



## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS–R8–ES–2018–0076; 4500030113]

#### RIN 1018–BD19

### Endangered and Threatened Wildlife and Plants; Threatened Species Status for Coastal Distinct Population Segment of the Pacific Marten

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

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to list the coastal distinct population segment (DPS) of Pacific marten (*Martes caurina*), a mammal species from coastal California and Oregon, as a threatened species under the Endangered Species Act (Act). If we finalize this rule as proposed, it would extend the Act's protections to this species. The effect of this regulation will be to add this species to the List of Endangered and Threatened Wildlife.

**DATES:** We will accept comments received or postmarked on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

Comments submitted electronically using the Federal eRulemaking Portal (see

**ADDRESSES** below) must be received by 11:59 p.m. Eastern Time on the closing date.

We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal:

<http://www.regulations.gov>. In the Search box, enter FWS–R8–ES–2018–0076, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on “Comment Now!”

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–ES–2018–0076; U.S. Fish and Wildlife Service Headquarters, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments **only** by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see *Public Comments* below for more information).

**FOR FURTHER INFORMATION CONTACT:** Dan Everson, Field Supervisor, U.S. Fish and Wildlife Service, Arcata Ecological Services Field Office, 1655 Heindon Road, Arcata, California 95521, or by telephone 707–822–7201. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

**Information Requested**

*Public Comments*

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as

possible. Therefore, we request comments or information from the public, other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The coastal marten's biology, range, and population trends, including:

(a) Biological or ecological requirements of the species, including habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat or both.

(2) Factors that may affect the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and existing regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

(5) Information on activities that are necessary and advisable for the conservation of the coastal marten to include in a 4(d) rule for the species. Section 4(d) of the Act provides that when a species is listed as a threatened species, the Secretary shall issue

such regulations as he deems necessary and advisable to provide for the conservation of such species. The Service has proposed such measures here and will evaluate ideas provided by the public in considering the prohibitions that are appropriate to include in the 4(d) rule.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include. Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information do not provide substantial information necessary to support a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species must be made “solely on the basis of the best scientific and commercial data available.”

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments **only** by the methods described in **ADDRESSES**.

If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <http://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on

*http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Arcata Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

#### *Public Hearing*

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the *Federal Register*. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the *Federal Register* and local newspapers at least 15 days before the hearing.

#### **Species Status Assessment**

A species status assessment (SSA) team prepared an SSA report for the coastal marten. The SSA team was composed of Service biologists, who worked throughout the process with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species. The SSA report underwent independent peer review by scientists with expertise in carnivore biology, habitat management, and stressors (factors negatively affecting the species) to the species. The SSA report and other materials relating to this proposal can be found on the Arcata Ecological Services Field Office website at *https://www.fws.gov/arcata/* and at *http://www.regulations.gov* under Docket No. FWS–

R8-ES-2018-0076, and at the Arcata Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

### **Previous Federal Action**

On September 28, 2010, we received a petition from the Center for Biological Diversity (CBD) and the Environmental Protection Information Center (EPIC), requesting that we consider for listing the (then-classified) subspecies Humboldt marten (*Martes americana humboldtensis*), or the (now-recognized) subspecies Humboldt marten (*M. caurina humboldtensis*), or the Humboldt marten DPS of the Pacific marten (*M. caurina*). The petitioners further stipulated that, based on recent genetic analyses indicating that populations of marten from coastal Oregon (considered members of *M. a. caurina*) are more closely related to *M. a. humboldtensis* than to *M. a. caurina* in the Cascades of Oregon (citing Dawson 2008, Slauson *et al.* 2009a), the range of the subspecies or DPS of the Humboldt marten should be expanded to include coastal Oregon populations of martens. In a letter to the petitioners dated October 22, 2010, we responded that we reviewed the information presented in the petition and determined that issuing an emergency regulation temporarily listing the species under section 4(b)(7) of the Act was not warranted.

On January 12, 2012, we published in the *Federal Register* a 90-day finding (77 FR 1900) that the petition presented substantial information indicating that listing may be warranted, and, subsequently, we initiated a status review. For purposes of the 90-day finding, the common name Humboldt marten referred to the then-classified American marten (*M. americana*) populations in coastal northern California and coastal Oregon.

