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**FOR FURTHER INFORMATION CONTACT:**

Peter J. King, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1018, Washington, DC 20573-0001, (202) 523-5740, E-mail: [generalcounsel@fmc.gov](mailto:generalcounsel@fmc.gov).

**SUPPLEMENTARY INFORMATION:**

By Notice of Proposed Rulemaking published October 31, 2002, 67 FR 66352, the Commission proposed amendments to its passenger vessel regulations at 46 CFR Part 540. These regulations implement the statutory requirement to provide proof of passenger vessel financial responsibility under Sections 2 and 3 of Public Law 89-777, now recodified at 46 U.S.C. 44101-44103. The proposed amendments would have: eliminated the current ceiling on required performance coverage; adjusted the amount of coverage required by providing for consideration of the obligations of credit card issuers; provided for the use of Alternative Dispute Resolution (ADR), including the Commission's ADR program, in resolving passenger performance claims; revised the application form, and made other technical changes. By reason of the scope of the changes proposed, the Commission sought to revise and republish in their entirety the Commission's passenger vessel operator (PVO) rules at 46 CFR Part 540.

The Commission's proposed rule elicited a broad range of comments from many sectors of the cruise industry. Comments were received from cruise lines, travel agents, individual ports servicing the cruise industry, state ports councils; and from the surety industry, banking industry and the credit card companies as well as trade associations representing these sectors of the industry. Comments were submitted both to the Commission and also to the Office of Management and Budget. In recognition of broad public interest in the rulemaking, the Commission initially extended the comment period for receiving written submissions and ultimately convened a public hearing to accept oral comments. Comments and status updates continued to be received by the Commission through April 2004.

Written and oral comments revealed wide-spread differences of opinion on both questions of fact and law with respect to the proposed rule, with particular aspects supported (or opposed) by one trade sector or another. More than 5 years have now passed since the Commission last received comments on the proposed rule. The

record in this proceeding has effectively become stale, failing to account for changes in the industry that include, but are not limited to, the recent economic downturn that has greatly impacted most segments of the domestic and world economies. The Commission has determined that the record amassed in prior years is no longer legally sufficient to sustain contemporary efforts to either adopt or propose new alternatives to the Commission's financial responsibility requirements for PVOs.

For these reasons, the Commission has decided to terminate the Notice of Proposed Rulemaking published on October 31, 2002, 67 FR 66352. Should the Commission decide to move forward with revising its passenger vessel regulations, the industry will be provided further opportunity to submit comments.

By the Commission.

**Karen V. Gregory,**  
*Secretary.*

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**BILLING CODE P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[FWS-R7-ES-2009-0049]

[MO 9221050083-B2]

[RIN 1018-AW32]

#### Endangered and Threatened Wildlife and Plants; Listing the British Columbia Distinct Population Segment of the Queen Charlotte Goshawk Under the Endangered Species Act

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

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to list the British Columbia distinct population segment (DPS) of the Queen Charlotte goshawk (*Accipiter gentilis laingi*) as threatened, except on the Queen Charlotte Islands (a significant portion of the DPS's range), where we propose to list the goshawk as endangered, under the Endangered Species Act of 1973, as amended (Act). This proposal, if made final, would extend the Act's protection to this subspecies in British Columbia, Canada, on Vancouver Island and the surrounding smaller islands, the Queen Charlotte Islands, and the coastal mainland west of the Coast Mountains. The Service seeks data and comments from the public on this proposal.

**DATES:** We will consider comments received on or before January 4, 2010. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by December 18, 2009.

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

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS-R7-ES-2009-0049; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

**FOR FURTHER INFORMATION CONTACT:**

Steve Brockmann, Juneau Fish and Wildlife Field Office, 3000 Vintage Blvd. Suite 201, Juneau, AK 99801; telephone (907) 780-1181; fax (907) 586-7154.

**SUPPLEMENTARY INFORMATION:**

#### Public Comments

We intend that any final action resulting from this proposal 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 suggestions from other government agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments regarding:

- (1) Biological information, population status, commercial trade, or other relevant data concerning any threat (or lack thereof) to this subspecies,
- (2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which are:

- (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.

- (3) The appropriate conservation status for the British Columbia DPS of the Queen Charlotte goshawk, and

- (4) Specific information on the areas identified as significant portions of the

range in this proposed rule, including threats.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not consider comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information—will be posted on the website. If you submit a hardcopy comment 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 comments 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, 3000 Vintage Blvd, Suite 201, Juneau, AK 99801.

Final promulgation of the regulations concerning the listing of this subspecies will take into consideration all comments and additional information that we receive, and may lead to a final regulation that differs from this proposal.

### Queen Charlotte Goshawk Biology

The Queen Charlotte goshawk is a comparatively small, dark subspecies of northern goshawk (*Accipiter gentilis*) that nests and forages in the temperate, rainforest-dominated archipelagos and coastal mainland of southeast Alaska and British Columbia. Natural history and threats to the subspecies are described in detail in our status review (USFWS 2007; USFWS 2008) and evaluated in our most recent finding, published in the **Federal Register** on November 8, 2007 (72 FR 63123). Below, we briefly summarize key aspects of the Queen Charlotte goshawk's biology.

Goshawks typically nest and forage in old-growth forest, but use mature second-growth (previously harvested, regenerating stands that have developed adequate structure) where old-growth forest is limited (Titus *et al.* 1994, pp. 19-24; Iverson *et al.* 1996, pp. 27-40; McClaren and Pendergast 2003, pp. 4-6). Non-forested land, recently clear-cut areas, and young second-growth stands are avoided (Iverson *et al.* 1996, pp. 27-40).

Forest regeneration following timber harvest usually results in dense second-growth stands that may support populations of some prey species, but goshawks avoid these habitats, presumably because they are too dense for the hawks to effectively hunt (DeStefano and McCloskey 1997, p. 38; Beier and Drennan 1997, p. 570; Greenwald *et al.* 2005, pp. 125-126; USFWS 2007, pp. 62-67).

As second-growth stands approach economic maturity, the forest structure develops adequately to allow goshawks to forage below the canopy. Second growth reaches economic maturity when its growth rate begins to slow. Trees of this age typically have not reached maximum size. Canopies of these stands are usually uniformly dense unless the stand was harvested in a multi-age system or has been thinned. We refer to such stands as “mature”, or “mature second growth.” In this document, “young second growth” refers to second growth that has not yet reached maturity. Mature forest with structure suitable for goshawk nesting and foraging may develop as early as 45 to 50 years following harvest on the most productive sites in the southern portion of the Queen Charlotte goshawk's range (Doyle 2004, pp. 27-28; McClaren 2003, p. 19), but may take over 100 years on less productive sites (Iverson *et al.* 1996, p. 71). These stands are typically harvested within a decade or two of reaching economic maturity, if they are in an area currently open to logging. On lands managed for sustained-yield timber harvest, approximately 10 to 20 percent of the second growth is typically mature and suitable as goshawk habitat, although this percentage varies with harvest history, stand treatments, and current demand for timber (Daniel *et al.* 1979, pp. 304-344). Unharvested retention areas (e.g., stream buffers) provide old-growth habitat in addition to any mature second growth in harvested landscapes.

“Old growth” or “old forest” refers to a structural stage of forest characterized by several age classes of trees, including dominant trees that have reached the maximum size typical for the site, accumulations of dead, dying, and decaying trees and logs, and younger trees growing in gaps between the dominant trees. Such stands are typically over 250 years old within the range of the Queen Charlotte goshawk, and have not been previously harvested.

Goshawks hunt primarily by flying between perches and launching attacks from those perches. They take a variety of medium-sized prey, depending largely on local availability (Squires and Reynolds 1997, p. 1), which varies

markedly among the islands in the Queen Charlotte goshawk's range. Red squirrels (*Tamiasciurus hudsonicus*) and sooty grouse (*Dendragapus fuliginosus*) (formerly blue grouse, *D. obscurus*) form the bulk of the diet in many locations, with thrushes, jays, crows, ptarmigan, and woodpeckers frequently taken as well (Ethier 1999, pp. 21-22 and 32-47; Lewis 2001, pp. 81-107; Lewis *et al.* 2004, pp. 378-382; Doyle 2005, pp. 30-31). During winter, many avian prey species migrate from the region, reducing the variety and abundance of prey available (Ethier 1999, p. 22; MacDonald and Cook 1999, pp. 23-24; Nagorsen 2002, pp. 92-97; Doyle 2005, p. 31). Winter diets of the Queen Charlotte goshawk are largely unknown.

Prey availability is defined by prey abundance and suitability of habitat for successful hunting. Commercial logging can reduce both. Mature and old-growth forest habitat provides productive habitat for prey species in a setting where goshawks can effectively hunt. Timber harvest typically results in prey population declines because few potential prey species within the range of the Queen Charlotte goshawk are adapted to open and edge habitats (Iverson *et al.* 1996, pp. 59-61; Doyle and Mahon 2003, p. 39; USFWS 2007, pp. 42-45). Where those logged areas grow into dense second-growth stands, hunting is impaired because these stands do not offer adequate flight space (DeStefano and McCloskey 1997, p. 38; Beier and Drennan 1997, p. 570; Greenwald *et al.* 2005, pp. 125-126; USFWS 2007, pp. 62-67).

