

Dated: June 27, 2003.

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Endangered and Threatened Wildlife and Plants; 90-day Finding for a Petition To List a Distinct Population Segment of the Fisher in Its West Coast Range as Endangered and To Designate Critical Habitat

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

**ACTION:** Notice of 90-day petition finding and initiation of status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding for a petition to list a distinct population segment (DPS) of the fisher (*Martes pennanti*) in its West Coast range, including portions of California, Oregon, and Washington, as endangered and to concurrently designate critical habitat in accordance with the Endangered Species Act of 1973, as amended. We find the petition presents substantial information that the West Coast population of the fisher may be a distinct population segment for which listing may be warranted. We are initiating a status review to determine if listing this population is warranted.

**DATES:** The finding announced in this document was made on July 3, 2003. To be considered in the 12-month finding on this petition, comments and information should be submitted to us by September 8, 2003.

**ADDRESSES:** Data, information, comments, or questions concerning this petition should be submitted to the Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Sacramento, CA 95825-1846. The petition finding and supporting information are available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Jesse Wild, at the address given above (telephone 916/414-6600; facsimile 916/414-6713; electronic mail: fisher@fws.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that the

Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on all information available to us at the time we make the finding. To the maximum extent practicable, we are to make this finding within 90 days of the date we received the petition, and publish the notice of the finding promptly in the **Federal Register**. Our standard for substantial information for petitions is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that substantial information was presented, the Act requires that we promptly commence a review of the status of the species involved.

On December 5, 2000, we received a petition, dated November 28, 2000, to list a DPS of the fisher in its West Coast range, including portions of California, Oregon, and Washington, as endangered pursuant to the Act, and to concurrently designate critical habitat. The petitioners include 19 organizations and one individual, with the lead organizations identified as the Center for Biological Diversity and the Sierra Nevada Forest Protection Campaign. We have reached our 90-day finding on this petition in accordance with an April 4, 2003, order by the U.S. District Court, Northern District of California. The order requires us to complete a finding by July 3, 2003 (*Center for Biological Diversity v. Norton*, Order Granting Plaintiffs' Motion for Summary Judgment, No. C 01-2950 SC).

#### Biology and Distribution

The fisher is classified in the order Carnivora, family Mustelidae, which also includes weasels, mink, martens, and otters. It is a member of the genus *Martes*, and occurs only in North America. Goldman (1935 as cited in Powell 1993) recognized three subspecies of fisher, although he stated they were difficult to distinguish: *Martes pennanti pennanti* in the east and central regions; *M. p. columbiana* in the central and northwestern regions; and *M. p. pacifica* in the western region. Subsequent analyses, however, questioned whether there is a sufficient basis to support recognition of different subspecies (Grinnell *et al.* 1937; Hagmeier 1959). Recent consideration of genetic variation indicates patterns of population subdivision similar to the earlier described subspecies, although it is not clear whether Goldman's designations of subspecies are

taxonomically valid (Kyle *et al.* 2001; Drew *et al.* 2003).

Fishers occur in the northern coniferous and mixed forests of Canada and northern contiguous United States, from the mountainous areas in the southern Yukon and Labrador Provinces in Canada southward to central California and Wyoming, the Great Lakes, New England, and Appalachian regions (Graham and Graham 1994; Powell 1994). The current distribution of fishers is much reduced from the historical distribution (Gibilisco 1994). The distribution has recovered since the 1950s in some of the central and northeastern areas, a change attributed to factors such as trapping closures and reintroductions (Brander and Books 1973; Powell and Zielinski 1994).

In Washington, Oregon, and California, fishers probably occupied most coniferous forest habitats prior to extensive settlement by Europeans (Grinnell *et al.* 1937; Bailey 1936 and Dalquest 1948 as cited in Aubry and Lewis in press 2003). They use low-to mid-elevational forests up to 8,200 feet (ft) (2,500 meters (m)) (Grinnell *et al.* 1937; Schempf and White 1977; Aubry and Houston 1992). Extensive trapping in the 1800s and 1900s is frequently cited as the principal initial cause of the substantial reduction of the range of the fisher in all three States. Commercial trapping of the fisher has been prohibited in each of these States for decades. Other factors consistently identified as contributing to the reduction of the fisher's distribution in these states include the alteration of forest habitats as a result of logging and conversion to other land uses (*e.g.*, Grinnell *et al.* 1937; Powell 1993; Powell and Zielinski 1994; Lewis and Stinson 1998; U.S. Department of Agriculture (USDA) Forest Service 2000).