On June 23, 2014, we published a scoping notice in the *Federal Register* (79 FR 35509) that summarized the uncertainty regarding the taxonomic classification of the subspecies (based on current genetics information) and indicated our intent to conduct an evaluation (for the 12-month finding) of a potential DPS of martens in coastal northern California and coastal Oregon relative to the full species classification level. On April 7, 2015, we published a not-warranted 12-month finding on the September 2010 petition (80 FR 18742).

On December 12, 2015, the Center for Biological Diversity and EPIC filed a complaint for declaratory and injunctive relief, alleging that our determination on the coastal marten violated the Act. By Order Re: Summary Judgment issued on March 28, 2017, the District Court for the Northern District of California remanded for reconsideration the Service's 12-month finding. On May 3, 2017, the court issued a stipulated order that the Service was to submit a 12-month finding to the *Federal Register* by October 1, 2018. This document serves as our 12-month finding on the September 2010 petition.

## **Background**

A thorough review of the taxonomy, life history, and ecology of the coastal marten is presented in the SSA report (Service 2018; available at <https://www.fws.gov/arcata/> and at <http://www.regulations.gov> under Docket No. FWS–R8–ES–2018–0076).

Our SSA report synthesizes the biology and status of the DPS of the Pacific marten (*Martes caurina*) in coastal Oregon and northern coastal California, commonly

referred to as the coastal marten. On June 23, 2014, we published a notice in the *Federal Register* (79 FR 35509) that summarized the taxonomic classification of the subspecies (based on current genetic information) and indicated our intent to conduct an evaluation of a potential DPS of martens in coastal Oregon and coastal northern California relative to the full species classification level. On April 7, 2015, we published a DPS analysis (80 FR 18742) concluding that Pacific martens in coastal Oregon and northern coastal California were both discrete and significant and constituted a listable entity referred to collectively as the “coastal DPS of the Pacific marten.” This document and the associated SSA reflect our analysis of that DPS. Preliminary results of genetic evaluation of the Pacific marten indicate that coastal Oregon and northern coastal California marten populations likely represent a single subspecies (Slauson *et al.* 2009a, pp. 1338–1339; Schwartz *et al.* 2016, unpublished report) but the taxonomic change has not yet been published. In this case, our listable entity may be a subspecies, but the analysis maintains its validity.

The coastal marten is a medium-sized carnivore that historically occurred throughout the coastal forests of northwestern California and Oregon. Martens have a long and narrow body type typical of the mustelid family (e.g., weasels, minks, otters, and fishers): Overall brown fur with distinctive coloration on the throat and upper chest that varies from orange to yellow to cream, large and distinctly triangular ears, and a bushy tail that is proportionally equivalent to about 75 percent of the head and body length. They are polygamous, with females solely responsible for raising young. Females do not mate until 15 months of age and, due to delayed implantation, will not produce their first litters until they are at least 24 months old. Juveniles disperse from their natal



home range at around 6 months of age. Martens exhibit intrasexual territoriality, and dominant males maintain home ranges that encompass one or more female's home ranges.

In the wild, most martens live less than 5 years. In light of delayed implantation, a small proportion of female martens, perhaps 10 percent at best, are reproducing for more than 3 years, contributing to a slow reproductive output.

Coastal martens have a generalist diet that changes seasonally with prey availability. Overall, their diet is dominated by mammals, but birds, insects, and fruits are seasonally important. They need to eat 15–25 percent of their body mass daily to meet their metabolic requirements.

Martens tend to select older forest stands (e.g., late-successional, old-growth, large-conifer, mature, late-seral, structurally complex). These forests have a mixture of old and large trees, multiple canopy layers, snags and other decay elements, dense understory development, and biologically complex structure and composition.

### **Summary of Biological Status and Threats**

The Act directs us to determine whether any species is an endangered species or a threatened species because of factors affecting its continued existence as set forth in section 4(a)(1) of the Act. The SSA report documents the results of our comprehensive biological status review for the coastal marten, including an assessment of the potential stressors to the species. It does not represent a decision by the Service on whether the species should be proposed for listing as an endangered or threatened species under the Act. It provides the scientific basis that informs our regulatory decision, which involves

the further application of standards within the Act and its implementing regulations and policies. The following is a summary of the key results and conclusions from the SSA report.

