

**Draft Final Fisher Listing Decision**

*Questions and Answers*

**INTERNAL ONLY**

*April 2020*



**1. Why did you split the West Coast DPS of Fisher into two separate DPSs?**

The U.S. Fish and Wildlife Service uses the best scientific and commercial data available to make ESA listing determinations. While we started this listing decision with the purpose of evaluating the status of the West Coast DPS of fisher, we determined that there are two distinct population segments of fisher: the Northern California/Southern Oregon distinct population segment and the Southern Sierra Nevada distinct population segment. Recent studies have shown that the two populations are genetically different, separated by a geographic gap of approximately 130 miles.

While it didn't influence our decision, it is worth mentioning that the state of California's Fish and Game Commission separated the fisher into similarly geographically/genetically divided populations when it completed its state listing review process in 2015.

**2. Didn't the Service know about the two separate populations for a long time?**

As a matter of policy, the Service tries to avoid dividing species into DPSs unless absolutely necessary. Dividing species can increase regulatory complexity and burdens on landowners. However, in this case, the separation made sense for a couple of reasons.

First, through the public comment periods, we received more information about separating the DPSs. While we discussed the differences between the Northern California/Southern Oregon and Southern Sierra Nevada populations in the Alternatives section of the 2014 proposed rule, it became clear throughout the process of reviewing comments that separating the two DPSs based on unique genetics and management was the right decision.

Second, the state of California's Fish and Game Commission classified the fisher population into similarly geographically/genetically divided units in 2015. While their classification did not influence our decision, our evaluation of the information landed us in the same place. The Southern Sierra Nevada unit was listed as threatened and there were no protections placed on the Northern California unit.

*\*Note: The State decision was made before the large tree mortality event in SSN DPS range. The Service had access to the data from that event, and the loss of habitat resulting from that event played a role in the endangered designation.*

**3. When the proposed listing rule went out for public comment, the Service proposed to list the entire West Coast DPS of the fisher as threatened. Now, the West Coast DPS has been divided into two DPSs. Why is the Southern Sierra Nevada DPS being listed as endangered, but the Northern California/Southern Oregon DPS is not receiving any protection?**

Some of the threats to the two DPSs are similar. In both cases, wildfire, climate change, predation, and toxicants are issues.

While threats may be similar, the Northern California/Southern Oregon DPS population is more resilient.

- The Northern California/Southern Oregon DPS has a larger overall population and is widely distributed throughout its range.
- Finally, ongoing conservation efforts taking place in the range of the Northern California/Southern Oregon DPS are helping to retain and restore fisher habitat.

Taken together – having a wide distribution throughout its range, and the ongoing conservation efforts – the Northern California/Southern Oregon DPS is not in danger of extinction throughout all or a significant portion of its range now or in the foreseeable future.

The Southern Sierra Nevada DPS faces greater challenges.

- This DPS has a much smaller overall population.
- In 2017, a large tree mortality event occurred as a result of prolonged drought and beetle infestations. This loss of habitat was a significant factor in our “endangered” designation for the DPS.
- While conservation efforts are taking place in the Southern Sierras, the ongoing tree mortality event is another threat that is not yet ameliorated by the conservation efforts.
- Finally, the Northern California/Southern Oregon DPS has seen benefits from reintroduction of fishers into the range. To-date, no reintroduction efforts have been carried out in the Southern Sierra.

#### **4. How many fishers are estimated to be in each DPS?**

- a. The Northern California/Southern Oregon DPS population is estimated to be around 3,100 individuals.
- b. The Southern Sierra Nevada population is estimated to be between 100-500 individuals. This is an estimate that was taken in advance of the large tree mortality event that resulted from the prolonged drought.

#### **5. With the final rule determining protections for one DPS, shouldn't the Service draft a new proposed rule and provide the public with an opportunity to comment?**

We don't think a new proposed rule and public comment period is necessary. Since 2014, the Service has discussed the presence of different fisher populations—native and reintroduced—all grouped under the West Coast DPS of fisher in its listing documents. In those documents, we presented Alternatives that would have separated the population into new DPSs. The public had an opportunity to review these documents and comment on the potential DPS alternatives. This determination is a logical outgrowth of those former Alternatives and therefore a new proposed rule is not needed.

- a. (*If pressed:* The Service was working to meet a court-ordered deadline of delivering this rule to the Federal Register on or before April 25, 2020 to determine the final listing status of the West Coast DPS of fisher. This required our biologists to review the information efficiently and develop a sound recommendation. This led us to the decision to include the two DPSs in the final rule and list the SSN population as endangered.)

