



OREGON MILITARY DEPARTMENT
JOINT FORCE HEADQUARTERS, OREGON NATIONAL GUARD
INSTALLATIONS DIVISION
1776 MILITIA WAY
P.O. BOX 14350
SALEM, OREGON 97309-5047

January 12, 2023

SUBJECT: Marbled Murrelet Reclassification and Requirements for the Oregon Military Department under the Oregon Endangered Species Act.

State Fish and Wildlife Commission
4034 Fairview Industrial Drive SE
Salem, Oregon 97302

Dear Commissioner Wahl:

This letter is in response to the November 12, 2021 letter entitled, *Notification of Marbled Murrelet Reclassification and Requirements for Affected State Land-Ownning and Managing Agencies under the Oregon Endangered Species Act*, requiring the Oregon Military Department (OMD) to determine the agencies role in the conservation of the species and to submit an agency approved endangered species management plan. The following information provides a brief overview of the Agency's current regulatory commitments and how the agency is currently meeting State requirements as they relate to the marbled murrelet on OMD property.

The Oregon Military Department is a unique state agency that provides both the State of Oregon and the Department of Defense (DoD) with a ready force of Citizen Soldiers, Airmen, and Civilians. Based on this dual security mission, most all proposed actions conducted by the OMD have a federal nexus, such that the action requires the use of federal funding, personnel, and/or equipment. Proposed actions with a federal nexus require National Environmental Policy Act (NEPA) documentation including compliance with the Endangered Species Act (ESA) to determine the effect of the project to federally listed species. As the marbled murrelet is federally listed as threatened, OMD is required to assess project impacts and conduct informal and formal consultation with the US Fish and Wildlife (USFWS) under Section 7 of the ESA regardless of land ownership. In following with federal laws and DoD and Army regulations, OMD also has a responsibility to migratory bird conservation under the Migratory Bird Treaty Act (MBTA), and Memorandum of Understanding between the DoD and USFWS in accordance with Executive Order 13186 "Responsibilities of Federal Agencies to Protect Migratory Birds." DoD guidance for implementation of the MOU includes specific actions to advance migratory bird conservation; avoid or minimize the take of migratory birds; and ensures DoD operations-other than military readiness activities-are consistent with the MBTA. Measures include bird conservation planning, partnerships, inventories, avoidance and mitigation, pesticide reduction, habitat conservation, training and outreach, annual plan reviews and monitoring for impacts of military readiness activities on migratory birds. These conservation

measures are provided and incorporated into the installations management plan. Per the Sikes Act Improvement Act of 1997 (SAIA, 16 US Code [USC] Section 670a et seq.), as amended, all DoD training installations are required to complete an Integrated Natural Resources Management Plan (INRMP) in partnership with the USFWS and state wildlife agency. The INRMP serves as the primary document and tool for managing natural resources on an installation, including all federal and state listed species and their habitats. Each INRMP is reviewed and concurred upon annually by USFWS and Oregon Department of Fish and Wildlife (ODFW). Federal funding is then provided by the Army National Guard for INRMP implementation.

In addition to federal responsibilities, OMD ensures all actions on state-owned properties are conducted in accordance with Oregon State laws and policies including the Oregon Endangered Species Act (OESA) and the Oregon State Wildlife Action Plan or Oregon Conservation Strategy. Relevant state species conservation practices and strategies are incorporated into an installation's INRMP. The required annual review process enables additions to existing conservation measures and Best Management Practices (BMPs) as changes to listed species and environmental factors change. All additions and changes are then reviewed and approved by the ODFW Sikes Act Coordinator. Pursuant to the July 15, 2021 rule change, OMD acknowledges the approved survival guidelines for the marbled murrelet, and, has consulted with Martin Nugent, ODFW Threatened, Endangered, and Sensitive Species Coordinator on actions with the potential to impact the marbled murrelet and for compliance with the November 12, 2021 notification from the Commission.

Currently, the marbled murrelet has not been documented on any OMD federal or state properties. Patches of forested habitats identified and provided to OMD by ODFW have assisted in further classifying suitable habitat for the species on OMD state-owned properties. Site visits, survey data, and recent NEPA documentation were then reviewed by the OMD natural resources manager and wildlife biologist to evaluate the presence of potential habitat components needed for nesting murrelets. The following provides a description of current habitat conditions and identifies OMD's role and actions for addressing conservation of the species at each of the three (3) OMD properties in which the Oregon Fish and Wildlife Commission identified as potential habitat for the marbled murrelet at Newport, Coos Bay and Camp Rilea.