Queen Charlotte goshawk nests are typically located in large trees within mature or old-growth forest stands that have greater volume and canopy cover than the surrounding forest (Iverson *et al.* 1996, pp. 47-56; Flatten *et al.* 2002, pp. 2-3; McClaren 2003, p. 12; McClaren and Pendergast 2003, pp. 4-6; Doyle 2005, pp. 12-14; USFWS 2007, pp. 26-30). Nesting pairs appear to be territorial, with nests spaced somewhat uniformly across available habitat. Nesting density, as measured by mean distance between adjacent nesting areas, appears to vary with habitat quality (primarily prey availability). Queen Charlotte goshawks appear to nest at lower densities than northern goshawks studied elsewhere (McClaren 2003, pp. 13 and 21; Doyle 2005, p. 15; USFWS 2007, pp. 45-47).

The best available information suggests that viable nesting territories (which are approximately 24,700 acres (10,000 hectares) each) contain at least 40 percent mature and old-growth forest (Doyle 2005, p. 14; USFWS 2007, pp.

75-78). However, goshawks may nest in areas with lower proportions of mature and old-growth forest where prey adapted to more open habitats is abundant (Doyle 2006, pp. 135-140; Iverson *et al.* 1996, p. 55; USFWS 2007, p. 36).

Individual nests are frequently not used in subsequent years as pairs often move to an alternate nest. Most alternate nests are clustered within a few hundred acres (200 to 500 hectares) (McClaren 2003, p. 13; Flatten *et al.* 2001, pp. 9-11), although females have been documented leaving the nesting area altogether and nesting in subsequent years with a new mate in a different territory up to 95 miles (152 kilometers) away. Males have been documented moving up to 2 miles (3.2 kilometers) between subsequent nests, but apparently remain in their nesting area in subsequent years (Flatten *et al.* 2001, pp. 9-10).

Nest occupancy (percentage of nest areas with adult goshawks present) and nesting activity (percentage of nest areas with eggs laid) appear to vary with habitat suitability, prey availability, and weather, with greater occupancy or activity in areas with less fragmented forest habitat and in years with higher prey abundance and warmer, drier weather (Desimone and DeStefano 2005, pp. 317-318; Doyle and Smith 1994, p. 126; Ethier 1999, pp. 31 and 36; Fairhurst and Bechard 2005, pp. 231-232; Finn *et al.* 1998, p. 1; Finn *et al.* 2002, pp. 270-271; McClaren 2003, pp. 11 and 16; Patla 1997, pp. 34-35; Patla 2005, pp. 328-330; McClaren *et al.* 2002, p. 350; Salafsky *et al.* 2005, pp. 242-244).

When prey availability and weather are suitable and nesting is initiated, nest success (percent of active nests that fledge at least one young) is typically high (87 percent rangewide, 1991 to 2004), as is productivity (1.6 to 2.0 fledglings per active nest) (USFWS 2007, p. 54). Fledglings typically spend about 6 weeks within several hundred yards (several hundred meters) of their nests learning flight and hunting skills before dispersing (McClaren *et al.* 2005, p. 257). Retention of mature forest structure near the nest is believed to be important for supporting this developmental stage (Reynolds *et al.* 1992, pp. 15-16; Kennedy *et al.* 1994, p. 80; Ethier 1999, p. 31; Finn *et al.* 2002, pp. 270-271; McClaren 2003, pp. 11 and 16; Desimone and DeStefano 2005, pp. 317-318; McClaren *et al.* 2005, pp. 260-261; Patla 2005, pp. 328-330).

#### Range

In our previous status reviews and findings, we identified the range of the

Queen Charlotte goshawk as the islands and mainland of southeast Alaska, and the Queen Charlotte Islands and Vancouver Island in British Columbia (60 FR 33784; 62 FR 46710; 72 FR 63123; USFWS 2007). In April 2008, the “Northern Goshawk (*Accipiter gentilis laingi*) Recovery Team” (NGRT) in Canada released a draft recovery strategy for the Queen Charlotte goshawk. The NGRT reviewed morphometric and radio-telemetry data, and distribution of coastal habitat and prey, and determined that, in addition to Vancouver Island and the Queen Charlotte Islands, the coastal mainland of British Columbia west of the Coast Range (including the Coastal Douglas-fir biogeographic zone and wet Coastal Western Hemlock subzones and variants) is also within the range of the subspecies (NGRT 2008, pp. 3-6). We believe that the NGRT’s determination is the best available information on the range of the bird in Canada, and so for purposes of this listing, we propose to adopt the range definition used by the NGRT to define the range of the subspecies in British Columbia.

#### Previous Agency Action

On November 8, 2007, we published our “Response to Court on Significant Portion of the Range, and Evaluation of Distinct Population Segments, for the Queen Charlotte Goshawk” (72 FR 63123) (Response to Court). That document contains a discussion of all previous Federal actions relating to the petition to list the subspecies. In the Response to Court, we found that Vancouver Island is a significant portion of the Queen Charlotte goshawk’s range, that southeast Alaska and British Columbia each support distinct population segments, and that listing is warranted for the British Columbia DPS, but not for the southeast Alaska DPS. We indicated that we would publish a proposed rule to list the British Columbia DPS as either threatened or endangered. This proposal is the result.

#### New Information

Since our November 8, 2007, Response to Court, new information relevant to goshawk conservation has become available. Specifically, a draft recovery strategy for the Queen Charlotte goshawk in British Columbia (NGRT 2008) defined the range of the subspecies to include the coastal mainland west of the Coast Mountains, in addition to Vancouver Island and the Queen Charlotte Islands. The strategy also reviewed threats to the subspecies and identified potential strategies and actions to recover populations in British Columbia.

Additionally, a new land use agreement was signed by the Haida Nation and the Province of British Columbia. The agreement designates new protected areas on the Queen Charlotte Islands and commits the Province to “Ecosystem Based Management” of forest resources. Details about how the of the Ecosystem Based Management scheme will be implemented are currently being developed and are not yet available.

Finally, the 1997 Tongass Land Management Plan, which defined management for most of the Queen Charlotte goshawk’s habitat in adjacent Southeast Alaska, was revised and replaced with a new forest plan in January 2008 (USDA Forest Service 2008). The new 2008 forest plan retains most of the Conservation Strategy set forth in the 1997 plan for the Tongass National Forest in Southeast Alaska, while modifying some standards and guidelines related to goshawk nest buffers, partial harvest requirements, and areas that would be available for timber harvest (USDA Forest Service 2008).

#### Review of the British Columbia DPS

Section 3(16) of the Act defines “species” to include “any distinct population segment of and species of vertebrate fish or wildlife which interbreeds when mature.” To interpret and implement the DPS provisions of the Act and Congressional guidance, the Service and the National Marine Fisheries Service published a “Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act” (DPS policy) in the **Federal Register** on February 7, 1996 (61 FR 4722). Under the DPS policy, three factors are considered in a decision concerning the establishment and classification of a possible DPS. The first two factors—discreteness of the population segment in relation to the remainder of the taxon and the significance of the population segment to the taxon to which it belongs—bear on whether the population segment is a valid DPS. If a population meets both tests, we consider it a DPS and then the third factor—the population segment’s conservation status in relation to the Act’s standards for listing, delisting, or reclassification, i.e., whether the population segment is endangered or threatened—is applied.

In our Response to Court (72 FR 63128), we determined that Queen Charlotte goshawks in British Columbia were distinct from those in southeast Alaska, with differences in conservation status, habitat management, and

regulatory mechanisms. We also found that the population segments in British Columbia and southeast Alaska were both significant as defined by our DPS policy, and concluded that two valid DPSs exist.

We have estimated the effects of new protected areas on the Queen Charlotte Islands, and inclusion of the mainland coast of British Columbia, on future landscape condition in British Columbia (USFWS 2008), and have considered the modifications made to the 1997 Tongass Land Management Plan, as reflected in the 2008 forest plan. Significant differences in management regimes remain. For example, we estimate that approximately 31 percent of the remaining old growth will ultimately be harvested and thereby converted to second growth in British Columbia, while only 12 percent of the remaining old growth will be harvested and converted to second growth in Southeast Alaska (USFWS 2008, Table A-17). When considered together with areas already harvested, we estimate that 59 percent of the original productive old growth will ultimately be harvested in British Columbia, but only 28 percent will be harvested in Southeast Alaska (USFWS 2008, Table A-9). We conclude that management of forest habitat remains sufficiently different between Alaska and British Columbia to support our previous conclusion that the international border separates two discrete populations based on differences in habitat management and regulatory mechanisms. We also conclude that the British Columbia population remains biologically and ecologically significant within the meaning of the DPS policy, for the reasons set forth in the Response to Court. Thus, we conclude that the British Columbia population remains a distinct population segment under the DPS policy.

#### Factors Affecting the British Columbia DPS

Section 4 of the Act (16 U.S.C. 1533), and implementing regulations at 50 CFR 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 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; or (E) other natural or manmade factors affecting its continued existence.

Information regarding the status of, and threats to, the British Columbia DPS of the Queen Charlotte Goshawk in relation to the five factors provided in section 4(a)(1) of the Act is discussed below.

This proposed rule addresses the finding in our Response to Court (72 FR 63128) that listing as threatened or endangered is warranted for the British Columbia DPS. Below, we provide a summary of our analysis of threats to the British Columbia DPS from the Response to Court, along with a new analysis of threats to the DPS in light of relevant new information. We have included statistics on habitat availability and forest management where they are available. Our primary sources of forest data include the British Columbia Ministry of Forests and Range (especially Niemann 2006 for Vancouver Island and the coastal mainland) and Leversee (2006) for the Queen Charlotte Islands. Our analysis of forest statistics is detailed in an updated appendix to our status review (USFWS 2008), in which our data sources, assumptions, and calculations are described. We also rely on the NGRT evaluation of the threats discussed below (NGRT 2008, pp. 16-21).

