



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

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May 14, 1996

MEMORANDUM FOR LEON PANETTA

FROM: KATHLEEN A. MCGINTY

CC: HAROLD ICKES
RON KLAIN
JOHN EMERSON
MARTHA FOLEY
KITTY HIGGINS
T.J. GLAUTHIER
BARBARA CHOW
ELENA KAGAN

RE: MARBLED MURRELET CRITICAL HABITAT DESIGNATION

Tomorrow, the U.S. Fish and Wildlife Service (USFWS) will send to the Federal Register the final designation under the Endangered Species Act (ESA) of 3,883,400 acres of critical habitat for the marbled murrelet. As you all know too well by now, the marbled murrelet is a threatened seabird that breeds in old growth forests of the Pacific Northwest. It was listed as threatened under ESA in 1992, but at the time the USFWS didn't know enough about its behavior to designate critical habitat. A major effort was mounted to learn more about the bird's nesting habitat. That knowledge was incorporated into the President's Northwest Forest Plan. The USFWS published a proposed critical habitat designation in January of 1994 and issued a supplemental proposal in August of 1995. However, the designation did not go to the final stage because of the ESA moratorium and lack of funding.

Despite the Congressional action taken to prohibit final designation of critical habitat, a federal judge in Washington State directed the completion of this listing (she read the rider as excluding prior judicial orders). She ordered the USFWS to complete their final designation by May 15th - this Wednesday.

The critical habitat designation will include federal, state and private lands in Washington, Oregon and California. The designation is very specific to particular pieces of land that contain nesting habitat, as opposed to broad swaths of land.

Accordingly, the Department of the Interior (DOI) strongly believes that the amount of controversy that this kind of rule might normally generate may be muted considerably by the work that has already been done to protect the species. For example, no further restrictions are anticipated on timber harvest on federal lands, because of the President's Northwest Forest Plan already takes the murrelets' needs into account. Similarly, all Habitat

Conservation Plans - the touchstone of our ESA reinvention policy on private lands - are exempt from the critical habitat designation. In Washington State and in Oregon, private landowners, including major timber companies, have cooperated with the USFWS and, I have been assured, have not voiced serious objections to the designation. In California, the Pacific Lumber Co. is expected to object strenuously to the listing. But, this is Charles Hurwitz's company and part of his reaction will be designed to increase his leverage in our on-going dialogue with him (confidential!) regarding the Headwaters Forests. (In fact, Hurwitz has just filed a lawsuit against us on this matter asking for approximately \$166 million).

As to the rest of California, again I am assured that all is well. In fact, DOI reports that some private landowners around Santa Cruz actually asked that more of their land be included in the designation!

In terms of Congressional interest, Congressman Frank Riggs (R-CA) did write a letter to USFWS urging that the primary burden of protecting murrelets be put on federal lands. Congressman Gary Condit (D-CA) apparently expressed a similar view, but neither have asked the USFWS to refrain from the final designation. The USFWS did, in fact, reduce the final area by about 500,000 acres as a result of comments received on the proposal.

The USFWS economic analysis demonstrates few immediate and direct impacts on the economy - in large part because of the President's Northwest Forest Plan and our Habitat Conservation Plans have already taken the murrelets' needs into account.

One caveat: As you know, one of the most significant remaining legal battles under the timber rider is over the nesting habitat of the marbled murrelet. If we lose that case and therefore have to cut 14% of the birds' nesting habitat, the optimistic picture painted here would be subject to considerable change, and there likely would be significant negative impacts on the both the President's Northwest Forest Plan, future Habitat Conservation Plans, and private lands because of the need to set aside additional forest areas for the murrelet.

Murrelet will get protected habitat

■ The Fish and Wildlife Service will set aside 3.9 million acres for the threatened bird

By BRENT WALTH

of The Oregonian staff 5-15-96 A 1

WASHINGTON — Nearly 3.9 million acres of woodlands in Oregon, Washington and California will be designated for protection today to help a threatened seabird whose nesting grounds have been diminished by logging.

The designation of critical habitat for the marbled murrelet ranks as one of the biggest actions to preserve lands for a bird shielded by the Endangered Species Act.

Although the decision will have little effect on national forest logging, because most of the land already is protected, it could put greater environmental controls over 865,000 acres of state and private timber, according to U.S. Fish and Wildlife Service documents obtained by The Oregonian.

However, the decision will exclude Oregon's 93,000-acre Elliott State Forest, once proposed for inclusion in the murrelet areas.

Fish and Wildlife Service officials are scheduled to make the murrelet announcement today to meet a court-imposed deadline for designating critical habitat for the bird.

Under the Endangered Species Act, designations of critical habitat allow the federal government to halt activities that would harm protected animals and

Please turn to
HABITAT, Page A6

cc: Martha
@ JF
③ Jennifer
④ Brian
Johnson

ple
opposed
pushing
grapple

Don't
nky
report (along
of other reporting
in CA, Wash, and
Fla)

Habitat: Northwest forest plan also will protect threatened seabird

Continued from Page One

plants. That authority often has been used to stop or limit commercial activities in national forests, especially logging.

The announcement could mark one of the last big steps that the federal government takes to extend protections for the murrelet, a shy robin-size bird that was listed as a threatened species in 1992.

The decision also marks another victory for environmental groups that have used the Endangered Species Act to cordon off vast sections of the Northwest's national forests from logging.

The habitat designated for the murrelet will be smaller than the 6.8 million acres set aside for another threatened bird, the northern spotted owl.

The owl's protection led to the Clinton administration's Northwest forest plan, which now will be used to protect three-fourths of the murrelet's habitat as well.

Fish and Wildlife Service officials declined to comment on the announcement until today. But the agency is expected to emphasize that none of the lands open to logging under the Northwest forest plan have been made part of the murrelet habitat decision.

