

Marbled Murrelet Rule Making May 10, 2023

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Marbled Murrelet Rule Making

Issue: With the up-listing of the Marbled Murrelet to state endangered, WDFW facilitated rules assessment has determined Marbled Murrelet rule amendments, changes, and clarifications are warranted.

- **Summary of Draft Rule Changes**
- **Expedited Rule Making**
- **Recommendations**



Draft Marbled Murrelet Rules

WAC 222-10-042 Marbled murrelets.

Within marbled murrelet detection areas

- 30% probability of occupancy, 2 platforms/ acre
- Without survey information, forest practices that will adversely impact this habitat may have a probable significant adverse impact on the environment.

Outside a marbled murrelet detection area:

- 50% probability of occupancy, 5 platforms per acre
- Without survey information, forest practices that will adversely impact this habitat may have a probable significant adverse impact on the environment.
- The adjacent forested area within 300 feet of "suitable marbled murrelet habitat", WAC 222-16-080 is assumed to be necessary for buffering potentially occupied habitat



Draft Marbled Murrelet Rules

WAC 222-16-010 *General definitions.

"Marbled murrelet nesting platform" means any horizontal tree structure such as a limb, an area where a limb branches, a horizontal surface created by multiple leaders, a deformity created by mistletoe infection or branch break, or a debris/moss platform or stick nest equal to or greater than 7 inches in width including associated moss if present, that is 50 feet or more above the ground in western hemlock trees 24 inches dbh and greater and in other conifer trees 32 inches dbh and greater and is capable of supporting nesting by marbled murrelets.

"Occupied marbled murrelet site"

A contiguous area of suitable marbled murrelet habitat is determined through the most current Pacific Seabird Group (PSG) terrestrial survey protocol



Draft Marbled Murrelet Rules

WAC 222-16-010 *General definitions.

"Suitable marbled murrelet habitat"

Marbled murrelet habitat:

- (a) Within 50 miles of marine waters;
- (b) At least forty percent of the dominant and codominant trees are conifer tree species;
- (c) Two or more nesting platforms per acre;
- (d) At least 5 acres in size of qualifying platform-bearing trees



Draft Marbled Murrelet Rules

WAC 222-16-080 Critical habitats (state) of threatened and endangered species.

(v) Harvesting within a 300 foot managed buffer zone adjacent to an occupied marbled murrelet site that results in:

- Harvest within a no-cut inner buffer of 150 feet
- Harvest within a managed 150 foot outer buffer which will leave a residual stand relative density of less than 35 for Douglas-fir or red alder dominant species group or residual stand relative density of less than 50 for Western hemlock-spruce dominant species group
- The inner zone of the buffer shall begin at the edge of the outer extent of the platform trees of the occupied habitat
- Landowner shall consult with WDFW on managed buffer prescriptions.

(vi) Where a landowner owns less than 500 acres of forest land within 50 miles of saltwater and the land does not contain an occupied marbled murrelet site or the 300-foot average buffer of an occupied marbled murrelet site



Draft Marbled Murrelet Rules

WAC 222-12-090 Forest practices board manual.

(14) Survey protocol for marbled murrelets. The most current Pacific Seabird Group terrestrial survey protocol shall be used when surveying for marbled murrelets in a stand.

(15) The department shall, in consultation with the department of fish and wildlife, develop: Guidance for applications classified by the department under WAC 222-16-080 (1) (h) (v) to be Class IV-Special forest practices for lands designated as critical habitat (state) for marbled murrelet (*Brachyramphus marmoratus*) for the following two forest practices activities:

(i) Harvesting within a 150-foot no-cut inner zone buffer of a 300-foot managed buffer zone adjacent to an occupied marbled murrelet site.

(ii) Harvesting within a 150-foot outer zone managed buffer of a 300-foot managed buffer zone adjacent to an occupied marbled murrelet site that results in a residual stand relative density of less than 35 for Douglas-fir or red alder dominant species group or a residual stand relative density of 50 for Western hemlock dominant species group.



Expedited Rule Making

Negotiated rule development. RCW 34.05.310(2)(a)

“Negotiated rule making by which representatives of an agency and of the interests that are affected by a subject of rulemaking, including, where appropriate, county representatives, seek to reach consensus on the terms of the proposed rule and on the process by which it is negotiated.”

Expedited rule making. RCW 34.05.353 (1)(e)

Forest Practices Board may file notice for the expedited adoption of rules meeting negotiated rule making that involved substantial participation by interested parties before the development of the proposed rule.



Expedited Rule Making

The expedited rule-making process must follow the requirements for a standard rule making with some exceptions. RCW 34.05.353. The Board is not required to prepare:

- SBEIS
- A statement indicating whether the rule constitutes a significant legislative rule
- CBA

The Board is not required to conduct a hearing for the expedited rule making.



Expedited Rule Making

An expedited rule making is made available for public review through the Washington State register, during this time:

- Any person may file a written objection to the expedited rule making within 45 days
- A person who has filed a written objection to the expedited rule making may withdraw the objection
- The Board may adopt the rule 45 days after the proposed expedited rule making is published:
 - If no written objections to the expedited rule making are filed with the agency;
 - If all objections that have been filed are withdrawn by the persons filing the objections
- If a written notice of objection to the expedited rule making is timely filed with the agency and is not withdrawn the Board may initiate standard rule-making proceedings



Marbled Murrelet Rule Making

Recommendation

The Washington Departments of Fish and Wildlife and Natural Resources recommend the Board:

- Accept the draft forest practices rules and board manual guidance recommendations as documented in attachment 1; and
- Initiate the expedited rule adoption process, and direct board staff to amend Board Manual Section 15 to add recommended language.