#### Factor A. The Present or Threatened Destruction, Modification, or Curtailment of the Habitat or Range

Mature and old-growth forest provides nesting and foraging habitat for goshawks, and supports populations of preferred prey (Iverson *et al.* 1996, pp. 16-18 and 41-44; Ethier 1999, pp. 61-68; McClaren 2004, pp. 6-7). Logging within and near nest stands has been implicated in nest site abandonment, although effects of such logging have varied from nest area abandonment in some study areas to no effect on productivity elsewhere (Crocker-Bedford 1990, pp. 263-266; Penteriani and Faivre 2001, p. 213; Doyle and Mahon 2003, p. 39; Mahon and Doyle 2005, pp. 338-340; Doyle 2006, pp. 138-139). Clearcut logging generally reduces prey populations (USFWS 2007, pp. 62-64), although, in some cases, sooty grouse populations may increase temporarily following logging (Hartwig 2003). Logging also impacts foraging habitat by removing perches and hunting cover, creating openings and dense second-growth stands that are avoided by goshawks (Iverson *et al.* 1996, p. 36).

“Productive forest” is defined by the British Columbia Ministry of Forest and Range as forest capable of producing trees large enough to be commercially viable as timber (i.e., “merchantable”) (Niemann 2006, p. 1). Such forests,

when mature, provide suitable structure for goshawk nesting and foraging. We, therefore, use the British Columbia Ministry of Forest and Range’s definition of, and statistics on, productive forest as a measurable approximation of goshawk habitat. Unless otherwise specified, discussions of mature, old-growth, and second-growth forests below refer to productive forest only. Areas of non-productive (or “scrub”) forest of smaller trees (which are not included in the cited forest statistics) may be used by goshawks for foraging or other activities, but are generally not used for nesting (Iverson *et al.* 1996, pp. 41-44).

Studies of goshawk habitat within and outside the range of the Queen Charlotte subspecies suggest that landscape with at least 40 to 60 percent mature or old forest are favored for nesting (Patla 1997, pp. 71-72; Finn *et al.* 2002, pp. 434-435; Doyle 2005, pp. 12-18). For example, each of the 10 nesting territories known on the Queen Charlotte Islands in 2004 contained at least 41 percent mature and old-growth forest, although only 4 territories (each containing at least 60 percent mature and old-growth forest) were successful during the preceding 3-year period (2002-2004) (Doyle 2005, p. 14). Reynolds *et al.* (1992, p. 27) recommended at least 40 percent of goshawk home ranges be maintained in mature or old forest cover in the southwest United States, with another 20 percent in middle-aged forest cover. Given these observations, we consider landscapes on the coastal islands with less than 40 percent cover by mature and old-growth forest to be poor-quality habitat, those with 40 to 60 percent mature and old-growth forest moderate-quality habitat, and those with greater than 60 percent mature and old-growth habitat high-quality habitat.

Goshawks may nest successfully in areas with lower proportions of mature and old-growth forest where prey adapted to more open habitats is available, or during years with high prey populations (Doyle 2006, pp. 138-139; Doyle 2007, p. 2; Doyle and Mahon 2003, p. 1; Iverson *et al.* 1996, p. 55; USFWS 2007, p. 36). Snowshoe hares (*Lepus americanus*), an important prey species for the goshawk in some areas, are found along edges and in open habitats on the mainland coast (Nagorsen 2002, pp. 92-93), so lower proportions of mature and old-growth forest may be suitable there, depending on availability of prey. Cottontail rabbits (*Sylvilagus floridans*), a potential prey species that occurs along edges of open habitats, have recently been introduced on Vancouver Island (Nagorsen 2002, p.

96), but they are restricted to the southern edge of the island, and have not been documented in the goshawk's diet there.

No studies definitively establish the amount of mature and old-growth forest required where prey adapted to more open habitats are available, but we expect it to be lower than where such prey are not available, and we expect it to depend largely on prey density, which varies spatially (across the landscape) and temporally (from year to year). Snowshoe hares likely add flexibility to goshawk diets on the mainland, especially during the winter, and probably allow nesting in some areas where it may not otherwise occur, although this effect is probably negligible during years of low hare populations. We conclude, based on the available information, that on average, landscapes on the mainland with less than 30 percent mature and old-growth forest cover are poor habitat, 30 to 50 percent mature and old-growth forest moderate habitat, and greater than 50 percent mature and old-growth forest high-quality habitat.

Productive forest (capable of producing commercially viable timber) covers approximately 45 percent of the 42-million-acre (ac) (17-million-hectare (ha)) Coast Forest Region delineated by the British Columbia Ministry of Forests and Range, which approximates the range of the Queen Charlotte goshawk in Canada (USFWS 2008, Table A-20). Therefore, on average, habitat was probably only of moderate quality for goshawks (30 to 50 percent mature and old growth) prior to wide-scale timber harvest, although some areas would have been, and remain, unsuitable (e.g., large alpine areas), while other areas had extensive tracts of high-quality habitat before logging began.

Industrial-scale logging began in the coastal rainforests of British Columbia in the early 1900s, peaked in the 1980s, and has remained relatively high since then (USFWS 2007, pp. 89-90). By 2002, timber harvest had converted approximately 5.2 million ac (2.1 million ha) (28 percent) of the 19 million ac (7.6 million ha) of productive forest in coastal British Columbia to second growth. This has reduced mature and old forest cover to approximately 34 percent of the landscape (USFWS 2008, Table A-20). This percentage translates, on average, to poor-quality habitat on the islands (less than 40 percent cover by mature and old-growth forest), and of moderate quality on the mainland (30 to 50 percent mature and old-growth forest). Again, naturally non-forested areas have always been unsuitable or poor-quality habitat, and some areas

likely still provide high-quality habitat, but in general, habitat quality has declined and is probably moderate-to-poor quality in many areas, due to timber harvest.

More than 100 new protected areas totaling approximately 3 million ac (1.2 million ha) were established on the British Columbia mainland coast in 2006 (BCMAL 2006, p. 1). This was followed by a December 2007 land use agreement between the Province of British Columbia and the Haida Nation, designating new protected areas totaling 628,000 ac (254,000 ha) on the Queen Charlotte Islands (BCOP 2007, pp. 1-2). Approximately 5.6 million ac (2.2 million ha) of the 42-million-ac (17-million-ha) Coast Forest Region is now in protected status, where timber harvest is not allowed. We estimate that protected areas include approximately 2.9 million ac (1.2 million ha) of productive forest (USFWS 2008, Table A-19). Most of this is likely old growth, although statistics on forest age within the new protected areas are not available.

Our status review in 2007 indicated that continued logging on the coastal islands of British Columbia would convert another 1.2 million ac (480,000 ha) (26 percent) of the remaining productive old-growth forest to second growth over the next 50 years (USFWS 2007, Appendix A, Tables A-9 and A-15). Future timber harvest in three of the seven Forest Districts in the Coast Forest Region (North Coast, Central Coast, and Queen Charlotte Islands Districts) will be planned using "Ecosystem Based Management." Although the requirement is intended to support a sustainable economy while protecting a healthy ecosystem, no specifics have been released (BCMAL 2006, pp. 2-3; BCOP 2007, pp. 1-2, BC 2008, p. 1). In the absence of any details about implementation of this management scheme, we rely on data and projections currently available based on existing management practices (summarized in USFWS 2007, pp. 82-101; USFWS 2008, Tables A-1 to A-20; NGRT 2008, pp. 6-23; see also *Southwest Center for Biological Diversity v. Babbitt*, 939 F.Supp. 49 (D.D.C. 1996)). Future harvest levels are uncertain, but additional conversion of old-growth forest to second growth is expected to continue throughout the DPS.

For the purposes of evaluating threats and recovery strategies, the NGRT has divided the British Columbia range of the Queen Charlotte goshawk into four Conservation Regions: Haida Gwaii (Queen Charlotte Islands), Vancouver Island, North Coast, and South Coast (NGRT 2008, pp. 4-6). They reviewed

the best-available scientific information and, where data were unavailable, used expert opinion and data-derived estimates (NGRT 2008, p. 16). They consider threats to the goshawk from habitat loss and fragmentation to be low to moderate in the North Coast region, moderate in the South Coast region, and moderate to high on the Queen Charlotte Islands and Vancouver Island (NGRT 2008, pp. 16-17). These conclusions are consistent with our understanding of the habitat threats faced by goshawks in British Columbia. Thus, while some risk is present throughout the DPS's range, habitat on the mainland coast, particularly the North Coast, appears to be more secure than on the islands.

In general, although new protected areas should help conserve some of the remaining goshawk habitat, significant degradation has occurred, and we expect continued decline in habitat quality within the range of the British Columbia DPS as old-growth forest available for harvest is converted to second growth. Ultimately, most of the harvested landscape is likely to become low-quality or poor-quality habitat. Reductions in prey populations and loss of perches and hunting cover are likely to have increasingly negative effects on goshawks' ability to hunt prey and feed their young. Based on the available information, we conclude that habitat loss is likely to contribute substantially to loss of long-term viability of Queen Charlotte goshawks in British Columbia. Therefore, we conclude that the present or threatened destruction, modification, or curtailment of habitat or range is a significant threat to the British Columbia DPS of the subspecies.