In Washington, the fisher historically occurred both east and west of the Cascade Crest (Scheffer 1938; Aubry and Houston 1992), in the Olympic Peninsula, and probably in southwestern and northeastern Washington (Lewis and Stinson 1998). An estimated 15 million acres (ac) (60,700 square kilometers (km<sup>2</sup>)), or 60 percent of the forested landscape in the State, was potential fisher habitat when European settlers arrived (Lewis and Stinson 1998). Based on extensive surveys and a lack of recent sightings or trapping reports, the fisher currently is considered to have been extirpated or reduced to scattered individuals in Washington (Aubry and Houston 1992; Lewis and Stinson 1998). The State has listed the fisher as endangered (WAC 232-12-297).

In Oregon, the fisher apparently has been extirpated from all but two portions of its historical range (Aubry and Lewis in press 2003). The two known extant populations are in the southwestern portion of the State: one in the southern Cascade Range that was established through reintroductions of fishers from British Columbia and Minnesota that occurred between 1961 and 1981, and one in the northern Siskiyou Mountains of southwestern Oregon that is presumed to be an extension of the population in northern California. The two populations appear to be disjunct and genetically isolated from each other (Aubry and Lewis in press 2003). The State has designated the fisher as a protected nongame species, considering it as a "Sensitive Species—Critical Category."

In California, the fisher historically ranged throughout forested lands of the Sierra Nevada from Greenhorn Mountain in northern Kern County northward to the southern Cascades at Mount Shasta, and from the Klamath Mountains and north Coast Range near the Oregon border southward to Lake and Marin Counties (Grinnell *et al.* 1937). By the mid-1920s, the fisher was considered to still occur in much of its historical range in California, but at "markedly reduced" numbers (Grinnell *et al.* 1937). Recent surveys suggest there has been a reduction in the occupied range since the early 1900s, particularly in the central and northern portions of the Sierra Nevada (Zielinski *et al.* 1995). Currently, there are two known populations in California, one in the northwestern part of the State (extending into southwestern Oregon) and the other in the southern Sierra Nevada, separated by approximately 260 miles (mi) (420 km) (Zielinski *et al.* 1995). The extent of this separation is far beyond the species' known maximum dispersal distance. The State considers the fisher to be a "Species of Special Concern."

In the western United States, fisher denning and resting sites are forest stands with complex structural characteristics that are typical of late-successional forests (Powell and Zielinski 1994; Seglund 1995; Dark 1997; Truex *et al.* 1998; Aubry *et al.* 1999; Carroll *et al.* 1999; USDA Forest Service 2000; Zielinski *et al.* in litt. 2002). These characteristics include large trees and snags, coarse down woody-debris and other complex structure near the ground, a high amount of canopy closure and overhead cover, and multiple-layered vegetation. Large tree cavities and snags in areas of dense canopy cover are often used as natal and maternal den sites (Lewis and

Stinson 1998; USDA Forest Service 2000); this may provide kits protection from predators while the mother is hunting (Lewis and Stinson 1998).

Late-successional coniferous or mixed forests are considered to provide the most suitable fisher habitat because they provide abundant potential den sites and preferred prey species (Allen 1987). However, according to Powell (1993), forest type is probably not as important as the vegetative and structural aspects that lead to abundant prey populations and reduce fisher vulnerability to predation. Younger forests in which complex forest floor components such as large logs, snags, and tree cavities are maintained in significant numbers, and which provide a diverse prey base, may be suitable habitat for the fisher (Lewis and Stinson 1998). Powell and Zielinski (1994) concluded that although there has been some indication of fishers being detected in second-growth forests and areas with limited overhead canopy, it was not known whether the use was transient or based on stable (regularly used) home ranges. Based on their work and a review of other information, Powell and Zielinski stated that early- and mid-successional forests are unlikely to provide the same prey resources, rest sites, and den sites as more mature forests. They also suggested that habitat for resting and denning sites may be more limiting for fishers than foraging habitat.