To evaluate the biological status of the coastal marten both currently and into the future, we assessed a range of conditions to allow us to consider the species' resiliency, redundancy, and representation (together, the 3Rs). The coastal marten needs multiple resilient populations distributed widely across its range to maintain persistence into the future and to avoid extinction. If populations lose resiliency, they are more vulnerable to extirpation, with resulting losses in representation and redundancy. Several factors influence whether coastal marten populations will increase to maximize habitat occupancy, which increases the resiliency of a population to stochastic events. These factors include the connectivity between populations, amount of suitable habitat for establishing home ranges, and amount of habitat that allows for predator avoidance. As we consider the future viability of the species, more populations with high resiliency distributed across the known range of the species are associated with higher overall species viability.

Coastal marten historically ranged throughout coastal Oregon and coastal northern California, but the species has not recently been detected throughout much of the historical range, despite extensive surveys. The species currently exists in four small (<100) populations and is absent from the northern and southern ends of its historical range. This current range is approximately 7.3 percent of its known historical range, with two populations in Oregon and two populations in California. The species has been extirpated from Sonoma and Mendocino Counties, CA, and largely from Humboldt, Del

Norte, and Siskiyou Counties, CA. In Oregon, coastal martens have been largely extirpated from much of the inland counties within the historical range and are known to currently occur in Coos, Curry, Josephine, Douglas, Lane, and Lincoln Counties.

We have assessed the coastal marten's levels of resiliency, redundancy, and representation currently and into the future by first ranking the condition of each population. We ranked the four populations into three categories (high, moderate, and low) based on key population factors and habitat elements: Three between-population factors (least-cost path distance, filters, and number of populations in proximity) and four within-population factors (population size, available male home ranges, available female home ranges, and proportion of habitat subject to high predation risk). Least-cost path distance describes the distance a marten must travel for dispersal needs in order to reach the next closest population. Filters are barriers to this movement and can be either natural or manmade, such as large rivers or highways. This analysis provided condition categories to describe the resiliency of each population. A summary of this analysis is provided in Table 1.

Maintaining representation in the form of genetic or ecological diversity is important to maintain the coastal marten's capacity to adapt to future environmental changes. We consider the coastal marten to have representation in the form of two different ecological settings. Some animals are adapted to the dunes ecosystems of coastal dune forest, and others are adapted to late-seral forest and serpentine ridges. One population represents the dune ecological setting, and three represent the forest and serpentine ecological settings. Genetic variation between populations is unknown at this

time, as no studies have been conducted to determine the degree of genetic variation between the four populations.

The coastal marten needs to have multiple resilient populations distributed throughout its range to provide for redundancy. The more populations, and the wider the distribution of those populations, the more redundancy the species exhibits. Based on the distributions of current verifiable marten detections and adjacent suitable habitat, we identified four extant population areas (EPAs) within coastal Oregon and northern coastal California:

- (1) Central Coastal Oregon Extant Population Area;
- (2) Southern Coastal Oregon Extant Population Area;
- (3) Oregon–California Border Extant Population Area; and
- (4) Northern Coastal California Extant Population Area.

Additional detections of coastal martens have occurred outside of the current EPAs but they did not meet the criteria of a population (most likely, they represent transient individuals in search of new territories) according to methods used in the Humboldt Marten Conservation Strategy and Assessment, a synthesis of literature on marten ecology developed by the Humboldt Marten Conservation Group. This group is made of State, Federal, Tribal, private, and non-governmental organizations in coastal Oregon and northwestern California to conserve and manage coastal martens.

Table 1. Resiliency of coastal marten populations. Data used to assign categories are included for each population and each factor.

	Between-Population Factors			Within-Population Factors				
<b>Population</b> (quantity of suitable habitat out of minimum convex polygon)	Least-cost path distance through suitable habitat	Number of filters	Number of populations in proximity (6–45 km)	Population Size	Number of available male home ranges	Number of available female home ranges	Proportion of suitable habitat that allows for predator avoidance	<b>Overall Current Condition</b>
<b>Central Coastal Oregon</b> 62 km <sup>2</sup> / 403 km <sup>2</sup>	<b>Low</b> 201 km	<b>Low</b> >1	<b>Low</b> 0	<b>Low</b> 71	<b>Low</b> 30	<b>Low</b> 44	<b>Low</b> 15%	<b>Low</b>
<b>Southern Coastal Oregon</b> 1103 km <sup>2</sup> / 2420 km <sup>2</sup>	<b>Low</b> 65 km	<b>Low</b> >1	<b>Low</b> 0	<b>Low</b> 12–<100	<b>High</b> 276–368	<b>High</b> 173–230	<b>Moderate</b> 65%	<b>Low</b>
<b>CA–OR Border</b> 56 km <sup>2</sup> / 206 km <sup>2</sup>	<b>High</b> 14 km	<b>Moderate</b> 1	<b>Moderate</b> 1	<b>Low</b> 12–<100	<b>Low</b> 14–19	<b>Low</b> 7–9	<b>High</b> 82%	<b>Low–Moderate</b>
<b>Northern Coastal CA</b> 704 km <sup>2</sup> / 1170 km <sup>2</sup>	<b>High</b> 14 km	<b>Moderate</b> 1	<b>Moderate</b> 1	<b>Low</b> 80–100	<b>High</b> 176–235	<b>Moderate</b> 96–128	<b>Moderate</b> 52%	<b>Moderate</b>