#### *Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

In Canada, the *laingi* subspecies has been federally listed as "Threatened" under the Species at Risk Act since 2002 (51 Eliz. II, Ch. 29). British Columbia has included the subspecies on its "Red List," indicating imperiled status, since 1994 (Cooper and Stevens 2000, pp. 3 and 14). In 2004, British Columbia designated the bird a Schedule 1 Species at Risk, indicating vulnerability to forest management and a need for protection beyond that provided by general forest management regulations (BCMSRM 2002, pp. 1-2; Barisoff 2004, p. 2; USFWS 2007, pp. 11-12). Each of these designations provides some protection from harvest. Birds may be taken illegally on occasion, but we have no indication that such activity is common, or that it poses any threat to the subspecies. We do not expect

overutilization for commercial, recreational, scientific, or educational purposes to contribute to population declines or extinction risk. The NRGTT considers the threat of human persecution to be low to none (NGRT 2008, pp. 17 and 21). We conclude that overutilization for commercial, recreational, scientific, or educational purposes does not now, or in the foreseeable future, pose a significant threat to the British Columbia DPS of the Queen Charlotte goshawk.

#### Factor C. Disease or Predation

Disease and predation associated with Queen Charlotte goshawks are not well documented, but small populations such as those on Vancouver Island and the Queen Charlotte Islands can be vulnerable to diseases, particularly when simultaneously stressed by other factors such as prey shortages. The NRGTT considers the threat from disease low, but has expressed concern that emerging diseases such as West Nile virus may be difficult to mitigate, if outbreaks occur (NGRT 2008, pp. 16 and 21).

Predation can also suppress small populations, leaving them vulnerable to other population stress factors. Goshawk predators within the British Columbia DPS include great horned owl (*Bubo virginianus*), bald eagle (*Haliaeetus leucocephalus*), American marten (*Martes americana*), wolverine (*Gulo gulo*), and black bear (*Ursus americanus*). Raccoons (*Procyon lotor*), which could take eggs or nestlings, have also been introduced on the Queen Charlotte Islands (Golumbia *et al.* 2003, pp. 13-15). The NRGTT considers predation risk low across the range of the DPS (NGRT 2008, pp. 16-20).

No information suggests that disease or predation currently put Queen Charlotte goshawks in danger of extinction in the British Columbia DPS, but either disease or predation may contribute to extinction risk in the foreseeable future (see Foreseeable Future section below) if their effects are exacerbated by other population stressors such as prey shortages, habitat limitations, or unfavorable weather (which affect nesting effort). We conclude that disease and predation do not currently put the Queen Charlotte goshawk at risk of extinction, although there is moderate risk that either could affect population viability in the foreseeable future.

#### Factor D. Inadequacy of Existing Regulatory Mechanisms

**Direct Take:** Throughout Canada, the Species at Risk Act protects the Queen Charlotte goshawk from direct harm,

harassment, and take on Federal lands. Individuals, eggs, and occupied nests are protected on all jurisdictions in British Columbia under the provincial Wildlife Act (RSBC 1996, section 34). Possession and trade in the subspecies is forbidden throughout Canada, as is destruction of nests. Based on the available information, regulation of direct take appears to be adequate throughout the DPS.

**Habitat Protection:** Two mechanisms exist to protect habitat under the Federal Species at Risk Act in Canada: (1) Identification of critical habitat, which may not be destroyed; and (2) conservation agreements, which may be negotiated with any entity or individual. Other mechanisms have been used by the Provincial government to protect goshawk habitat (discussed below), but critical habitat has not yet been formally designated under the Species at Risk Act (NGRT 2008, p. 31).

The Species at Risk Act requires development of a recovery strategy, which identifies the scientific framework for recovery. The NRGTT, which includes experts from Provincial and Federal (U.S. and Canadian) government agencies, private consultants, non-government organizations, industry, and First Nations, has produced a draft recovery strategy summarizing natural history, threats, knowledge gaps, and recovery approach (NGRT 2008). A recovery action plan, to define and guide implementation of the recovery strategy, is expected within 2 years after the recovery strategy is finalized (NGRT 2008, pp. i and 34).

The recovery strategy identifies many legal mechanisms for protecting habitat at various scales. Land use planning is perhaps the most broad-scale method used by the British Columbia Provincial Government for establishing protected areas and limits on development to conserve biodiversity across the Province. Approximately 13 percent of the landscape across coastal British Columbia is protected from logging in various parks and reserves. These reserves average approximately 50 percent cover by productive forest (USFWS 2008, Table A-23), so on average they appear to provide moderate- to high-quality habitat. Special management zones, where timber harvest is allowed but non-timber values such as wildlife and recreation are given additional consideration, are also designated in some areas (BC 2000, p. 30).

Logging on Crown (Provincial) lands is regulated by the Forest and Range Practices Act. This statute and its companion regulations set objectives for

many resources, and require timber harvest plans describing how each objective will be met. Integrated with the Forest and Range Practices Regulations is the Identified Wildlife Management Strategy (IWM Strategy), which was developed by the British Columbia Government to provide additional protection for species requiring specific measures beyond the "coarse filter" system of protected areas and the various regulations governing timber harvest generally. The IWM Strategy provides for establishment of Wildlife Habitat Areas around known goshawk nests, and allows prescription of management measures within those areas (BCMWLAP 2004, pp. 1-4). Where nests are identified, Wildlife Habitat Areas are proposed, usually by Provincial biologists, although anyone may make a proposal. The proposed Area is reviewed and may be modified by the Ministry of Environment, comments are solicited from affected parties, a Timber Supply Impact Analysis is conducted, the proposal is reviewed by a Provincial Committee, and a final decision is made by the Ministry of Environment (BCMWLAP 2004, pp. 4-10). The final decision may reflect compromises intended to reduce impacts on timber operators or others.

Once a Wildlife Habitat Area is designated for goshawks, timber harvest is not allowed in a core area of approximately 500 ac (200 ha) to protect the active nest, alternate nests, and post-fledging habitat. A management plan must be developed for timber harvesting and road construction in the surrounding management zone of about 5,000 ac (2,000 ha) to protect foraging habitat. Non-binding recommendations have been developed to help guide these management plans (McClaren 2004, pp. 10-11). To date, at least 28 Wildlife Habitat Areas covering 36,470 ac (14,765 ha) have been designated for *laingi* goshawks in British Columbia (USFWS 2007, p. 113).

Provincial policy limits the amount of land that may be protected under the IWM Strategy (in Wildlife Habitat Areas or other such mechanisms) to one percent of the short-term timber supply in each Forest District, for all Identified Wildlife species combined. This limitation may be waived with adequate justification, and does not have legal force of law, but is considered a goal of government (BCMWLAP 2004, p. 4; FPB 2004, pp. 7-8). Because the one percent cap is on impacts to the "short-term" timber supply, rather than the long-term supply, calculations must be based on mature forest stands. In the South Island Forest District (which covers southern Vancouver Island), less than one-third

of the productive forest is at or near economic maturity, so Wildlife Habitat Areas and other such retentions for Identified Wildlife are limited to approximately one-third of 1 percent of the productive forest in the Timber Harvesting Land Base. Similar situations exist wherever past harvest is extensive, yet these areas have the greatest need for conservation (FPB 2004, pp. 7-8).

Another potential limitation of the one percent cap on goshawk conservation is apparent in areas with high numbers of other at-risk species and continuing threats to those species (Wood and Flahr 2004, pp. 394-395). Southern Vancouver Island, for example, is a biodiversity "hot spot," with a large number of rare and endemic species (Scudder 2003). Some of these species have habitat needs that differ from those of the goshawk, yet their legitimate conservation needs must be accommodated along with the goshawk within the one percent limit. In the South Island Forest District, Wildlife Habitat Areas are approaching, and may have already exceeded, the one percent cap (Wood *et al.* 2003, p. 53).

In 2004, the British Columbia Ministry of Sustainable Resource Management established "Provincial Non-Spatial Old Growth Objectives" that must be addressed in Forest Stewardship Plans (Abbott 2004, pp. 1-6). The order established "Landscape Units" and old growth forest retention objectives for each of those units. Individual Landscape Units are assigned to low, intermediate, or high biodiversity emphasis, with lower percentages of old-growth retention identified for lower-emphasis units. The exact amount of old growth that must be retained depends on the forest type (biogeoclimatic zone) and the "natural disturbance regime" identified for each biogeoclimatic zone variant. Within the Coastal Western Hemlock (*Tsuga heterophylla*) Zone, old growth retention objectives range from 9 to 13 percent; in the Mountain Hemlock (*T. mertensiana*) Zone, objectives range from 19 to 28 percent; and in the Coastal Douglas-fir (*Pseudotsuga menziesii*) Zone, 9 to 13 percent. The objectives are termed "non-spatial" because they describe amounts but not specific areas to be retained, unlike other orders that establish protection of specified areas. In order to meet the non-spatial, old-growth objectives, tenure-holders and Timber Supply Area managers can rely on existing protected areas such as Wildlife Habitat Areas, riparian reserves, inoperable lands, and other designations that result in retention of old-growth stands.

The Province of British Columbia has made significant progress in implementation of several elements of their conservation program for goshawks, as described above. A draft recovery strategy has been released. Several of the actions identified in the draft strategy have begun; others are likely to be implemented once the Recovery Implementation Group completes an action plan (NGRT 2008, pp. 21-32). It is likely that the identified strategies will assist in long-term conservation of the subspecies in British Columbia. The strategy, however, is currently in draft form with an action plan not anticipated for 2 years (NGRT 2008, p. 34).