Fishers have been found to be associated with riparian areas (Aubry and Houston 1992). Forested riparian areas often are protected from logging and generally are more productive, thus having the dense canopy closure, large trees, and general structural complexity such as broken top trees, snags, and coarse woody debris, all of which provide important rest site elements (Seglund 1995; Dark 1997).

Fishers avoid areas with little forest cover or significant human disturbance and conversely prefer large areas of contiguous interior forest (Rosenberg and Raphael 1986; Powell 1993; Jones and Garton 1994; Seglund 1995; Dark 1997). At a landscape scale, patches of preferred habitat and the location of open areas with respect to these patches may be crucial to the distribution and abundance of fishers in an area; fishers will probably use patches of preferred habitat that are interconnected by other forest types, whereas they will not likely use patches of habitat that are separated by sufficiently large open areas (Buskirk and Powell 1994). Riparian corridors (Heinemeyer and Jones 1994) and forested saddles between major drainages (Buck *et al.* 1983) may provide important dispersal habitat or

landscape linkages (travel corridors) for the species.

The fisher is a generalized predator with a diverse diet that includes snowshoe hares (*Lepus americanus*), porcupines (*Erithizon dorsatum*), birds, squirrels, mice, shrews, voles, reptiles, insects, deer carrion, vegetation, and fruit (Powell 1993; Martin 1994; Zielinski *et al.* 1999; Zielinski and Duncan in litt. 2002). They usually hunt on the ground and occasionally hunt in trees (Raine 1987; Powell 1993).

Other than the breeding season, fishers are solitary. Their home ranges are large, varying across North America from 3,954 to 30,147 ac (16 to 122 km<sup>2</sup>) for males and from 988 to 13,096 ac (4 to 53 km<sup>2</sup>) for females (Powell and Zielinski 1994; Lewis and Stinson 1998).

Fishers have a low annual reproductive capacity. Males may not be effective breeders until they are 2 years old (Powell 1993). Females breed at the end of their first year, but because of delayed embryo implantation, do not produce a litter until their second year. Not all females produce young every year. Litters usually consist of 2 to 3 kits, and are raised entirely by the female. Kits have developed their own home ranges by age 1 (Powell 1993). Although relatively little information exists on dispersal by young, recent evidence suggests that only juvenile males disperse long distances, which would affect the rate at which the fisher may be able to colonize formerly occupied areas within its historical range (Aubry *et al.* in press 2003).

Fishers are estimated to live up to 7 to 10 years of age in the wild (Powell 1993). The most commonly reported mortality factors include predation, incidental trapping (*i.e.*, in traps set for other species), and being struck by vehicles (*e.g.*, Buck *et al.* 1994; Lewis and Zielinski 1996; Lewis and Stinson 1998; Truex *et al.* 1998).

#### Distinct Population Segment

Under the Act, we must consider for listing any species, subspecies, or, for vertebrates, any distinct population segment of these taxa, if there is sufficient information to indicate that such action may be warranted. To implement the measures prescribed by the Act and its Congressional guidance, we and the National Marine Fisheries Service (National Oceanic and Atmospheric Administration—Fisheries) developed a joint policy that addresses the recognition of DPSs of vertebrate species for potential listing actions (61 FR 4722). The policy specifies that we are to use two elements to assess whether a population

segment under consideration for listing may be recognized as a DPS: (1) the population segment's discreteness from the remainder of the species to which it belongs; and (2) the significance of the population segment to the species to which it belongs. Our evaluation of significance is made in light of Congressional guidance that the authority to list DPSs be used "sparingly" while encouraging the conservation of genetic diversity. If we determine that a population segment meets the discreteness and significance standards, then the level of threat to that population segment is evaluated based on the five listing factors established by the Act to determine whether listing the DPS as either threatened or endangered is warranted.