#### **6. Will critical habitat be developed for the Southern Sierra Nevada DPS? Why isn't it part of this final decision?**

We determined that designating critical habitat for the Southern Sierra Nevada DPS is prudent but not determinable at this time because we are still analyzing new information. The Service will develop a proposed critical habitat rule for the Southern Sierra Nevada population in the near future and the proposed rule will go through a public comment process.

**7. Who owns the land in the Southern Sierra Nevada DPS range?**

The Southern Sierra Nevada DPS range includes a majority of public lands managed by BLM, USFS and National Park Service.

Agency	Acres	Percent
Bureau of Land Management	916,152	9.8
Forest Service	3,637,488	39.0
Bureau of Indian Affairs	56,003	0.6
National Park Service	1,337,482	14.4
State and Local	42,123	0.5
Private	3,099,276	33.3
Total Acres*	9,318,596	100.0

\* Acres and % may not sum due to rounding and because some other owners with less land are not included.

**8. In the proposed listing rule for the West Coast DPS of fisher, the Service proposed a 4(d) rule that provided regulatory protections for fisher to support species recovery but also provided exclusions to forestry management activities that benefited fishers. Will the 4(d) protections be part of this listing decision?**

There will not be a 4(d) rule in this listing decision. 4 (d) rules are only developed when listing a species as “threatened” and are not available to species listed as “endangered.” The Service does not regulate activity on non-listed species, like the Northern California/Southern Oregon DPS.

**9. Why did you extend the comment period for an additional 15 days?**

During the initial 30-day comment period in November 2019, we learned that commenters needed more time to provide information to inform our decision. We extended the comment period to allow for that information to be submitted.

**10. Who provided comments during the original comment period and the subsequent comment period that shaped the final decision document?**

- a. Comments submitted during the first thirty days were contributed by a number of parties, including the Oregon Farm Bureau Federation, the Center for Biological Diversity, and the California Forestry Association.
- b. During the second window, we continued to receive comments from a wide range of interested parties, including the Integral Ecology Research Center, Green Diamond Resource Company, and the Forest Landowners Association.

**11. Was any part of this decision influenced/requested by/or involving the timber industry?**

The decision is based on the best available scientific and commercial information. The timber industry, among many others, including environmental groups, researchers, and agencies (local, State, and Federal), provided information during the public comment period that was reviewed and considered during our decision process.

**12. What conservation efforts are underway that benefit the Northern California-Southern Oregon DPS of fisher?**

There are several conservation efforts underway within the range of the Northern California-Southern Oregon DPS range.

- a. The **Northwest Forest Plan** guides the management of USFS and BLM lands in northern spotted owl range, which overlaps with the Northern California/Southern Oregon DPS range.
- b. This plan supports conservation of old-growth forests which serve as great habitat for both species.
- c. Three private landowners developed **habitat conservation plans** to balance timber activities with conservation of wildlife. While these plans were developed to prevent take of northern spotted owls, the conservation activities also benefit fisher.
- d. The **Sierra Pacific Industries Ownership CCAA** covers SPI lands within both Northern California/Southern Oregon DPS range and Southern Sierra Nevada DPS range. The activities in this strategy focus on retaining and protecting important forest habitat elements, like resting and denning sites for fisher during timber harvest.
- e. The **Oregon CCAA** was developed for Green Diamond Resource Company, ????
- f. There are also multiple **MOUs** between the U.S. Forest Service and private timber companies that benefit fisher and its habitat in Oregon and California. These agreements focus on forest fuels reduction to reduce the risk of catastrophic wildfire while maintaining important forest habitat elements for fisher (NOTE: the Service is not a signatory on the MOUs.)

**13. Are there plans to implement similar conservation activities in the range of the Southern Sierra Nevada DPS?**

Conservation efforts for the Southern Sierra Nevada DPS are predominantly driven by the "Southern Sierra Nevada Fisher Conservation Strategy," which is intended to meet the needs of multiple agencies with an interest in fisher conservation and land management in the Sierra Nevada, including the USFS, NPS, USFWS, California Department of Fish and Wildlife, Sierra Nevada Conservancy (SNC), and other local, state, tribal, and private entities. The strategy provides science-based guidance for conserving and recovering fisher in the southern Sierra Nevada by reducing threats and increasing the quality and resiliency of fisher habitat.

**14. Are there any other conservation activities that would benefit fisher recovery?**

We continue to work with a number of public and private partners on forest management actions that could be taken to support the recovery of the fisher. We're encouraged to see our partners proactively integrate habitat conservation measures into their plans and forest management activities. Additionally, efforts to reintroduce more fishers into the wild will continue to bolster populations.