In summary, the Province's Protected Area Strategy protects 13 percent of the land area, and 13 percent of the productive forest, in parks and other reserves within the range of the British Columbia DPS. We believe that this is inadequate, by itself, to support a viable population of goshawks because much of the protected land is not forested, and because goshawks are dispersed at low densities across a vast landscape and are likely to need more than 13 percent of the landscape in suitable condition (specifically, mature and old-growth forest). Management of timber lands within the province continues to evolve with increasing emphasis on conservation of non-timber values associated with forests, including goshawks. However, the Province's Identified Wildlife Management Strategy, which allows for designation and protection of Wildlife Habitat Areas around goshawk nests, is limited by a policy-level cap of one percent of the short-term timber supply. We acknowledge that much work is underway in the Province to address the threats and conservation needs of Queen Charlotte goshawks. Because much of the regulatory framework is relatively new, some key elements of the recovery effort have not yet been fully developed or implemented, so it is difficult at this time to assess their potential effectiveness (see Conservation Efforts, below).

We conclude that continued development and implementation of regulatory mechanisms will be required to minimize the risk of extinction for the British Columbia DPS of the Queen Charlotte goshawk. Existing regulatory mechanisms do not appear to adequately reduce the threat posed to goshawk habitat from timber harvest at this time.

#### *Factor E. Other Natural or Manmade Factors Affecting the Species' Continued Existence*

We are not aware of current population-level threats to Queen Charlotte goshawks due to competition for either prey or nest sites. The NGRT rates this threat as low across the DPS (NGRT 2008, p. 16). Competition among herbivores has been implicated in grouse declines on the Queen Charlotte Islands, however, where introduced deer have reportedly overbrowsed blueberries and other important grouse foods, resulting in grouse population declines (Golumbia *et al.* 2003, pp. 10-11; Doyle 2004, pp. 15-16). This has probably reduced goshawk nesting effort (number of pairs attempting to nest) on the Queen Charlotte Islands during periods of low squirrel density, when goshawks might otherwise have nested if grouse had been more abundant. Predation on sooty grouse eggs and nestlings by introduced raccoons may also be a factor contributing to grouse population declines on the Queen Charlotte Islands (Golumbia *et al.* 2003, pp. 13-15).

Threats due to low prey diversity are considered low on the mainland, moderate on Vancouver Island, and high on the Queen Charlotte Islands (NGRT 2008, pp. 16 and 18) (see previous discussion under Factor A).

We know of no contaminants that pose current or potential future threats to goshawks within the British Columbia DPS.

Natural disasters such as windstorms, landslides, avalanches, earthquakes, tsunamis, and volcanic eruptions could affect localized areas within the British Columbia DPS, but are not believed to pose population-level threats, either now or in the foreseeable future. Large, landscape-altering forest fires, insect infestations, or tree diseases could pose population-level threats to Queen Charlotte goshawks in the British Columbia DPS if they affect major portions of either Vancouver Island or the Queen Charlotte Islands, both of which support contiguous blocks of forest habitat on one or two large islands, rather than on many islands as in the southeast Alaska DPS. Global climate change could increase the frequency and severity of large fires, forest pests, or forest diseases (Bachelet *et al.* 2005, pp. 2244-2248), but we do not know how likely such events might be. Increases in forest cover, as cool-adapted species invade alpine areas and plant communities generally shift northward (Hamann and Wang 2006, pp. 2780-2782), could increase the amount of habitat available to goshawks,

but such gains could be offset by loss of forest cover elsewhere. We conclude that climate change is likely to have mixed effects on goshawks. The possibility exists that landscape-level changes due to climate change could negatively affect the British Columbia DPS of the Queen Charlotte goshawk, but these threats do not currently place the DPS in danger of extinction, nor do we expect them to in the foreseeable future.

The small goshawk population on the Queen Charlotte Islands appears to be genetically distinct from goshawks elsewhere and may be genetically isolated (Gust *et al.* 2003, p. 22; Talbot *et al.* 2005, pp. 2-3; Talbot 2006, p. 1). Isolated populations such as the one on the Queen Charlotte Islands are typically at greater risk of extinction or genetic problems such as inbreeding depression and loss of genetic diversity, particularly where populations are small (Lande 1988, pp. 1456-1457; Frankham *et al.* 2002, pp. 312-317). Inbreeding depression is a reduction in viability and fecundity that occurs as large populations decline and rapid inbreeding produces increased prevalence of harmful genes that are typically rare in larger populations (Lande 1988, p. 1456). Loss of genetic diversity occurs as populations are reduced, and can diminish future adaptability to a changing environment. The NGRT considers threats from genetic isolation to be high for the Queen Charlotte Islands, and low to none elsewhere in British Columbia (NGRT 2008, pp. 16, 18-19). We concur with this assessment.

Hybridization can be a threat when related species or subspecies interbreed, diluting the genetics of the smaller population. Populations on Vancouver Island apparently interbreed with the subspecies of goshawk that inhabits much of mainland North America, *Accipiter gentilis atricapillus* (Gust *et al.* 2003, p. 22; Talbot *et al.* 2005, pp. 2-3; Talbot 2006, p. 1). This seems likely given the proximity of Vancouver Island to the mainland. On the mainland, the Queen Charlotte goshawk (*A. g. laingi*) inhabits wet coastal forests, but likely interbreeds with the interior subspecies (*A. g. atricapillus*) within the drier coastal western hemlock zones between coastal and interior forests. The NGRT considers this a transition zone between the two subspecies, but concludes, based on limited sampling, that "Vancouver Island and (coastal) mainland B.C. populations (of *A. g. laingi*) do not appear to be interbreeding with interior B.C. populations (of *A. g. atricapillus*)" (NGRT 2008, pp. 3, 6, and 18). We have no information indicating

that *A. g. atricapillus* goshawks are expanding into the range of the Queen Charlotte goshawk, and we consider the transition zones between the subspecies to be stable. We therefore conclude that hybridization does not pose a significant threat to the continued survival of the Queen Charlotte goshawk, now or in the foreseeable future.

The breeding population across the British Columbia DPS appears to be about 352 to 374 pairs (NGRT 2008, p. 8). Small populations such as this are at greater risk of extinction than larger populations from environmental stochasticity (random or otherwise unpredictable events such as disease epidemics, prey population crashes, or environmental catastrophes), which can reduce the population to a density at which it is vulnerable to demographic stochasticity (fluctuations in birth and mortality rates) (Engen *et al.* 2001, p. 794; Adler and Drake, 2008, p. 192).

We conclude that the British Columbia DPS of the Queen Charlotte goshawk is not currently in danger of extinction due to other natural and manmade factors (Factor E) such as competition, contaminants, natural disasters, climate change, or genetic problems resulting from hybridization or isolation. However, due to its small population size, this DPS is likely to be vulnerable to prey fluctuations, hybridization (on Vancouver Island), or inbreeding depression (on the Queen Charlotte Islands) in the foreseeable future. Each of these potential threats would likely become more important if habitat modification causes population declines, exacerbating the impact of the threats.

#### Conservation Efforts

Section 4(b)(1)(A) of the Act requires us to determine if a species should be listed "after taking into account those efforts, if any, being made...to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices." We consider existing regulatory mechanisms and other efforts underway in British Columbia to conserve goshawks and goshawk habitat in our analysis of the five listing factors, above. In many cases, conservation actions are planned, but have not yet been implemented. In other cases, conservation efforts may be underway, but their effectiveness is uncertain. To help guide evaluation of such efforts, the Service published a "Policy for Evaluation of Conservation Efforts When Making Listing Decisions" (PECE Policy) (68 FR 15100, March 28, 2003). The PECE Policy "applies to those formalized conservation efforts that

have not yet been implemented or have been implemented, but have not yet demonstrated whether they are effective at the time of a listing decision." For efforts meeting these criteria, the policy directs us to consider (1) the certainty that a conservation effort will be implemented, and (2) the certainty that the effort will be effective.

British Columbia's draft Recovery Strategy identifies several broad strategies and recommended approaches to address threats to the goshawk, with specific actions listed to address each approach (NGRT 2008, pp. 26-30). Because the recovery strategy itself is draft, it does not meet the PECE Policy's definition of a formalized conservation effort (68 FR 15104, **SUPPLEMENTARY INFORMATION**, Response 17). Many of the actions listed in the draft recovery strategy, however, have already been implemented and warrant evaluation as formalized conservation efforts. We also evaluate actions identified in the draft recovery strategy that have not yet been implemented, because we believe that the NGRT intends to pursue them.

Among the actions that have not yet been implemented are predictions of habitat changes resulting from climate change, monitoring and modeling of West Nile Virus impacts, and monitoring of edge-adapted competitors and predators. The draft Recovery Strategy is a broad-scale document that does not provide details on who would be responsible for implementing the identified actions, the source and security of funding, legal authorities, procedural and legal requirements (permits, authorizations and permissions, etc.), and volunteer (e.g., landowner or timber tenure holder) participation necessary to implement the actions, as required for us to conclude with a high level of certainty that the actions will be implemented (PECE Policy, 68 FR 15114-15115).

Among the actions identified in the draft strategy that have already begun, the most highly developed is protection of habitat using existing authorities and mechanisms. These are described in NGRT (2008) Appendix 1, and are evaluated above under Factor D (inadequacy of existing regulatory mechanisms). We consider habitat protection an effective strategy, but cannot conclude that implementation under existing mechanisms adequately removes the threat posed to the Queen Charlotte goshawk from habitat loss.