Under our DPS policy, a population segment of a vertebrate species may be considered discrete if it satisfies either one of the following two conditions: (1) it is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation); or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

Substantial information is presented in the petition and other documents in our files indicating the West Coast population may be markedly separated from other populations of the fisher. Physical barriers that result in separation from fisher populations that occur in the Rocky Mountains and the eastern United States include major highways, major rivers, urban and rural nonforested areas, agricultural development, and other areas such as the Okanogan Valley in Washington. Along the West Coast, the Oregon Cascade Range population is described as being separated from the population in British Columbia by more than 400 mi (650 km) (Aubry and Lewis in press 2003), and fishers in the southern Sierra Nevada are approximately 260 mi (420 km) from those in northern California (Zielinski *et al.* 1995). Quantitative measures of genetic discontinuity also indicate there may be a marked separation of the West Coast population from other populations of the taxon. Genetic studies indicate the historical continuity in fisher distribution that once provided for genetic interchange among populations no longer exists in the western United States (Aubry and

Lewis in press 2003). Genetic analyses also indicate that native populations of the fisher in California and the reintroduced population in the southern Cascade Mountains of Oregon have become isolated from the main body of the species, probably due to extirpation of the fisher in Washington and northern Oregon (Drew *et al.* 2003). The West Coast population also may be markedly separated from other populations as a result of ecological factors, as they use forest types that differ in species composition, tree size, and habitat structure as compared to those used by fishers in the northeastern United States, eastern Canada, and the Great Lakes region (Buskirk and Powell 1994; Powell and Zielinski 1994). However, the extent to which such ecological factors may result in a marked separation of the West Coast population from populations in the Rocky Mountains or British Columbia is less clear.

Information in the petition and in our files pertaining to the second criterion for discreteness suggests the West Coast population of the fisher may be delimited by the international governmental boundary between the United States and Canada with regard to differences in control of exploitation, management of habitat, conservation status, and regulatory mechanisms that may be significant with respect to section 4(a)(1)(D) of the Act. For example, commercial harvest of the fisher is allowed in British Columbia, but trapping the species has been prohibited for decades in Washington, Oregon, and California (Lewis and Stinson 1998). Also, Canada has no overarching forest practices laws governing management of its national lands. In contrast, in the United States, lands within the National Forest System, including the wildlife habitat occurring there, are considered under the National Forest Management Act of 1976, as amended (16 U.S.C. 1600), and associated planning regulations. Therefore, the petition and other documents in our files present substantial information indicating that the West Coast population of the fisher may meet one or both of the conditions for discreteness under our DPS Policy.

Our DPS policy states that our consideration of a population segment's biological and ecological significance may include, but is not limited to, the following: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon; (3) evidence that the population

segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range; and (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

Fishers in the West Coast population persist in an ecological setting that may be unusual in comparison to the rest of the taxon, with a different climate, topography, and habitat than are found in the majority of its range. The potential loss of the West Coast population could result in a significant gap in the range of the species by eliminating the southwest portion of its range. Also, the populations in the southern Sierra Nevada and northern California/southern Oregon appear to be the only extant native populations of the fisher remaining in the West Coast States (Truex *et al.* 1998; Aubry *et al.* in press 2003; Drew *et al.* 2003), and based on our review of maps provided by Lewis and Stinson (1998), these are two of only seven or eight remaining areas occupied by fishers in the United States. Loss of the West Coast population could result in the loss of a significant genetic entity, since they have been described as being genetically distinct from fishers in the remainder of North America (Drew *et al.* 2003). Based on our review of the petition and other documents in our files, there is substantial scientific information indicating that the West Coast population of the fisher may have significance to the remainder of the taxon.

Because the petition and other documents present substantial information the West Coast population of the fisher may be both discrete and significant, it may constitute a valid DPS and thus may be a listable entity under the Act.

#### Conservation Status

Under our DPS policy, if a vertebrate population segment is discrete and significant (*i.e.*, it is a distinct population segment) we will base its evaluation for endangered or threatened status on the Act's definition of those terms and a review of the factors enumerated in section 4(a). Under section 4(a) of the Act, we may list a species, subspecies, or vertebrate DPS on the basis of any of five factors, as follows: "(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; (E) other natural or

manmade factors affecting its continued existence.”