Our analysis of the past, current, and future influences on what the coastal marten needs for long-term viability revealed that two factors pose the largest risk to future viability of the species. These risks are primarily related to habitat loss and associated changes in habitat quality and distribution and include: (1) A decrease in connectivity between populations; and (2) habitat conversion from that suitable for martens to that suitable for generalist predators and competitors, thereby increasing potential interactions and subsequent marten injury, mortality, or predation. These factors are all influenced by vegetation management, wildfire, and changing climate.

Predation of martens (Factor B) has increased due to the changes in forest composition. Bobcats are their predominant predator, with predation accounting for 41 percent of marten mortalities in one study, and the sources of all those predations being bobcat. Bobcats prefer regenerating harvested stands less than 30 years old, and are nearly absent from older forests, the preferred marten habitat. Martens are vulnerable to predation and increased competition in habitats that have been subject to either high-moderate severity fires or intensive logging in the last 40 years because both of these events remove the structural characteristics of the landscape that provide escape cover and are important to marten viability (canopy cover, shrub cover, etc.). These older forests have declined substantially from historical amounts: older forests historically encompassed >75 percent of the coastal California area, 50 percent of the Klamath and Siskiyou region in northern California and southwest Oregon, and 25 to 85 percent of the Oregon Coast Range. Remaining older forests in the redwood region, Oregon Coast Range, and Klamath-Siskiyou region is estimated around 5, 20, and 38 percent, respectively, of what occurred historically.

In addition to logging, fires are a regular occurrence where the southern 3 marten populations occur; between 2000 and 2014, approximately 17 percent of the suitable habitat in the north coastal California population was burned. In the California–Oregon border population area, roughly 12 percent of suitable habitat was burned in the Longwood Fire of 1987. Substantial amounts of marten habitat in a population area can be burned in single fire events or over a few years at varying severities. Climate change is projected to result in longer fire seasons, producing more and larger fires. Fires large enough to totally encompass all or most of all four individual population areas are already occurring and are expected to increase, raising concern over the resiliency of at least the three southern marten population areas, which have been most affected by recent fires and are in a fire regime particularly vulnerable to future fires.

Dispersal is the means by which marten populations maintain and expand their distribution. Successful dispersal functional habitat between patches of habitat suitable for reproduction to maintain or expand population size and distribution. A resilient coastal marten population would have suitable habitat between populations that provides important habitat for key prey, abundant daily resting sites, and a maximum distance within the range of their average dispersal distance. Both Oregon populations do not have functional connectivity to any other population and if a stochastic or catastrophic event eliminated either of them, natural recolonization would not be feasible. The two California populations have connectivity to one another but not the Oregon populations.

In addition to being mostly isolated, all four populations are relatively small and face other threats in addition to habitat loss. Since 1980, 19 mortalities of coastal martens caused by vehicles (Factor E) have been documented, all in Oregon and mostly

along U.S. Highway 101. We expect that some unknown amount of marten roadkills go undetected, so this is likely an underestimate of the number of martens killed by cars. Exposure to rodenticides (Factor E) through direct ingestion or the consumption of exposed prey has lethal and sub-lethal effects on coastal martens. Illegal marijuana cultivation sites on public, tribal, and private forest lands are implicated as the likely source of these rodenticides. In a similar carnivore species, 85% of carcasses tested were exposed to rodenticides, with the exposure in 13% being the direct cause of death.

Certain diseases (Factor C) are also a concern to martens and other carnivore populations, including canine distemper viruses (CDV), rabies viruses, parvoviruses, and the protozoan (single-celled organism) *Toxoplasma gondii*. We acknowledge that there has been limited testing of coastal martens for the presence of pathogens or exposure to pathogens, but exposure levels and ultimate effect on populations are difficult to document until an outbreak is actually observed. While larger populations might display a mass mortality as a result of disease infections, extinction or extirpation is rare. With population sizes estimated at less than 100 each for all four coastal marten populations, an outbreak in an individual population puts it at a higher risk for extirpation, particularly when diseases act synergistically with other threats.