Other actions listed in the draft Recovery Strategy have been implemented (or have begun and are ongoing), but have not yet been proven effective. Included in this category are:



- Development of general wildlife measures to ensure sufficient foraging habitat outside Wildlife Habitat Areas,
  - Landscape modeling to identify habitat availability,
  - Research and implementation of silviculture methods to promote prey populations,
  - Development and implementation of management plans for introduced species,
  - Development and implementation of outreach and education for landowners and resource managers,
  - Effectiveness monitoring of habitat management,
  - Development and use of spatially explicit population models and genetic samples to define population and distribution objectives,
  - Use of habitat conservation tools to conserve and recover populations in each conservation region, and
  - Identification and monitoring of prey populations.

The PECE Policy lists six criteria necessary to establish that a conservation effort will be effective in adequately reducing threats to a level that listing a species as threatened or endangered is not necessary. These criteria include (1) a description of the threats addressed by the conservation effort, (2) explicit, incremental objectives for the conservation effort and dates for achieving the objectives, (3) the steps necessary to implement the conservation effort, (4) quantifiable measures to demonstrate progress toward, and achievement of, objectives, (5) provisions for monitoring and reporting progress on implementation and effectiveness, and (6) incorporation of adaptive management principles (68 FR 15115). The draft Recovery Strategy is a broad-level planning document that describes threats to the goshawk and provides recommendations for addressing those threats. It lacks detail on implementation of the recommended actions. A recovery action plan, which will likely provide much of the detail described in the PECE Policy, is expected within 2 years of finalizing the draft Recovery Strategy. Meanwhile, we are not aware of currently available documents that provide the information (criteria 1 through 6, immediately above) necessary to ascertain with a high level of certainty that the actions will be effective.

A major conservation effort recently announced by the Province of British Columbia is Ecosystem Based Management for lands managed for multiple uses in the Central Coast, North Coast, and Haida Gwaii regions (BCMAL 2006, pp. 1-3; BCOP 2007, pp. 1-2). Ecosystem Based Management “is

a new adaptive approach to managing human activities that ensures the coexistence of healthy ecosystems and communities. The intent is to support a sustainable economy while protecting a healthy ecosystem” (BCMAL 2006, p. 2). Key elements include establishment of protected areas; higher standards for key environmental values; use of traditional, local, and scientific knowledge to develop management targets; recognition of Aboriginal and other local interests in land use planning and management; and promotion of stability, certainty, and long-term resource use (BCMAL 2006, p. 2).

The British Columbia government has moved to implement Ecosystem Based Management on the mainland coast and, more recently, the Queen Charlotte Islands. Land use agreements have been reached with various First Nations, and efforts are underway to identify lands for protection. We have a high level of certainty that Ecosystem Based Management will be implemented in some form, although details of which lands will be protected, and how timber harvest will be regulated, are not yet available. We expect that protection of additional areas will result in reduced logging overall, although the rate of logging on the remaining lands is not known. We therefore cannot be sufficiently certain that the program will reduce threats to goshawks to a level that listing as threatened or endangered is no longer necessary.

#### *Foreseeable Future*

The term “threatened species” means any species (or subspecies or, for vertebrates, distinct population segments) that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act does not define the term “foreseeable future.” However, in a January 16, 2009, memorandum addressed to the Acting Director of the U.S. Fish and Wildlife Service, the Office of the Solicitor, Department of the Interior, concluded, “. . . as used in the ESA, Congress intended the term ‘foreseeable future’ to describe the extent to which the Secretary can reasonably rely on predictions about the future in making determinations about the future conservation status of the species.” In a footnote, the memorandum states, “In this memorandum, references to ‘reliable predictions’ are not meant to refer to reliability in a statistical sense. Rather, I use the words ‘rely’ and ‘reliable’ according to their common, non-technical meanings in ordinary usage. Thus, for the purposes of this memorandum, a prediction is reliable if

it is reasonable to depend upon it in making decisions” (M-37021, January 16, 2009).

We assess foreseeable future in terms of the threats to the species in question. Threats to the British Columbia DPS of the Queen Charlotte goshawk are primarily related to habitat loss. Other threats are likely to be significant only if populations decline to critically low levels. We expect the amount of suitable goshawk habitat to continue to decline until all the old growth available for harvest has been converted to second growth. At that time, we expect the amount of habitat to stabilize, with less habitat than is available today. Thereafter, logging will be limited to the second growth, which we expect will be harvested on a sustained-yield basis. Because second-growth stands provide suitable goshawk habitat for only the final 10 to 20 percent of each timber harvest rotation (USFWS 2007, pp. 62-67), we estimate that approximately 15 percent of the second growth will be mature, at any given time, and will provide suitable nesting and foraging habitat, while 85 percent will be younger, and provide largely unsuitable habitat (USFWS 2007, pp. 99 and 131). While we recognize that ongoing changes in management regimes, market conditions and technology may affect the intensity and pace of habitat loss, we consider logging projections provided by the BC Ministry of Forests and Range, and by the individual Tree Farm License holders, to be the best information available at this time for evaluating habitat trends and threats into the future. In our review, we used such projections to estimate how much old-growth and mature second-growth forest would be available after all available old growth has been converted to second growth, which we expect to occur in approximately 50 years (USFWS 2007, pp. 85-91 and pp. 103-104; USFWS 2008, Tables A-1 and A-10 to A17).

Wildlife populations typically continue to decline for several generations after habitat loss has occurred, as the populations reach equilibrium with their habitat and competitors (Tilman *et al.* 1994, pp. 65-66). Therefore, extinction may occur many years after habitat loss has ceased. We do not know precisely how long it will take before the population stabilizes or goes extinct following habitat loss, but we do expect the goshawk population to continue to decline for several generations after habitat loss peaks in about 50 years. We therefore define foreseeable future for the British Columbia DPS as approximately 50 years plus a period of

up to several generations for the population to adjust.

#### Conclusion

Our analysis of threats suggests that as additional forest is logged, habitat quality will continue to decline for the British Columbia DPS of the Queen Charlotte goshawk and its prey. With reduced prey populations, and less favorable habitats in which to hunt, we expect that Queen Charlotte goshawks within the British Columbia DPS would have reduced nesting success. Ultimately, this is expected to result in even smaller populations than currently occur (352 to 374 breeding pairs). Smaller populations likely would become increasingly vulnerable to factors such as predation, disease, prey fluctuations, hybridization, and inbreeding depression. We conclude, therefore, that while extinction is not imminent, the Queen Charlotte goshawk is in danger of extinction in the foreseeable future within the British Columbia DPS. Therefore, we propose to list the Queen Charlotte goshawk in portions of British Columbia (not including the Queen Charlotte Islands, as explained below) as a threatened species under the Act.

#### Significant Portions of the British Columbia DPS's Range

We now consider whether more immediate threats place the goshawk in imminent danger of extinction in any significant portion of the DPS's range. The Act defines an endangered species as one "in danger of extinction throughout all or a significant portion of its range," and a threatened species as one "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." The term "significant portion of its range" is not defined by the statute.

For purposes of this finding, a significant portion of a species' (or subspecies' or DPS's) range is an area that is important to the conservation of the species because it contributes meaningfully to the representation, resiliency, or redundancy of the species. Adequate representation ensures conserving the breadth of the genetic makeup of the species needed to conserve its adaptive capabilities. Populations in peripheral areas, for example, may be important in this aspect. Resilience refers to the ability of a species to recover from periodic disturbances or environmental variability. In general, a species is usually most resilient in highest quality habitat. Redundancy of populations is needed to provide a margin of safety for

the species to withstand catastrophic events. The contribution of the range portion must be at a level such that its loss would result in a decrease in the ability to conserve the species. It does not mean that if such portion of the range were lost, the species as a whole would be in danger of extinction immediately or in the foreseeable future; rather, that the ability to conserve the species would be compromised.

*Vancouver Island:* We previously found that Vancouver Island is a significant portion of the Queen Charlotte goshawk's entire range (Response to Court, 72 FR 63128; November 8, 2007). This determination was based on the amount of habitat and proportion of the rangewide population still occurring on Vancouver Island, and the importance of the population there to redundancy and resilience of the subspecies, rangewide.

The NGRT estimates that Vancouver Island supports 165 (44 to 47 percent) of the 352 to 374 breeding pairs within British Columbia (NGRT 2008, p. 8). Loss of this large percentage of the small population would clearly result in a meaningful decrease in redundancy across the DPS. Geographically, Vancouver Island covers 27 percent of the DPS's range (NGRT 2008, p. 6). Thus, although Vancouver Island comprises about 25 percent of the DPS's range in British Columbia, it supports nearly half of the breeding pairs.

Approximately half of the original goshawk habitat remains on Vancouver Island (USFWS 2008, Table A-10). Goshawks there nest in both old-growth and mature forest. Nesting densities (as measured by mean distance between nesting areas) are higher on Vancouver Island than on the Queen Charlotte Islands or in southeast Alaska (NGRT 2008, p. 8), suggesting that prey availability is good and other necessary resources are available. Because the remaining habitat appears to be of high quality, we believe that the habitat on Vancouver Island contributes significantly to the resiliency of the DPS, as defined above.

Preliminary genetic results suggest that goshawks on Vancouver Island may be genetically distinct from goshawks on the Queen Charlotte Islands (Talbot *et al.* 2005, pp. 2-3; Talbot 2006, p. 1). These potentially significant findings, if confirmed, suggest that loss of the Vancouver Island population would reduce both representation and resilience of the subspecies, as defined above. This genetic diversity, for example, may help the subspecies respond and adapt to future environmental changes, particularly as warmer-adapted forest communities

move northward in response to climate change.

Because the Queen Charlotte goshawk population on Vancouver Island contributes to the redundancy and resiliency of the British Columbia DPS, and may provide important genetic representation, we conclude that Vancouver Island is a significant portion of the DPS.