The petition presents information and supporting references with regard to threats according to each of the five factors under section 4(a)(1) of the Act, based on numerous publications in scientific journals and documents prepared by federal and State agencies. The petition concludes with a summary statement that the remaining populations of the fisher within its range on the West Coast are at risk due to “a combination of continued habitat destruction caused by logging and development, poaching, predation, small population size and population isolation” and also as a result of current regulations that the petitioners consider to be inadequate.

With respect to factor A, information in the petition and other information in our files focuses on late-successional forests as the principal habitat of the West Coast population of the fisher. In some circumstances, areas other than late-successional forests may contain habitat features used by the fisher, and not all late-successional forests are necessarily fisher habitat (*e.g.*, forests at higher elevations). However, late-successional forests appear to be an appropriate index of suitable habitat. The petition and other information in our files indicates that present and expected future timber harvests, various types of development, and recreational pressure may result in the destruction, modification, or curtailment of the fisher’s habitat and range. Some of these effects, such as timber harvest and various human developments, may be more likely to occur on private land than on the National Forests and other public lands within the range of the fisher, due to differences in management. An estimated 25 percent of the historical range of the fisher in the Sierra Nevada is on non-federal land, and approximately 60 percent of the private land is managed as industrial forest. In recent years these industrial forest lands have accounted for more than 80 percent of the timber volume harvested in the Sierra Nevada, and recent analyses concluded “Old forest conditions on private land [in the Sierra Nevada] may decrease” (USDA Forest Service 2000). In the portion of Washington, Oregon, and northern California covered by the Northwest Forest Plan (NWFP) (concerning management of certain Forest Service and Bureau of Land Management (BLM) lands), approximately 34 percent of the fisher’s range is estimated to be on non-federal land, where timber harvest is expected to continue in various portions of late-successional forest (USDA and

U.S. Department of the Interior (USDI) 1994). Portions of late-successional forests on the National Forests and BLM lands also are subject to timber harvest under the NWFP (USDA and USDI 1994).

Although the effects of recreational activities on wildlife species, including the fisher, are not well understood, such activities can result in displacement of animals from habitat (*i.e.*, indirectly degrading habitat suitability) or have other negative impacts. According to the Final Environmental Impact Statement (FEIS) for the Sierra Nevada Forest Plan Amendment (SNFPA), the human population in the Sierra Nevada is expected to be nearly 2 million by 2040, more than triple the population in 1990, and recreational activities of various types are expected to increase (USDA Forest Service 2000). The human population increase also is expected to result in increased developments of various types, particularly on private lands, and this also may reduce and fragment fisher habitat.

Habitat fragmentation is a concern because, as noted above, fishers avoid crossing open areas. Lack of habitat connectivity may result in significant delay or failure to access and use patches of suitable habitat. Lack of connectivity also may contribute to population isolation. The analysis of the connectivity of old forests in the Sierra Nevada noted that “checkerboard” land ownership patterns in the central Sierra Nevada (where there is considerable intermingling of private land with National Forest System land), coupled with assumptions about reasonably foreseeable timber harvesting on private lands, make the retention of connectivity “problematic” in these areas (USDA Forest Service 2000). The FEIS further stated that: “\* \* \* lack of appropriate habitat elements, including large trees and snags, the lack of connectivity among patches of remaining habitat, the fragmenting effect of major highways, and human disturbance associated with the presence of smaller roads” may account for the lack of increase or expansion of the fisher population in the southern portion of the Sierra Nevada.

The petition cites the risk of crown fires to fisher habitat as one of the natural or anthropogenic factors affecting the continued existence of the West Coast fisher population. Changes in the structure of forests—due to past timber harvest practices, fire suppression, and other activities—have resulted in increased fuel loadings in many forested areas, which in turn have increased the risk of crown or “stand-replacing” fires. The petitioners also

assert, however, that the late-successional, mixed conifer forests where the fisher generally is found are at lower risk of crown fires than other seral-stages and forest types, and that fuels reduction activities could pose risks to the fisher. In particular, they cite the potential for such activities to reduce the large trees and snags used by the fisher for resting and denning.

