specified in the survival guidelines for the Marbled Murrelet (OAR 635-100-0137).

In making their role determinations, each state agency needs to balance each of the following:

- The statutory or constitutional requirements, rules and policies applicable to the agency's programs;
- The social and economic impacts that conservation would have on the State of Oregon;
- The conservation needs of the Marbled Murrelet (ODFW 2021. Chapter 2);
- The defined purpose of the state land the agency owns or manages; and
- The roles that land other than state land will play in the conservation of the species.

The agencies must balance these five factors consistent with the biological aspects of the Marbled Murrelet biology identified by the Department (ODFW 2021), and the statutory or constitutional obligations of each of the agencies (including the land's statutory purpose).

After determination of their role and within 18 months of the listing as endangered, each agency must develop and approve an endangered species management plan based on the statutes, rules, and policies applicable to the agency's programs and must take into account any social or economic impacts that the plan may have on the state.

The Commission then reviews the endangered species management plans approved by each agency to determine whether the plan achieves the role defined for the land by the agency. The Commission may modify the endangered species management plan for consistency with the role the land owning or managing agency has defined for the land and approve the plan as submitted or modified within 24 months from the date the species is listed as endangered.

Staff have been working with each agency in providing technical assistance as they determine the role their land will serve in the conservation of marbled murrelet. To assist agencies in determining their roles and development of their individual endangered species management plans for the Marbled Murrelet, staff provided information on the components of murrelet biology and geography of the land base as outlined in the Department's June 2021 Biological Assessment. Staff also reviewed components of the Survival Guidelines with the nine other state agencies to assure consistent implementation.

The contribution of the land owning or managing agencies to the conservation of Marbled Murrelets ranges from single properties owned (for example, OYA and ODOC) to more substantial land holdings owned and managed by ODF, ODSL and OPRD. Some agencies have determined more than one 'role' for their properties as they develop endangered species

management plans. This reflects both different administrative purposes of their lands and that the role options are really a continuum of overlapping management actions, safeguards and species needs.

A summary of these efforts and determinations to date follows:

Oregon Department of Forestry (ODF): The Board of Forestry determined in March 2022 that ODF's role on ODF-managed lands, will be a contribution to conservation of Marbled Murrelets. This contribution to conservation is designed to support stable or increasing population and habitat trends, by protecting occupied habitat and improving habitat conditions, and is based on existing take avoidance policies and other commitments under their current Forest Management Plan.

Oregon Parks and Recreation Department (OPRD): Role(s) still being determined. There is likely to be more than one role given different property objectives.

Oregon Department of State Lands (ODSL): Role(s) still being determined. There is likely to be more than one role given different property objectives.

Oregon Department of Transportation (ODOT): On ODOT's actively managed and maintained lands, they will continue to meet survival guideline requirements for Marbled Murrelets by following established ODOT practices with a goal of take avoidance. As road builders and maintainers of roads and rights of way, ODOT's role in Marbled Murrelet conservation and management is to avoid take when possible. ODOT intends to contribute to recovery on federally-funded state highway projects that impact Marbled Murrelet habitat. If a situation arises where ODOT cannot avoid take, ODOT would minimize take to the greatest extent practicable through coordination with the Department and U.S. Fish and Wildlife Service and provide reasonable and prudent mitigation measures.

Oregon Military Department (OMD): Role(s) still being determined on the one property which also has a federal consultation nexus through proposed activities on Camp Rilea.

Oregon Department of Corrections (ODOC): One property (Shutter Creek Correctional Institute) has 20 acres of moderate and high probability murrelet nesting habitat. Property ownership is currently being transferred to the federal government or another state agency. Given the uncertainty with this timeline, ODOC is proceeding with the role determination and endangered species management plan development.

Oregon Department of Aviation (ODA): Role(s) still being determined.

Oregon Youth Authority (OYA): OYA's role is largely focused on protections for existing stands of trees on their Tillamook Youth Correctional Facility. No murrelet observations have been recorded and there is no indication of existing or prior nesting activities.

Oregon Watershed Enhancement Board (OWEB): Role(s) still being determined. There is likely to be more than one role given different property objectives.

These agencies are currently in the process of developing their endangered species management plans, which will be submitted to the Department by January 2023 and will be reviewed by the Commission, as required by statute, before July 2023 – within 24 months of the listing decision (filed with Secretary of State on July 15, 2021).

PUBLIC INVOLVEMENT

- Addressed questions of interested persons, including the news media.

ISSUE 1

Role of Department Land in the Conservation of the Marbled Murrelet.

ANALYSIS

The Department was one of ten agencies that the Commission determined could play a role in the conservation of the Marbled Murrelet on their respective state lands. Data layers from the U.S. Forest Service Northwest Forest Plan Monitoring Assessment, 2017 (Lorenz et al. 2021) were used to determine exact geographic locations and amount of forested habitat potentially suitable for nesting Marbled Murrelets. Department-owned properties include approximately 1,720 acres total of potential Marbled Murrelet nesting habitat with approximately 1,241 acres of ‘low’ relative probability as potential Marbled Murrelet nesting habitat; 296 acres of ‘moderate’ relative probability; and 182 acres of ‘high’ relative probability as potential murrelet nesting habitat. Most moderate and high relative probability Marbled Murrelet nesting habitat occurs as small or narrow patches of habitat that are poorer quality for murrelets because potential nests are considered, among other things, more vulnerable to predation. Currently no Department property has sufficient areas of occupied habitat to be managed specifically for Marbled Murrelet conservation.

The potential Marbled Murrelet nesting habitat on Department lands is distributed across three categories of properties:

- Four Wildlife Areas (Coquille Valley Wildlife Area, God’s Valley Wildlife Area, Jewell Meadows Wildlife Area, and Tami Wagner Wildlife Area);
- Eleven Fish Hatcheries (Alesia, Bandon, Big Creek, Cedar Creek, Elk River, Gnat Creek, Oregon Hatchery Research Center (OHRC), Klaskanine, Nehalem, Salmon River, and Trask). Except for the OHRC, most hatcheries have tree stands of less than five acres in size); and

- Forty-three other Department-managed properties, primarily boat ramps and launches (with a mix of ownership; easements; partnership with Oregon State Marine Board and/or counties); riverbank access; bank angling; parking; recreation; conservation areas; and wildlife viewing areas. These properties have potential Marbled Murrelet nesting forested habitat ranging from less than one acre in size to 111 acres; only four properties have more than five acres of potential murrelet nesting habitat.

The Department proposes to define the role its lands will play in the conservation of Marbled Murrelet as follows:

Department owned and managed lands will maintain implementation of Survival Guidelines for the Marbled Murrelet (OAR 635-100-0137). In addition, on those specific properties where the Department determines it is feasible, forested habitat will be managed to contribute to the conservation of the Marbled Murrelet (e.g., stands on Department properties contiguous with occupied forest stands on neighboring properties will be managed to ‘buffer’ known nesting areas).

OPTIONS

1. Approve the staff recommendation of the role the Department lands will serve in conservation of the Marbled Murrelet.
2. Modify the staff recommendation of the role that Department lands will serve in the conservation of the Marbled Murrelet.

STAFF RECOMMENDATION

Option 1.

DRAFT MOTION:

I move to determine that Department owned properties will play a role in the conservation of Marbled Murrelet as proposed by staff in Attachment 1.

Effective Date: *Upon approval*