*Threats on Vancouver Island:* Approximately 13 percent of the landscape, but only 9 percent of the productive forest, on Vancouver Island is protected in reserves (USFWS 2008, Tables A-9 and A-23). Mature and old-growth forest currently covers approximately 42 percent of Vancouver Island (USFWS 2008, Table A-21), suggesting that habitat, on average, is of moderate quality.

We estimate that an additional 16 percent of the productive forest (or 31 percent of the remaining old-growth forest) is likely to be harvested over the next 50 years (USFWS 2008, Table A-9), resulting in a landscape with approximately 35 percent cover by mature and old-growth forest (USFWS 2008, Table A-24). We consider this poor habitat. Thus, habitat loss (Factor A) does not pose an immediate threat to the goshawk population on Vancouver Island, but is likely to become a significant threat within the foreseeable future.

The NGRT considers threats from habitat loss and fragmentation high on Vancouver Island (NGRT 2008, p. 16).

There is evidence that goshawks on Vancouver Island hybridize with the mainland (*atricapillus*) form of the northern goshawk to a greater degree than goshawks elsewhere in the DPS or rangewide (Gust *et al.* 2003, p. 22; Talbot *et al.* 2005, pp. 2-3; Talbot 2006, p. 1), except possibly in the "transition zone" on the mainland (see discussion above, under Factors Affecting the British Columbia DPS, Factor E). We consider Vancouver Island a "stable hybrid zone" (Haig *et al.* 2006, p. 7), where the *laingi* phenotype will continue to be represented in the population.

We do not expect that overutilization (Factor B), predation or disease (Factor C), inadequacy of regulatory mechanisms (Factor D), or other threats, such as prey fluctuations or inbreeding depression (Factor E) will have a disproportionately greater impact on Vancouver Island than elsewhere in the DPS's range.

We do not believe that habitat loss (Factor A) or hybridization rates (Factor E) place goshawks on Vancouver Island in imminent threat of extinction because these threats are of a chronic, long-term

nature. Continued habitat loss, however, is likely to result in a progressively smaller, more vulnerable population. Therefore, we have determined that proposing to list the species on Vancouver Island as threatened is appropriate.

*Queen Charlotte Islands:* The Queen Charlotte Islands are believed to support about 10 to 18 breeding pairs, though few nest during poor prey years (Doyle 2005, p. 18; Doyle 2007, p. 8; McClaren 2006, p. 8; NGRT 2008, p. 8). Currently available genetic analyses suggest that the population there may be unique (Talbot 2006, p.1) and genetically isolated (Talbot *et al.* 2005, p. 3). Birds from this population are also apparently more consistently dark than birds from Vancouver Island or southeast Alaska (Taverner 1940, p. 160; Beebe 1974, p. 54; Webster 1988, pp. 46-47). This genetic distinctiveness and strength of phenotypic expression may represent adaptation to a dark, rainforest habitat; lack of prey in open habitats; a diet dominated by avian prey; a periodically prey-poor environment; and an absence of immigration by the mainland subspecies. Loss of this population would eliminate a small but significant pool of the genetic diversity and perhaps genetic purity (genetic coding for the small, dark phenotype) within the subspecies, which could substantially reduce the subspecies' representation and environmental resilience. We conclude that the Queen Charlotte Islands are a significant portion of the DPS's range.

*Threats on the Queen Charlotte Islands:* Habitat loss (Factor A) has been significant on the Queen Charlotte Islands, where about 27 percent of the productive forest has been converted to second growth (USFWS 2008, Table A-9). Mature and old-growth forest covers approximately 52 percent of the landscape, providing moderate-quality habitat, on average (USFWS 2008, Table A-21).

As part of a recent Strategic Land Use Agreement between the Haida Nation and the Province of British Columbia, new protected areas have been established and future logging on the Queen Charlotte Islands will be guided by "Ecosystem Based Management Objectives" (BC 2007, pp. 5-22). These actions are likely to reduce future threats from logging, but details of the management regime are not yet available.

New protected areas, announced in December 2007, added 628,000 ac (254,000 ha) of land, including approximately 500,000 ac (202,000 ha) of productive forest, to the reserves on the Queen Charlotte Islands. An

estimated 38 percent of the productive forest on the islands is now protected in parks and other reserves (USFWS 2008, Table A-9) where logging is forbidden. When considered in combination with old-growth and mature stands retained within the otherwise harvested landscape, we expect approximately 51 percent of the landscape of the Queen Charlotte Islands to support mature and old-growth forests in the future (USFWS 2008, Table A-24). This should provide habitat of moderate quality.

Harvest of old growth is expected to continue, but projections of future logging rates under the new management regime are not yet available. We anticipate that habitat loss will be less than the 14 percent loss we projected under the previous management regime (USFWS 2007, pp. 99-101; USFWS 2008, Tables A-1, A-13 and A-15). NGRT considers threats to nesting habitat moderate, but threats to foraging habitat, and threats from habitat fragmentation, high on the Queen Charlotte Islands (NGRT 2008, pp. 16-18).

We conclude that habitat loss has been significant and is expected to continue, although this threat will likely be reduced to an unknown extent by implementation of ecosystem based management objectives for logging across the Queen Charlotte Islands. Ongoing logging is constrained by several mechanisms that protect nesting habitat and some foraging habitat. Habitat loss, therefore, does not put the Queen Charlotte Islands at more immediate risk of extinction than elsewhere in the DPS, because a higher proportion of productive old-growth forest has been retained on these islands than elsewhere in the DPS.

Overutilization for commercial, recreational, scientific, or educational purposes (Factor B) is not believed to be a significant risk, and is not expected to contribute to population declines or extinction risk on the Queen Charlotte Islands. The NGRT considers these threats of low magnitude (NGRT 2008, pp. 16 and 21).

Disease and predation (Factor C) are not well documented, but small populations can be vulnerable to diseases (some of which may be currently unknown or just emerging, such as West Nile virus) particularly when those populations are simultaneously stressed by other factors such as prey shortages. The current population is very small and apparently not supplemented by immigration (Talbot *et al.* 2005, pp. 2-3) and therefore has limited genetic diversity. This limited genetic diversity is likely to reduce the population's ability to

survive outbreaks of exotic diseases. Small populations may also be suppressed by predation. The NGRT considers threats from predation and disease to be low (NGRT 2008, pp. 16-20), but acknowledges that addressing impacts from disease may be difficult (NGRT 2008, pp. 17-21). We conclude that disease and predation do not currently place goshawks in danger of extinction on the Queen Charlotte Islands, but may contribute to extinction risk, especially if their effects are exacerbated by other population stressors such as prey shortages, habitat limitations, or unfavorable weather (all of which affect nesting effort).

Most of the existing regulatory mechanisms (Factor D) are similar to elsewhere in the DPS (as discussed above). We conclude that, as elsewhere in the DPS, continued development of existing regulatory mechanisms will be necessary to prevent goshawks on the Queen Charlotte Islands from becoming in danger of extinction in the foreseeable future, but inadequacies of the current regulatory regime do not put these goshawks in immediate danger of extinction.

Other factors such as competition, natural disasters, loss of genetic diversity, inbreeding depression, or prey fluctuations (Factor E) can act alone or in combination to reduce survival or fecundity. The goshawk population on the Queen Charlotte Islands is very small, with an estimated 10 to 18 breeding pairs (NGRT 2008, p. 8). In 2007, 9 of 13 known territories were occupied, but only 3 pairs produced young. This was the highest rate of nest activity observed since intensive monitoring began in 2000 (Doyle 2007, pp. 5-9). This small population, which is apparently reproductively isolated from adjacent populations (Talbot *et al.* 2005, p. 3), likely has limited ability to adapt to changes in the environment because its genetic diversity is low. There is also risk of reduced reproductive success due to inbreeding depression. Of particular concern is the limited prey available to goshawks on the Queen Charlotte Islands. Declines in grouse populations, likely caused by introduced deer and raccoons, have resulted in heavy reliance on introduced red squirrels, which are known to fluctuate with cone crops.

The NGRT considers threats from low prey diversity and availability, and from genetic isolation, to be high, threats from introduced species to be moderate, and threats from competition and climate change to be low on the Queen Charlotte Islands (NGRT 2008, pp. 16-20).

We conclude that goshawks on the Queen Charlotte Islands are currently in danger of extinction due primarily to demographic factors (small population size and genetic isolation), which makes them particularly vulnerable to fluctuations of the few available prey species, environmental catastrophes, or disease. The small number of nesting pairs magnifies the impacts of current and potential threats. We propose, therefore, to list the Queen Charlotte goshawk as endangered on the Queen Charlotte Islands, a significant portion of the British Columbia DPS's range.

**Mainland British Columbia:** The NGRT estimates that the British Columbia coastal mainland covers 64 percent of the subspecies' geographic range in the DPS, and supports approximately half of the breeding population in the DPS (NGRT 2008, pp. 6-8). Goshawks from this portion of the range likely provide immigrants to Vancouver Island, as goshawks have been documented moving between Vancouver Island and the mainland (McClaren 2004, p. 3). The mainland could represent a potential source population, should populations on Vancouver Island decline. Loss of Queen Charlotte goshawks on the mainland would result in a significant gap in the subspecies' distribution, and a significant reduction in the resiliency and redundancy of the British Columbia DPS. We therefore consider the coastal mainland of British Columbia a significant portion of the DPS's range.