The analyses for the SNFPA considered the likelihood and potential effects of fires of various intensities in the Sierra Nevada, as well as the potential effects of prescribed fire or mechanical fuels reduction treatments. The FEIS stated there is considerable uncertainty regarding fire effects on large trees, as well as uncertainty regarding the effects of prescribed fire or various mechanical fuels reduction treatments on canopy closure and other components of fisher habitat in the Sierra Nevada (USDA Forest Service 2000). Regarding the remainder of the West Coast range of the fisher (*i.e.*, Washington, Oregon, and northern California), the petition and our files for this 90-day finding contain almost no specific information regarding the risk to the fisher and its habitat posed by potential crown fires, or the potential threats or benefits to fisher habitat that may be associated with various fuels reduction treatments.

With regard to factor B, overutilization for commercial purposes, the trapping of fishers has been prohibited for decades in California, Oregon, and Washington. However, fishers sometimes are incidentally caught in traps legally set for other furbearers (Luque 1983 as cited in Lewis and Stinson 1998; Douglas and Strickland 1987; Lewis and Zielinski 1996), which can result in crippling injury or mortality (Cole and Proulx 1994; Strickland and Douglas 1984 as cited in Lewis and Zielinski 1996). Information is limited regarding the extent to which incidental trapping or poaching may be affecting the fisher, but even low rates of additive mortality from trapping have been predicted to affect fisher population stability (Powell 1979; Lewis and Stinson 1998), and may slow or negate population responses to habitat improvement (Powell and Zielinski 1994).

With regard to factor C, the available information indicates that disease is not a significant threat, while the threat posed by predation is not clear. Healthy adult fishers are not usually subject to predation (Powell and Zielinski 1994), but predation risk may be greater in areas with relatively less canopy cover and forest structure (Buck *et al.* 1994). Truex *et al.* (1998) stated that predation

and being struck by vehicles were important causes of mortality of fishers in northern California and the southern Sierra Nevada. The threat posed by predation may be exacerbated by small population size (see discussion of factor E, below).

Regarding factor D, the petitioners present information to support their assertion that the West Coast population of the fisher is threatened by the inadequacy of existing regulatory mechanisms. Because the petition predates the SNFPA, which was adopted in January of 2001, information for the Sierra Nevada presented in the petition was based on a draft Environmental Impact Statement for the SNFPA. According to the FEIS (USDA Forest Service 2000), the SNFPA would generally improve upon previous management for fishers on the involved National Forest lands, although it represents some risk to fisher habitat. The FEIS provided separate predictions of outcomes for the fisher environment and for fisher populations on National Forests in the Sierra Nevada after 50 years under a range of management alternatives. For the alternative adopted by the SNFPA, the predicted outcome for the environment of the fisher on the National Forests was as follows: "Suitable environments are either broadly distributed or of high abundance across the range of the species; however, there are temporary gaps where suitable environments are absent or only present in low abundance. Disjunct areas of suitable habitat are typically large enough and close enough to permit dispersal and interaction among subpopulations across the species' range." The predicted population outcome was slightly worse: "Suitable environments are frequently distributed as patches or they exist at low abundance, or both. Gaps, where suitable environments are either absent or present in low abundance, are large enough that some subpopulations are isolated, limiting opportunity for species interactions. In most of the species' range, subpopulations have the opportunity to interact as a metapopulation; however, some subpopulations are so disjunct or of such low density that they are essentially isolated from other populations" (USDA Forest Service 2000). The Forest Service is proposing changes to the SNFPA and recently issued a draft supplemental EIS for public review and comment (68 FR 35406); thus, the potential effects of the SNFPA will have to be reevaluated based on any changes that are adopted as a result of the final supplemental EIS.