**15. What kind of economic impact will listing the Southern Sierra Nevada DPS have on counties within the range of the species?**

The Service is in the process of identifying what critical habitat could look like for the Southern Sierra Nevada DPS of fisher. As part of this process the Service will conduct an economic analysis of our critical habitat decision. In the near future, our draft analysis will be posted when we propose critical habitat for the Southern Sierra Nevada DPS. We do not expect an economic impact within the range of the NCSO because of the not warranted determination.

**16. What does the range of each DPS of fisher look like?**

One of the factors in our decision to separate the two DPSs is that there is a 130-mile gap in the geographic range between them. *(See map on page 7)*

- i. The Northern California/Southern Oregon DPS range is like an upside down "V." The point of the "V" starts just north of Crater Lake National Park in Oregon, extending south down one side to Lassen Volcanic National Park then to Chico, California. The other side of the "V" goes west to Oregon's southern coast down the northern California

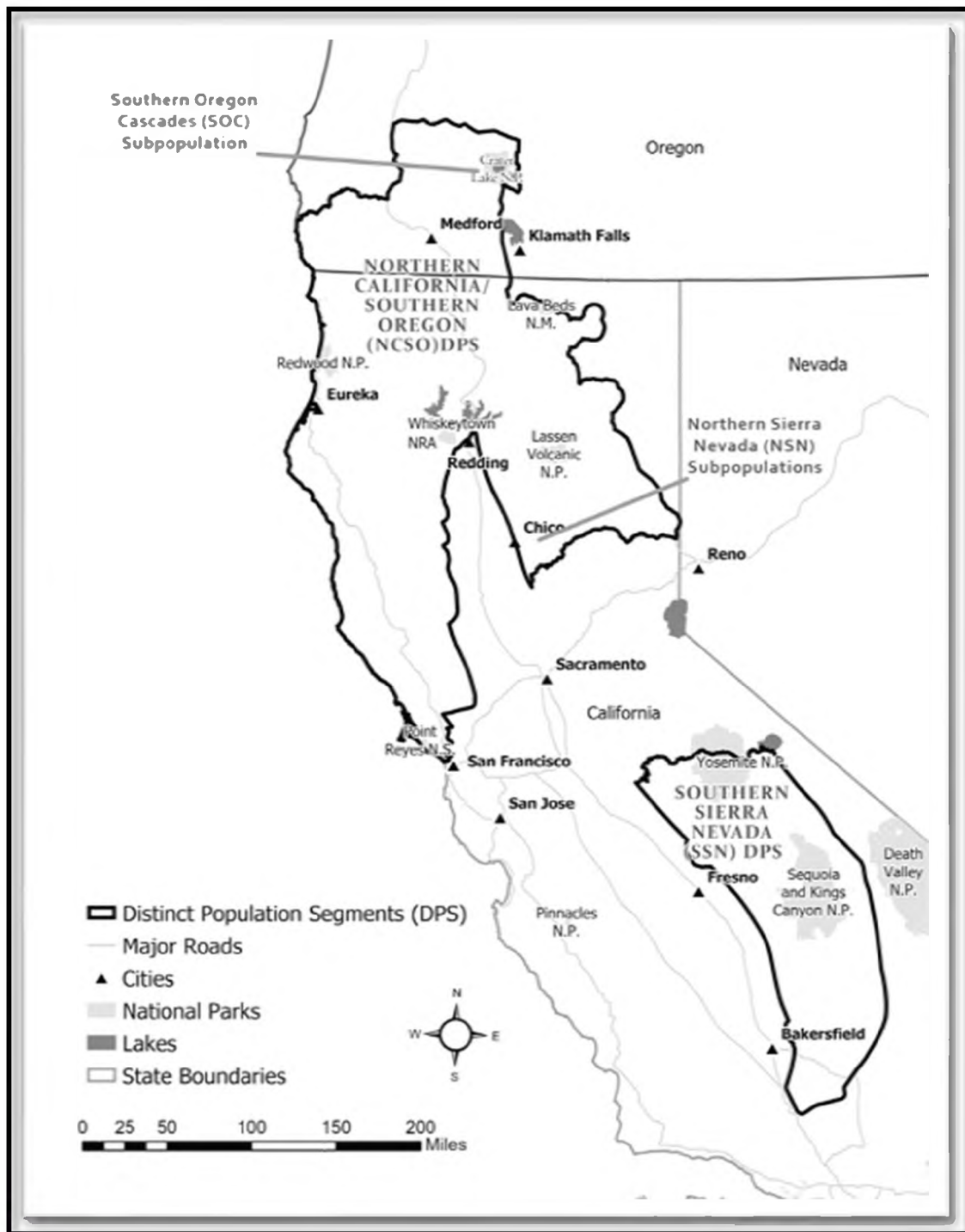
coastline and inland to the coastal mountain range to Point Reyes National Park. California's Central Valley comprises the geographic 'gap' or void between the two sides of the "V."