**Threats on mainland British Columbia:** Only 43 percent of the coastal mainland of British Columbia supports productive forest, compared to 68 percent on the Queen Charlotte Islands and 78 percent on Vancouver Island. Approximately 19 percent of that productive forest has been converted to young second growth, resulting in a landscape with only 30 percent cover by mature and old-growth forest (USFWS 2008, Table A-21), which we consider to be habitat of poor to moderate quality. Within that landscape, however, we expect that there are areas of varying sizes with greater forest cover that provide higher quality habitat.

We believe that goshawks on the mainland can successfully use landscapes with lower coverage of mature and old-growth forest than goshawks on the islands, because snowshoe hares and hoary marmots (*Marmota caligata*), which are adapted to open habitats, inhabit the mainland coast, but not the islands (Nagorsen 2002, pp. 92-93 and 100). The Vancouver Island marmot (*Marmota vancouverensis*) inhabits a relatively small area on the south central portion

of Vancouver Island (Nagorsen 2002, p. 103). We do not believe that this species is a significant prey source for most goshawks on Vancouver Island because of its restricted distribution. Because prey that use open habitats are widely distributed on the mainland, we consider landscapes with 30 to 50 percent cover by mature and old-growth forest moderate-quality habitat for goshawks there.

As on the Queen Charlotte Islands, future timber harvest in two of the six forest districts on the mainland (North Coast and Central Coast) will be by "Ecosystem Based Management," details of which have not yet been finalized (BCMAL 2006, pp. 2-3).

If productive forest outside designated parks and other reserves is retained in the otherwise logged matrix at a rate similar to on the Queen Charlotte Islands and Vancouver Island (because of inoperable ground and retention to protect non-timber resources), we estimate that 4 million ac (1.7 million ha) of old-growth forest will remain available for harvest on the mainland (USFWS 2008, Table A-22). Harvest of this old-growth forest would result in a landscape of approximately 22 percent mature and old-growth forest (USFWS 2008, Table A-24). We believe that this would, on average, be poor-quality habitat. As in other portions of the Queen Charlotte goshawk's range, some areas would likely provide tracts of higher quality habitat, and some areas would be unsuitable for goshawks. The NGRT considers threats from habitat loss and fragmentation to be moderate in the southern portion of the mainland and low to moderate in the northern portion (NGRT 2008, p. 16). We conclude that habitat loss (Factor A) does not appear to place goshawks on the coastal mainland of British Columbia in imminent danger of extinction, but continued loss of old-growth habitat is likely to reduce habitat quality and contribute to population declines in the foreseeable future.

We do not expect overutilization (Factor B), predation or disease (Factor C), inadequacy of regulatory mechanisms (Factor D), or other threats, such as prey fluctuations, climate change, natural disasters, or inbreeding depression (Factor E) to have disproportionately greater impacts on the mainland than elsewhere in the DPS's range. The NGRT considers each of these threats to be low on the mainland, except that they consider threats from low prey availability moderate in the southern portion of the mainland (NGRT 2008, p. 16).

It is likely that Queen Charlotte goshawks on the mainland encounter

the mainland (*atricapillus*) subspecies of the northern goshawk, and that some hybridization occurs, although we are aware of no documentation to confirm this hypothesis. The NGRT considers the drier coastal western hemlock zones on the mainland to be transitional areas between subspecies. As on Vancouver Island, we believe these areas to be stable hybrid zones where the *laingi* form will persist unless changes in habitat favoring the *atricapillus* form occur. Such changes could conceivably be caused by factors such as climate change or timber harvest. Our current understanding of climate change effects is inadequate to allow predictions concerning competitive advantages that may result. Likewise, we are unable to conclude that timber harvest will favor one subspecies over another.

We do not believe that habitat loss (Factor A) or hybridization rates (Factor E) place Queen Charlotte goshawks on the mainland in imminent danger of extinction because these threats are of a chronic, long-term nature. Continued habitat loss, however, is likely to result in poor-quality habitat across a large portion of the range, leading to a progressively smaller, more vulnerable population in danger of extinction in the foreseeable future. Therefore, listing as threatened is appropriate.

In summary, we find that the Queen Charlotte goshawk on the coastal mainland and on Vancouver Island and the surrounding, smaller islands of southern British Columbia is not at imminent risk of extinction, but is likely to become in danger of extinction in the foreseeable future. We therefore propose to list the Queen Charlotte goshawk population in those areas as threatened. We find that because of its small population size and genetic isolation, the Queen Charlotte goshawk population on the Queen Charlotte Islands (an area also known as Haida Gwaii) is at imminent risk of extinction. We therefore propose to list the Queen Charlotte goshawk in this significant portion of the range as endangered. However, it is possible that, with further analysis, we may limit our determination on the status of the Queen Charlotte Goshawk to the DPS level only. That is, we may list the entire DPS as either threatened or endangered in the final rule.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition (through listing), requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in

public awareness, and encourages conservation actions by Federal and State governments, private agencies and groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions within the United States or on the high seas, and consult with the Service with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is designated. Because the British Columbia DPS of the Queen Charlotte goshawk is entirely outside the United States, and is not "on the high seas," section 7 of the Act does not apply to this DPS. Therefore, there will be no requirement to evaluate management actions or consult with the Service. Further, we cannot designate critical habitat in foreign countries (50 CFR 424.12(h)), so we are not proposing critical habitat for the DPS.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered and threatened species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign threatened and endangered species, and to provide assistance for such programs in the form of personnel and training of personnel.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. These prohibitions, under 50 CFR 17.21 and 17.31, in part, make it illegal for any person subject to the jurisdiction of the United States to "take" (take includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt any of these) within the United States or upon the high seas; import or 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 or threatened wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies. These prohibitions would not apply to the Queen Charlotte goshawk within the British Columbia DPS, except as they

apply to import into the United States or foreign commerce.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species, and 17.32 for threatened species. Permits may be issued for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

#### Peer Review

In accordance with our policy, "Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities," that was published on July 1, 1994 (59 FR 34270), we will seek the expert opinion of at least three appropriate independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to the peer reviewers immediately following publication in the **Federal Register**.

#### Required Determinations

##### Paperwork Reduction Act

This proposed rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* The regulation will not impose new recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

##### National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

##### Clarity of the Rule

We are required by Executive Order 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: (a) Be logically organized; (b) Use the active voice to address readers directly; (c) Use clear language rather than jargon; (d) Be divided into short sections and sentences; and, (e) 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 the **ADDRESSES** section. 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.

#### References Cited

A list of the references used to develop this proposed rule is available upon request (see **FOR FURTHER INFORMATION CONTACT**).

#### Author

The primary author of this proposed rule is Steve Brockmann, Juneau Fish and Wildlife Field Office, U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**).

#### 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 follows:

#### PART 17—[AMENDED]

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

**Authority:** 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding two new entries for "Goshawk, Queen Charlotte" in alphabetical order under BIRDS to the List of Endangered and Threatened Wildlife as follows:

§ 17.11 *Endangered and threatened wildlife.*

\* \* \* \* \*

(h) \* \* \*

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	*
BIRDS							
*	*	*	*	*	*	*	*
Goshawk, Queen Charlotte	<i>Accipiter gentilis laingi</i>	Canada (That portion of British Columbia that includes Vancouver Island and its surrounding islands, the mainland coast west of the crest of the Coast Range, and the Queen Charlotte Islands)	Entire, except Queen Charlotte Islands	T		NA	NA
Goshawk, Queen Charlotte	<i>Accipiter gentilis laingi</i>	Canada (That portion of British Columbia that includes Vancouver Island and its surrounding islands, the mainland coast west of the crest of the Coast Range, and the Queen Charlotte Islands)	Queen Charlotte Islands	E		NA	NA
*	*	*	*	*	*	*	*

Dated: October 20, 2009.

Sam D. Hamilton,

Director, Fish and Wildlife Service.

[FR Doc. E9-26154 Filed 11-2-09; 8:45 am]

BILLING CODE 4310-55-S

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

[Docket No. FWS-R9-IA-2009-0056]

[90100-1660-1FLA B6]

[RIN 1018-AW00]

**Endangered and Threatened Wildlife and Plants; Listing the Salmon-Crested Cockatoo as Threatened Throughout Its Range with Special Rule**

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

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to list the salmon-crested cockatoo (*Cacatua moluccensis*) as threatened, with a special rule, under the Endangered Species Act of 1973, as amended (Act). This proposal, if made final, would extend the Act's protections to this species and amend the regulations at 50 CFR part 17 to create a special rule under authority of section 4(d) of the Act that provides measures that are necessary and advisable for the conservation of the salmon-crested cockatoo. The Service seeks data and comments from the public on this proposed listing and special rule.

**DATES:** We will accept comments received or postmarked on or before February 1, 2010. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by December 18, 2009.

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

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS-R9-IA-2009-0056.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS-R9-IA-2009-0056; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mails or faxes. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

**FOR FURTHER INFORMATION CONTACT:** Douglas Krofta, Chief, Branch of Listing, Endangered Species Program, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 420, Arlington, VA 22203; telephone 703-358-2171; facsimile 703-358-1735. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

**SUPPLEMENTARY INFORMATION:**

**Public Comments**

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we are requesting comments

from other government agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

- Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and regulations that may be addressing those threats;
- Additional information concerning the range, distribution, and population size of this species;
- Any information on the biological or ecological requirements of this species;
- Current or planned activities in the areas occupied by this species and possible impacts of these activities on this species;
- Any information concerning the effects of climate change on this species or its habitats;
- Any information concerning numbers of this species held in captivity in the United States, breeding success, and types of activities that should be addressed in the special rule; and
- The appropriate conservation status for the salmon-crested cockatoo.

If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy comment 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 comments on <http://www.regulations.gov>.