For the National Forests and BLM lands in Washington, Oregon, and northern California covered by the Northwest Forest Plan, the report of the Forest Ecosystem Management Assessment Team (FEMAT) projected a 63 percent future likelihood for achieving an outcome in which habitat for the fisher is of sufficient quality, distribution, and abundance to allow the species population to stabilize, well distributed across Federal lands in the NWFP area (FEMAT 1993). The analysis for the NWFP acknowledged that population sizes of the fisher in the Pacific Northwest are quite low in portions of its range, "causing some uncertainty that populations will recover even if habitat conditions are sufficient to support well-distributed, stable populations" (USDA and USDI 1994). Some aspects of the NWFP (e.g., the Aquatic Conservation Strategy and the "survey and manage guidelines") are presently undergoing changes, which may result in changes in Forest Service and BLM management of habitat used by the fisher.

As described above (see discussion of factor A), a substantial portion of the range of the fisher in Washington, Oregon, and California is on private land. Timber harvest on such lands is carried out in accordance with State regulations. Although these State regulations address various aspects of timber harvest on private lands, they do not contain specific provisions to protect fishers or fisher habitat. The State regulations do, however, address retention of large trees, canopy closure, and riparian areas. The extent to which the State regulations on timber harvest affect fragmentation of fisher habitat is unclear.

Under section 10 of the Act, a non-Federal entity with a habitat conservation plan (HCP) that meets certain requirements may receive authorization from us to "take" federally listed species. Several HCPs in California, Oregon, and Washington contain conservation strategies that protect habitat for the northern spotted owl (*Strix occidentalis caurina*) or marbled murrelet (*Brachyramphus marmoratus*) and may provide some benefit to fishers or have fisher-specific protection measures. The petitioners assert that protections provided by the Federal listing of the northern spotted owl do not necessarily translate to protections for fishers on Federal lands or on private lands, and that there has been little or no analysis of the adequacy of the HCPs with regard to the fisher. According to Lewis and Stinson (1998), fishers require larger areas and are more sensitive to habitat

fragmentation than the owl. Protections provided by the Federal listing of the marbled murrelet may provide habitat for fishers on low-elevation private lands, but the extent to which this occurs has not been determined.

The petition asserts there are few to no specific State regulations to protect the fisher on State lands in California and Oregon. In Oregon, the fisher is designated a protected nongame species and is listed as a "Sensitive Species—Critical Category." In California, the fisher is classified as a furbearing mammal that is protected from commercial harvest and it is a "Species of Special Concern." Our evaluation indicates that these designations in Oregon and California do provide some protection to the fisher in the form of voluntary conservation efforts and fines for illegal trapping. In the case of California, the fisher and its habitat also may receive consideration under the California Environmental Quality Act. The fisher is listed by the State of Washington as endangered, which provides additional protections in the form of more stringent fines for poaching and a process for environmental analysis of projects affecting the species.

The management plans for California's and Oregon's State Forests do not appear to contain specific measures addressing the fisher. The State Forests in California and Oregon consist of small, widely scattered parcels or larger areas of highly fragmented forest habitat, and they generally are not managed to maintain late-successional habitat characteristics. The State lands in Washington are managed by the Washington Department of Natural Resources (WDNR). Because these lands generally occur at lower elevations than National Forest lands in the State, a higher proportion is within the elevational range preferred by the fisher (Aubry and Houston 1992; WDNR 1997). More than half of all WDNR forest lands are under 60 years in age and less than 10 percent are more than 50 years of age, indicating the State's management of these lands does not result in retaining late-successional forests (WDNR 1997) that are typically considered to provide fisher habitat.

The petition mentions tribal lands but only presents information concerning a forest management plan for a relatively small tribal area in northern California where fishers are known to occur. Very little of the available information in our files addresses management of the fisher or its habitat on Native American lands, and further analysis would be needed to determine the adequacy of existing

regulatory mechanisms involving these lands.