- ii. The Southern Sierra Nevada DPS extends from Yosemite National Park south along the Sierra Nevada Mountains to just southeast of Bakersfield in Kern County.

**17. This listing decision has taken many years to produce. Can you walk me through the history?**

- a. On December 5, 2000, the Service received a petition from the Center for Biological Diversity and the Sierra Nevada Forest Protection Campaign to list the West Coast DPS of Pacific fisher as endangered under the ESA. The petition also asked the Service to designate critical habitat for the DPS.
- b. On July 10, 2003, the Service published a positive 90-day finding and initiated a 12-month status review.
- c. On April 8, 2004, the Service announced that the West Coast DPS of fisher was warranted for listing but precluded by higher priority actions. The West Coast DPS of fisher was added to the Service's candidate species list.
- d. On June 10, 2007, Sierra Forest Products, Inc., challenged the Service's 2004 12-month finding for the fisher by asserting that the Service failed to specify whether the West Coast DPS of the fisher is a DPS of a species or a DPS of a subspecies.
- e. On June 6, 2008, the Eastern District Court of California announced that the Service's determination of the species' status was not arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.
- f. On July 12, 2011, the Service reached an agreement (multi-district litigation with Center for Biological Diversity) to submit a proposed listing determination, or withdraw the warranted 12-month finding, no later than the end of the 2014 Fiscal Year.
- g. On October 7, 2014, the Service published a proposed rule (79 FR 60419) to list the West Coast DPS of fisher as a threatened species under the ESA. That proposal had a 90-day comment period, ending January 5, 2015.
- h. On December 23, 2014, the Service extended the proposal's comment period for an additional 30 days, ending February 4, 2015 (79 FR 76950).
- i. On April 14, 2015, the Service reopened the comment period and announced a 6-month extension of the final listing to acquire new information and comments regarding toxicants, rodenticides and survey information (80 FR 19953). That additional comment period ended May 14, 2015, and was conducted specifically to help assess distribution and population trends due to disagreement regarding the sufficiency or accuracy of the available data related to those issues.
- j. On April 18, 2016, the Service published a document in the *Federal Register* withdrawing the proposed rule to list the West Coast DPS of fisher (81 FR 22710), concluding that the stressors acting upon the DPS did not significantly impact the species at either the population or range-wide scales.
- k. On October 19, 2016, the Center for Biological Diversity, Environmental Protection Information Center, Klamath-Siskiyou Wildlands Center, and Sierra Forest Legacy filed a complaint for declaratory and injunctive relief, alleging that the agency's determination on the West Coast DPS of fisher violated the ESA.
- l. On September 21, 2018, a summary judgment was issued. The District Court for the Northern District of California vacated the listing withdrawal and remanded the Service's final determination for reconsideration. The order gave the Service until March 22, 2019 to prepare a new rule.
- m. On November 20, 2018, the District Court for the Northern District of California granted the Services' request to extend the deadline to publish in the *Federal Register* either a withdrawal, final listing, or a revised proposed rule by September 21, 2019. Should this occur, the Service then had until March 21, 2020 to publish a final determination. The Service filed a motion for extension by 35 days for each date.

- n. On January 31, 2019, a 30-day public comment period was opened to solicit additional information on threats and conservation actions for the West Coast DPS of fisher. These, and all prior comments, were considered in the revised proposed listing rule.
- o. On May 17, 2019, the District Court for the Northern District of California granted the Services' request to extend the deadline 35 days, until October 26, 2019, for submitting to the *Federal Register* either a withdrawal, final listing, or a revised proposed rule.
- p. On November 7, 2019, we published a revised proposed rule to list the West Coast DPS of fisher, and we opened a 30-day public comment period. We evaluated new information available since 2014 and reconsidered the best available information already in our files (including all peer, partner, and public comments received during previous comment periods as well as the two recent comment periods). We concluded that the West Coast DPS of fisher continued to meet the definition of a threatened species based on cumulative effects associated with multiple threats across the DPS's range.
- q. On December 19, 2019, we reopened the public comment period for an additional 15 days to allow the public more time to comment on the revised proposed rule.
- r. Based on numerous comments received during multiple comment periods over the past five years, we re-evaluated our DPS approach and determined that the singular West Coast DPS should be evaluated as two separate DPSs (the NCSO DPS and the SSN DPS).
- s. The final fisher listing determination is to be submitted to the Federal Register by April 25, 2020.



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