The coastal marten faces a variety of risks including loss of habitat, wildfire, and increased predation risk. These risks play a large role in the resiliency and future viability of the coastal marten. Given the uncertainty regarding connectivity between populations, suitable habitat, and increases in predation within the populations, we forecasted what the coastal marten may have in terms of resiliency, redundancy, and representation under three plausible future scenarios. All three scenarios were forecast



out over the next 15, 30, and 60 years. A range of timeframes with a multitude of possible scenarios allows us to create a “risk profile” for the coastal marten and its viability into the future. Scenario 1 evaluates the future condition of the coastal marten if there is no change in trends in threats to the populations from what exists today, while the other two scenarios evaluate the response of the species to increases or decreases in the major factors that are influencing marten viability. While we do not expect every condition for each scenario to be realized, we are using these scenarios to bound the range of possibilities. Scenarios 2 and 3 are considered the “outside bounds” for the range of potential plausible future conditions. For each scenario we describe the stressors that would occur in each population. We use the best available science to predict trends in future stressors (timber harvest, wildfire, etc.). Data availability varies across States and populations. Where data on future trends is not available, we look to past trends and evaluate if it is reasonable to assume these trends will continue. The results of the analysis of resiliency in our plausible future scenarios are described in further detail in the SSA report and summarized in Table 2.

Table 2. Coastal marten population conditions under each scenario.

<b>Population</b>	<b>Current Condition</b>	<b>Years into the future</b>	<b>Scenario 1</b>	<b>Scenario 2</b>	<b>Scenario 3</b>
<b>Central Oregon</b>	<b>Low</b>	15	<b>Low</b>	<b>Low</b>	<b>Low</b>
		30	<b>Low</b>	<b>Low</b>	<b>Low-0</b>
		60	<b>Low-0*</b>	<b>Low</b>	<b>Low-0</b>
<b>Southern Oregon</b>	<b>Low</b>	15	<b>Low</b>	<b>Low</b>	<b>Low</b>
		30	<b>Low</b>	<b>Low</b>	<b>Low</b>
		60	<b>Low</b>	<b>Low</b>	<b>Low</b>
<b>CA-OR Border</b>	<b>Low-Moderate</b>	15	<b>Low-Mod</b>	<b>Low-Mod</b>	<b>Low-Mod</b>
		30	<b>Low-Mod</b>	<b>Low-Mod</b>	<b>Low-Mod</b>
		60	<b>Low-Mod</b>	<b>Low-Mod</b>	<b>Low-Mod</b>

<b>Northern Coastal California</b>	<b>Moderate</b>	15	<b>Moderate</b>	<b>Moderate</b>	<b>Moderate</b>
		30	<b>Moderate</b>	<b>Mod–High</b>	<b>Moderate</b>
		60	<b>Low–Mod</b>	<b>Mod–High</b>	<b>Low–Mod</b>

\*0 = extirpated

### **Determination**

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations in title 50 of the Code of Federal Regulations (at 50 CFR part 424), set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the coastal marten. The Act defines an endangered species as any species that is “in danger of extinction throughout all or a significant portion of its range” and a threatened species as any species “which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act, either singly or in combination. A thorough analysis and discussion of the threats that may impact the coastal marten are included in the final SSA report (Service 2018, entire) associated with this document, and here we apply those threats to the statutory listing criteria to which they apply. We considered whether the coastal marten

is presently in danger of extinction and determined that proposing endangered status is not appropriate. While threats are currently acting on the species and many of those threats are expected to continue into the future (see below), we did not find that the species is currently in danger of extinction throughout all of its range. With four populations occurring across the range of the species, the current condition of the species still provides for enough resiliency, redundancy, and representation such that it is not at risk of extinction now.

However, estimates of future resiliency, redundancy, and representation for the coastal marten are low. As discussed in greater detail in the SSA, the species faces a variety of threats including loss of habitat (Factor A) due to wildfire, timber harvest, and vegetation management. Trapping (Factor B), collisions with vehicles (Factor E), and rodenticides (Factor E) are all impacting marten individuals, and the threat of disease (Factor C) carries the risk of further reducing populations. Changes in vegetation composition and distribution have also made coastal martens more susceptible to predation (Factor C) from larger carnivores. These threats, which are expected to be exacerbated by the species' small and isolated populations (Factor E) and the effects of climate change (Factor E), were central to our assessment of the future viability of the coastal marten.