Timber industry officials say they still are concerned about additional layers of restrictions against logging in the Northwest.

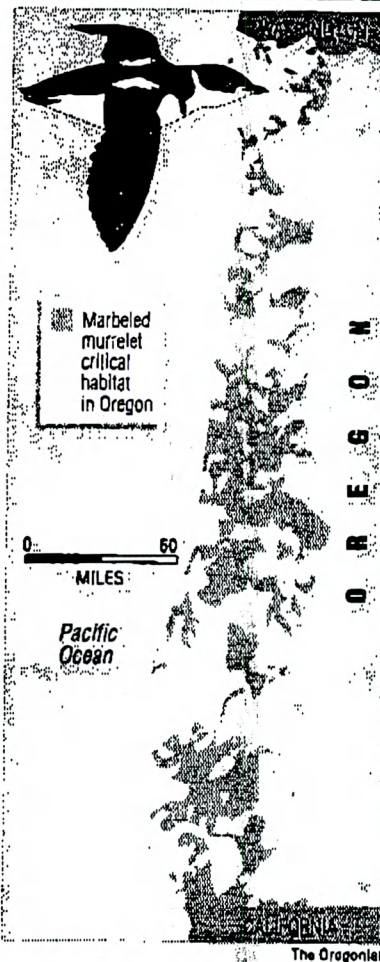
"I suppose the federal government should be commended for trying to minimize the 'economic impact,'" said Jim Geisinger of the Northwest Forestry Association. "But there's so much land set aside already by the forest plan, I'd hope they could take care of more species without setting aside more land."

An attorney for the environmental groups that brought the murrelet suit against the Fish and Wildlife Service said the number of acres is less important than the location of the habitat.

"We're going to have to look at the maps to see if this is adequate," said Adam Berger of the Sierra Club Legal Defense Fund. "If the agency has managed to provide protection on fewer acres by consolidating and redistributing its habitat designations, that may be OK."

The plaintiffs, including the Portland Audubon Society and the Oregon Natural Resources Council, sued in 1991 to force the Fish and Wildlife Service to recognize the murrelet as a threatened species.

PROTECTED HABITAT



Under the suit, U.S. District Judge Barbara Rothstein in Seattle ruled earlier this year that the Fish and Wildlife Service had to present its final decision on the murrelet's habitat by today.

The agency has raced to meet that deadline after a congressional freeze on most endangered species programs ended last month.

Scientists still are learning about the murrelet, but they estimate 18,000 to 32,000 of the birds live in Oregon, Washington and California.

The birds spend most of their time in the Pacific Ocean but nest on shore among the high, dense limbs of old-growth trees. Many murrelets nest along the coast, but they can range as far as 50 miles inland.

Murrelet pairs have one egg a year, and both birds fly from nest to ocean and back to feed their young. Biologists estimate that about half of the murrelet young do not survive.

Logging of old-growth forests has been cited as a threat to the bird in

HABITAT PROTECTION

WHAT'S HAPPENING: The U.S. Fish and Wildlife Service is expected to designate nearly 3.9 million acres in Oregon, Washington and California today as critical habitat for the marbled murrelet, a seabird listed as threatened under the Endangered Species Act.

WHAT IT MEANS: The critical-habitat designation will allow the federal government to restrict commercial activities — especially logging — in forests where the murrelet nests.

THE EFFECT: Federal officials will say the designation is designed to have little impact on logging in national forests. About 865,000 acres of state and private forest lands may face new restrictions.

California. Critics of the bird's protection say the species isn't threatened everywhere, noting that the murrelet is thriving in Canada and Alaska.

The Fish and Wildlife Service last August proposed that 4.5 million acres be designated as critical habitat for the murrelet in Washington, Oregon and California.

Today's announcement is expected to show that the service not only reduced the total acreage by about 600,000 acres but also shifted the habitat areas toward the coast. Of the 3.88 million acres protected, only 48,000 acres are privately owned; of those, only about 900 are in Oregon.

In Oregon, about 1.3 million acres of federal lands will be designated as critical habitat for the murrelet, down from the 1.6 million acres proposed last summer.

In addition, the final plan will call for 175,000 acres of state lands to be part of the habitat designation. The August proposal called for 279,000 acres.

The withdrawal of the Elliott State Forest from the proposed habitat areas is perhaps the single biggest change in the Fish and Wildlife Service's plans in Oregon.

In October the state of Oregon agreed to a six-year management plan that requires better logging management in the Elliott State Forest to account for areas where murrelets are likely to nest.

The Fish and Wildlife Service concluded that that plan made further restrictions under the Endangered Species Act unnecessary for the Elliott, which covers portions of Doug-

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

01-May-1996 07:42pm

TO: Jennifer M. O'Connor
FROM: Kathleen A. McGinty
 Council on Environmental Quality
CC: Martha Foley
SUBJECT: timber

mentioned this to martha earlier, wanted to update you, too.
still no memo from ag. and, as you witnessed at our timber
meeting yesterday, clear directives have yet to be given to their
troops.

i spoke to greg frazier again today about this. he assures me he's
working it.

but, there is a new urgency that i highlighted for him and that
you should know too -- justice argues the known to be nesting
issue before the 9th circuit tuesday. they will no doubt be
asked: "if we rule in your favor, is the fs prepared to offer alt
timber?????" and the answer will no doubt be influential in their
ruling. this is the big one.....

can you make sure harold is apprised that this is where we are on
this issue. it will continue to take our concerted efforts to get
glickman to get serious on this and pay attention to it.

we are down to the wire.

Name	Date
Steve Reich	6/4/99

Counsel

[illegible]

Counsel