With regard to factor E, the petition states that because of small population sizes and isolation, fisher populations on the West Coast may be in danger of extinction from inbreeding depression (*i.e.*, negative genetic effects) and unpredictable variation in demographic or environmental characteristics (demographic and environmental stochasticity). Small populations of wildlife are considered to be at risk of extinction solely from demographic and environmental stochasticity, independent of deterministic factors, such as human-caused habitat loss (Lande and Barrowclough 1987; Lande 1993). According to Heinemeyer and Jones (1994), the greatest long-term risk to the fisher in the western United States is probably population extinction due to isolation of small populations. Aubry and Lewis (in press 2003) consider the inability of extant fisher populations to support one another demographically, including those that are isolated by relatively small distances, or to colonize currently unoccupied areas within their historical range, to be significant conservation concerns. Also, the significance of mortality factors such as incidental trapping or being struck by vehicles may be greater for small populations of fishers (Powell 1979; USDA Forest Service 2000), and the same may be true with regard to mortality due to predation.

Lewis and Stinson (1998) note that although commercial trapping of fishers has been prohibited in Washington for approximately 70 years, the species has not recovered in the State. They suggest that any small population that may still exist in Washington is at risk due to natural variation in demographic factors (*e.g.*, variable reproduction and survival) and environmental effects, as well as potential negative genetic effects that can affect small populations. They consider the remaining fishers in Washington to be unlikely to represent a viable population and conclude that the species is likely to be extirpated from the State without recovery activities. Despite the protections afforded by the NWFP, the low population level of the fisher in the portions of the range covered by the plan in Washington, Oregon and northern California results in "uncertainty that populations will recover even if habitat conditions are sufficient to support well-distributed, stable populations," and the recovery of fisher populations in the NWFP area is likely to be slow due to the species' low reproductive rate and small population

size (USDA and USDI 1994). The fisher population in the southern Sierra Nevada is thought to be at substantial risk because of several factors, including isolation, small population size, demographic and environmental stochasticity, and low reproductive capacity, in addition to ongoing habitat loss (Zielinski *et al.* 1995; Lamberson *et al.* in litt. 2000; Drew *et al.* 2003).

#### **Finding**

We have reviewed the petition, literature cited in the petition, and information available in Service files. We have found that the petition presents substantial information indicating the West Coast population of the fisher may be a distinct population segment for which listing may be warranted.

The petition also requests us to designate critical habitat for this species. If we determine in our 12-month finding that listing the fisher in its West Coast range is warranted, we will address the designation of critical habitat in the subsequent proposed listing rule or as funding allows.

#### **Public Information Solicited**

When we make a finding that substantial information exists to indicate that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information on the fisher in California, Oregon, and Washington. This includes information regarding historical and current distribution, biology and ecology, ongoing conservation measures for the fisher and its habitat, and threats to the fisher and its habitat. We also request information regarding the adequacy of existing regulatory mechanisms including, but not limited to, State regulations pertaining to timber harvest, as well as the California Environmental Quality Act and any similar regulations that are applicable in Oregon or Washington. In addition to requesting information on the fisher in its West Coast range, we are requesting information on the species rangewide for the purpose of determining if the fisher in its West Coast range constitutes a DPS, or more than one DPS, or constitutes a significant portion of the range of the species. We request any additional information, comments, and suggestions from the public, other concerned governmental agencies, Tribes, the scientific community, industry or environmental entities, or

any other interested parties concerning the status of the fisher.

If you wish to comment, you may submit your comments and materials concerning this finding to the Field Supervisor (*see* ADDRESSES section). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

#### **References Cited**

A complete list of all references cited herein is available on request from the Sacramento Fish and Wildlife Office (*see* ADDRESSES section).

#### **Author**

The primary author of this document is Jesse Wild (*see* ADDRESSES section).

#### **Authority**

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 3, 2003.

**Marshall P. Jones, Jr.,**

*Acting Director, Fish and Wildlife Service.*

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## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

#### **Interim Voluntary Guidelines To Avoid and Minimize Wildlife Impacts from Wind Turbines**

**AGENCY:** Fish and Wildlife Service.

**ACTION:** Notice of availability of interim guidelines and request for comments.

**SUMMARY:** The Fish and Wildlife Service (Service) has developed voluntary interim guidelines for locating and designing wind energy facilities to avoid or minimize the loss of wildlife, particularly birds and bats, and their