Given current and future decreases in resiliency, populations will become more vulnerable to extirpation from stochastic events, in turn, resulting in concurrent losses in representation and redundancy. The range of plausible future scenarios for coastal marten predicts decreased resiliency in all four currently extant populations. Under most modeled scenarios, the species is likely to lose enough resiliency, redundancy, and

representation such that it is at risk of not being viable. All three scenarios presented as representative of plausible future scenarios create conditions where the coastal marten would not have enough resiliency, redundancy, or representation to sustain populations over time. While determining the probability of each scenario was not possible with the available data, the entire risk profile that was provided by looking across the range of the three plausible scenarios showed that the species will likely continue to lose resiliency, redundancy, and representation throughout the range in all scenarios.

In short, our analysis of the species' current and future conditions, including the impact of the factors described in section 4(a)(1) of the Act, as well as the conservation efforts discussed below, show that the between-population and within-population factors used to determine the resiliency, representation, and redundancy for the species will continue to decline over the next 15–60 years. Consequently, the species is likely to become in danger of extinction throughout its range within the foreseeable future. We chose 15 years as a temporal extant for assessing the impact of stressors to marten populations in the near term because it is roughly the length of three marten generations and is a recommended timeframe established by the International Union for Conservation of Nature. We chose the two longer periods of 30 and 60 years as multiples of generation length (6 and 12 marten generations, respectively) and to provide a longer temporal extant to assess the threat of wildfire and climate change based on availability of wildfire data and climate models.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. Because we have determined that the coastal marten is likely to become an endangered species

within the foreseeable future throughout its range, we find it unnecessary to proceed to an evaluation of potentially significant portions of the range. Where the best available information allows the Services to determine a status for the species rangewide, that determination should be given conclusive weight because a rangewide determination of status more accurately reflects the species' degree of imperilment and better promotes the purposes of the statute. Under this reading, we should first consider whether listing is appropriate based on a rangewide analysis and proceed to conduct a "significant portion of its range" analysis if, and only if, a species does not qualify for listing as either endangered or threatened according to the "all" language. We note that the court in *Desert Survivors v. Department of the Interior*, No. 16-cv-01165-JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018), did not address this issue, and our conclusion is therefore consistent with the opinion in that case.

Therefore, on the basis of the best available scientific and commercial information and in accordance with sections 3(6) and 4(a)(1) of the Act, we propose adding the coastal marten as a threatened species to the List of Endangered and Threatened Wildlife at 50 CFR 17.11(h).

#### *Available Conservation Measures*

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The

protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria for review of when a species may be ready for downlisting or delisting, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final

recovery plan will be available on our website (<http://www.fws.gov/endangered>), or from our Arcata Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands. If this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the States of California and Oregon would be eligible for Federal funds to implement management actions that promote the protection or recovery of the coastal marten. Information on our grant programs that are available to aid species recovery can be found at: <http://www.fws.gov/grants>.

Although the coastal marten is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Several Federal agency actions that occur within the species' habitat may require conference or consultation or both as described in the preceding paragraph. These actions include management and any other landscape-altering activities on lands administered by the Service and the Department of the Interior's Bureau of Indian Affairs, Bureau of Land Management, and National Park Service and the Department of Agriculture's U.S. Forest Service; issuance of section 404 Clean Water Act permits by the U.S. Army Corps of Engineers; and construction and maintenance of roads or highways by the Department of Transportation's Federal Highway Administration or the California Department of Transportation (Cal Trans).

#### **Provisions of Section 4(d) of the Act**



Under section 4(d) of the Act, the Secretary of the Interior has the discretion to issue such regulations as he deems necessary and advisable to provide for the conservation of threatened species. The Secretary also has the discretion to prohibit by regulation with respect to any threatened species of fish or wildlife any act prohibited under section 9(a)(1) of the Act. The prohibitions of section 9(a)(1) of the Act make it illegal for any person subject to the jurisdiction of the United States to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these) endangered species of fish or wildlife within the United States or on the high seas. In addition, it is unlawful to import; export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any endangered fish or wildlife species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife or fish that has been taken illegally. To the extent the section 9(a)(1) prohibitions apply only to endangered species, this proposed rule would apply those same prohibitions to the coastal marten with some exceptions, in accordance with section 4(d) of the Act.