The Newport property, parcel ID 11-11-32-00-00201-00 is a 3.3-acre undeveloped parcel located < 1 mile from the coast along SE 98TH Court just south of the Newport Municipal Airport. No infrastructure or National Guard training is conducted on this property. Forest composition includes young to mid-aged mixed deciduous/coniferous trees ranging from 20-50 feet with isolated mature trees found offsite south of the airport runway. Primarily second-growth forest, the parcel currently lacks suitable nesting components including the lack of moderate to high canopy trees with large horizontal tree limbs at least 4 inches in diameter and located a minimum of 33 feet high in the live crown preferred by the species. Noise from the airport and other human disturbances from nearby residential housing further reduces the suitability of the site. In June 2022

an Environment Assessment (EA) for the Newport Municipal Airport Obstruction Removal Project that included the tree removal on the OMD property was completed by the Federal Aviation Association (FAA). In compliance with Section 7 of the ESA, consultation with the USFWS made a no affect, not likely to adversely affect determination for the marbled murrelet and critical habitat. Based on this and current habitat conditions at the site and existing federal laws and protective measures already in place, OMD believes the development of an endangered species management plan is not warranted for this location and the role of the agency will be avoidance of take.

The Oregon Army National Guard Armory at 255 Norman Avenue is 5.34-acre parcel located < 3 miles from coast in the city of Coos Bay. The property consists of the Armory buildings, surrounded by Soldier parking. Landscaping consists of turf and a few scattered trees and shrubs. The few trees on the property do not provide even minimal habitat requirements for nesting murrelets. Although the property is state-owned, a federal nexus exists as federal funding is provided for State Soldiers that qualify to be called into federal service. Thus, proposed actions that could impact a federally listed species would require compliance with federal laws including consultation under Section 7 of the ESA. Based on the lack of habitat and existing federal laws and protective measures already in place, OMD believes the development of an endangered species management plan is not warranted for this location and the role of the agency will be avoidance of take.

Camp Rilea is a 1,800-acre national training site, located along a 3-mile stretch of coastal habitat west of US Highway 101 south Warrenton. Camp Rilea is one of the primary training installations for the Oregon Army National Guard consisting of a 295-acre Cantonment that support numerous support facilities and 13 training areas, ranging in size from 51 to 176 acres that encompass 16 small-arms and explosive live-fire weapons training ranges. Impacts from training and other actions at Camp Rilea have been analyzed and addressed through the NEPA process and in consultation with USFWS for listed species, including the marbled murrelet and its habitats.

Past inventory studies, planning level bird surveys, and observational data have never documented use of Camp Rilea by the marbled murrelet. Twenty-two vegetation communities have been delineated on the installation and are arranged in linear north-south strips. Several forested habitat patches identified initially as potentially suitable for nesting murrelets were assessed by the OMD natural resources manager and wildlife biologist and discussed in consultation with the ODFW species lead, Martin Nugent. Patches consist of highly fragmented remnant stands of mature spruce and pine trees adjacent to live-fire ranges, maneuver training areas and helicopter landing zones. The proposed parcels identified as potential habitat lack the required components for nesting, experience frequent noise disturbances from ground and aerial supported military training, adjacent residential housing and Highway 101 and are located < 1 mile from the ocean.

The Camp Rilea INRMP takes an ecosystem management approach as directed by Army regulation 200-1, INRMP Implementation Manual, and DoD Instruction 4715.03 Natural Resources Conservation Program. The goals, objectives and management actions laid out in the INRMP, ensure that military lands support present and future training and testing requirements while preserving, improving, and enhancing ecosystem integrity and biodiversity. The INRMP serves as the primary document and tool for managing natural resources, including all federal and state listed species and their habitats. As a designated cooperative agency for the development of the INRMP, ODFW along with USFWS help conduct annual INRMP reviews and to determine the need for updates or revisions. On September 17, 2020 USFWS and ODFW participated in and concurred with the Camp Rilea INRMP 5-Year Review for Operation and Effect and Annual INRMP Review Meeting. In 2021 and 2022, an update to the INRMP was drafted and will formally be sent to the USFWS, ODFW and the Tribes for review. The INRMP update includes the recent uplisting of the species, acknowledges the rule changes approved by the Commission, further clarifies the status of the marbled murrelet and its habitat on Camp Rilea, and defines conservation actions for the species. The draft is currently being finalized and packaged for review for the Sikes Act Coordinators at USFWS and ODFW. A draft will also be sent to the Commission at that time, otherwise an informal preliminary draft can be made available upon request.

In summary, as a result of the consultation process with ODFW, OMD has determined that no endangered species management plans would be required at the Newport and Coos Bays properties and that the Camp Rilea INRMP would continue to serve as the primary management plan for federal and state listed species that occur or have the potential to occur on the installation. Consistent with ORS 496.172(4), 496.182(1), OAR 635-100-0137, OMD has determined that due to the dual federal and state military mission of agency, that the state approved survival guidelines for the species would be preempted by the federal laws and protective measures already in place (i.e. NEPA, ESA, MBTA, Sikes Act, EO 13186). Thus, OMD concludes that existing measures will continue to provide a benefit and support for the future conservation of the marbled murrelet in the state of Oregon.

We look forward to your review and continued coordination and participation of ODFW in the natural resources management of our military training installations. Please direct questions to the OMD Natural Resources Manager, Janet Johnson at 971-355-4126 or janet.c.johnson30.nfg@army.mil.

Sincerely,

A handwritten signature in blue ink that reads "Janet Johnson".

James Arnold
Environmental Program Manager
Oregon Military Department