The courts have recognized the extent of the Secretary's discretion to develop prohibitions, as well as exclusions from those prohibitions, that are appropriate for the conservation of a species. For example, the Secretary may decide not to prohibit take, or to put in place only limited take prohibitions. See *Alsea Valley Alliance v. Lautenbacher*, 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council v. National Marine Fisheries Service*, 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002). In addition, as affirmed in *State of Louisiana v. Verity*, 853 F.2d 322 (5th Cir. 1988), the

protective regulation for a species need not address all the threats to the species. As noted by Congress when the Act was initially enacted, “once an animal is on the threatened list, the Secretary has an almost infinite number of options available to him with regard to the permitted activities for those species.” He may, for example, “permit taking, but not importation of such species,” or he may choose to forbid both taking and importation but allow the transportation of such species, as long as the measures will “serve to conserve, protect, or restore the species concerned in accordance with the purposes of the Act” (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

#### **Proposed 4(d) Rule for the Coastal Marten**

Under this proposed section 4(d) rule, except as noted below, all prohibitions and provisions of section 9(a)(1) would apply to the coastal marten. The following management activities would not be subject to the general prohibitions of section 9(a)(1):

(1) Forestry management activities for the purposes of reducing the risk or severity of wildfire, such as fuels reduction projects, fire breaks, and wildfire firefighting activities.

(2) Forestry management activities included in a State-approved plan or agreement for lands covered by a Natural Communities Conservation Plan, Habitat Management Agreement, or Safe Harbor Agreement that addresses coastal marten as a covered species and is approved by the California Department of Fish and Wildlife under the authority of the California Endangered Species Act.

(3) Forestry management activities consistent with the conservation needs of the coastal marten. These include activities consistent with formal approved conservation

plans or strategies, such as Federal or State plans and documents that include coastal marten conservation prescriptions or compliance, and for which the Service has determined that meeting such plans or strategies, or portions thereof, would be consistent with this proposed rule.

Although these management activities may result in some minimal level of harm or temporary disturbance to the coastal marten, overall, these activities benefit the subspecies by contributing to conservation and recovery. With adherence to the limitations described in the preceding paragraphs, these activities will have a net beneficial effect on the species by encouraging active forest management that creates and maintains the complex tree and shrub conditions needed to support the persistence of marten populations, which is essential to the species' long-term viability and conservation.

These provisions are necessary because, absent the protections of the Act, the species is likely to become in danger of extinction in the foreseeable future. Applying the prohibitions of the Act will minimize threats that could cause further declines in the status of the species. Additionally, these provisions are advisable because the species needs active conservation to maintain or improve the quality of its habitat, and to sustain and expand the species' population and occupied range. By exempting some of the forestry management activities from the prohibitions, these provisions can encourage cooperation by landowners and other affected parties in implementing conservation measures that will maintain or enhance habitat and expand the population of the species and its occupied range. These provisions will allow for use of the land while at the same time ensuring the maintenance or enhancement of suitable habitat and minimizing

impacts to the species.

For activities funded, permitted, or carried out by a Federal agency that are not covered by the provisions and that may result in take, the Federal agency with jurisdiction would need to ensure, in consultation with the Service, that the activities are not likely to jeopardize the continued existence of the species. Private citizens who would like to have coverage for take resulting from activities not covered by these provisions may wish to seek an incidental take permit from the Service before proceeding with the activity (if there is no Federal nexus).

Based on the explanations above, the prohibitions under section 9(a)(1) would apply to the coastal marten throughout its range, with specific exemptions tailored to the conservation of the species. Nothing in this proposed 4(d) rule would change in any way the recovery planning provisions of section 4(f) and consultation requirements under section 7 of the Act or the ability of the Service to enter into partnerships for the management and protection of the coastal marten.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Arcata Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

### **Critical Habitat**

Section 4(a)(3) of the Act, as amended, and implementing regulations in 50 CFR 424.12, require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be an endangered or threatened species. Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary of the Interior that such areas are essential for the conservation of the species.

Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when any of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. The regulations also provide that, in determining whether a designation of critical habitat would not be beneficial to the species, the factors that the Service may consider include but are not limited to: Whether the present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or whether any areas meet the definition of "critical habitat" (50 CFR 424.12(a)(1)(ii)).

We do not know of any imminent threat of take attributed to collection or vandalism for the coastal marten. The available information does not indicate that identification and mapping of critical habitat is likely to initiate any threat of collection or vandalism. Therefore, in the absence of finding that the designation of critical habitat

would increase threats to the species, if there are benefits to the species from a critical habitat designation, a finding that designation is prudent is appropriate.

The potential benefits of designation may include: (1) Triggering consultation under section 7 of the Act, in new areas for actions in which there may be a Federal nexus where it would not otherwise occur because, for example, it is unoccupied; (2) focusing conservation activities on the most essential features and areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the protected species. Because designation of critical habitat would not likely increase the degree of threat to the coastal marten and may provide some measure of benefit, designation of critical habitat may be prudent for the coastal marten.

Our regulations (50 CFR 424.12(a)(2)) further state that critical habitat is not determinable when one or both of the following situations exists: (1) Information sufficient to perform required analysis of the impacts of the designation is lacking; or (2) the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. A careful assessment of the economic impacts that may occur due to a critical habitat designation is still ongoing, and we are in the process of working with the States and other partners in acquiring the complex information needed to perform that assessment. The information sufficient to perform a required analysis of the impacts of the designation is lacking, and, therefore, we find designation of critical habitat for the coastal marten to be not determinable at this time.

## **Required Determinations**

### *Clarity of the Rule*

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;
- (4) Be divided into short sections and sentences; and
- (5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

### *National Environmental Policy Act (42 U.S.C. 4321 et seq.)*

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the *Federal Register* on October 25, 1983 (48 FR 49244).

### *Government-to-Government Relationship with Tribes*

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. In development of the SSA, we sent letters noting our intent to conduct a status review and requested information from all tribal entities within the historical range of the coastal DPS of the Pacific marten, as well as providing a draft SSA Report to the Yurok Tribe for review. As we move forward in this listing process, we will continue to consult on a government-to-government basis with tribes as necessary.

### **Authors**

The primary authors of this proposed rule are the staff members of the Service's Species Assessment Team, with assistance from the Arcata Ecological Services Field Office and the Portland Ecological Services Field Office.



**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Proposed Regulation Promulgation**

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

**PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS**

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245; unless otherwise noted.

2. Amend § 17.11(h) by adding an entry for “Marten, Pacific (coastal DPS)” to the List of Endangered and Threatened Wildlife in alphabetical order under MAMMALS to read as set forth below:

**§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*

(h) \* \* \*

Common name	Scientific name	Where Listed	Status	Listing Citations and Applicable Rules
MAMMALS				
* * * * *				
Marten, Pacific (coastal DPS)	<i>Martes caurina</i>	Wherever found	T	[ <i>Federal Register</i> citation when published as a final rule] 50 CFR 17.40(s) <sup>4d</sup>
* * * * *				

\* \* \* \* \*

3. Amend § 17.40 by adding paragraph (s) to read as set forth below:

**§ 17.40 Special rules—mammals.**

\* \* \* \* \*

(s) Coastal marten (*Martes caurina*). --(1) *Prohibitions*. Except as noted in paragraph (a)(2) of this section, all prohibitions and provisions of section 9(a)(1) of the Act apply to the coastal marten.

(2) *Exceptions from prohibitions*. Incidental take of the coastal marten will not be considered a violation of the Act if the take results from any of the following activities:

(i) Forestry management activities for the purposes of reducing the risk or severity of wildfire, such as fuels reduction projects, fire breaks, and wildfire firefighting activities.

(ii) Forestry management activities included in a State-approved plan or agreement for lands covered by a Natural Communities Conservation Plan, Habitat Management Agreement, or Safe Harbor Agreement that addresses coastal marten as a covered species and is approved by the California Department of Fish and Wildlife under the authority of the California Endangered Species Act.

(iii) Forestry management activities consistent with the conservation needs of the coastal marten. These include activities consistent with formal approved conservation plans or strategies, such as Federal or State plans and documents that include coastal marten conservation prescriptions or compliance, and for which the Service has determined that meeting such plans or strategies, or portions thereof, would be consistent with this rule.

\* \* \* \* \*

James W. Kurth  
*Deputy Director*  
*U.S. Fish and Wildlife Service*  
*Exercising the Authority of the Director*  
*U.S. Fish and Wildlife Service.*

Billing Code 4333-15

[FR Doc. 2018-21794 Filed: 10/5/2018 8:45 am; Publication Date: 10/9/2018]