



United States Department of the Interior



FISH AND WILDLIFE SERVICE
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File Name: Fisher Final Tribal Notification 5.12.2020
TS Number: 20-344

May 13, 2020

Dear Tribal Chairperson,

Based on your Tribe's status as a sovereign nation and in keeping with our trust responsibility, the U.S. Fish and Wildlife Service (Service) is sending this letter as notification of our final determination on the status of the Pacific fisher (*Pekania pennanti*). The Service is announcing a final rule to list the Southern Sierra Nevada distinct population segment (DPS) of fisher as endangered under the Endangered Species Act (ESA), while the Northern California-Southern Oregon DPS will not be listed.

In addition, the Service plans to propose critical habitat for the Southern Sierra Nevada DPS of fisher after a thorough analysis of available information can be completed. A proposed rule for this will go through the public comment process at a later date.

The Service is responsible for identifying species in need of protection under the Endangered Species Act of 1973, as amended (Act). On October 7, 2014, the Service proposed the West Coast Distinct Population Segment (DPS) of fisher as a threatened. The Service withdrew that proposal on April 18, 2016, concluding at that time the threats acting upon the DPS were not of sufficient imminence, intensity, or magnitude to indicate that they were singly or cumulatively resulting in significant impacts at either the population or rangewide scales.

On October 19, 2016, the Center for Biological Diversity (CBD) *et al.* filed a complaint for declaratory and injunctive relief, alleging that our determination on the West Coast DPS of fisher violated the Act. Following many months of litigation, the court issued an order that vacated the listing withdrawal and remanded the Service's final determination for reconsideration. The Court directed the Service to prepare a new determination and submit it to the *Federal Register* by October 26, 2019, with a final listing determination submitted by April 25, 2020.

On November 7, 2019, the Service published in the *Federal Register* a) notice for a revised proposed rule to list the West Coast DPS of fisher as threatened under the ESA; b) the availability of a proposed section 4(d) rule; and c) reopening of public comment period for 30 days. An extended 15 day comment period occurred in December.

In the course of our review process, the Service determined that the formerly designated West Coast DPS should be evaluated as two separate DPS, the Northern California-Southern Oregon and Southern Sierra Nevada DPS of fisher.

The Southern Sierra Nevada DPS of fisher will be listed as endangered based on several factors including loss of habitat, small population size and limited distribution within a fragmented habitat. The Northern California-Southern Oregon DPS is not warranted for protection under the ESA due in part to its widespread distribution, resilience and ongoing conservation efforts on public and private timberlands within its range.

Fisher description, distribution

Fishers are members of the weasel family, about the size of a large house cat, with thick dark brown fur and often white markings on the chest and underbelly. They prey on small mammals, birds and are preyed on by coyotes, larger carnivores and birds of prey. Other mortality factors are collisions with vehicles and indiscriminate use of rodenticides associated with illegal marijuana cultivation.

The Southern Sierra Nevada DPS of fisher is found in high elevation forests from the Tuolumne River in Yosemite National Park south to the Kern River Canyon, including Mariposa, Madera, Fresno, Tulare and Kern Counties, California. The Northern California-Southern Oregon DPS of fisher is found across a wide variety of forest types and ecological conditions.

The species is consistently associated with low- to mid-elevation coniferous and mixed conifer and hardwood forests with characteristics of mid- and late-successional forests (e.g., diverse successional stages, moderate to dense forest canopies, large-diameter trees, coarse downed wood, and large snags, tree cavities, or deformed trees). Throughout their range, fishers are obligate users of tree or snag cavities for denning and daytime resting sites with a high proportion of use occurring in late-successional forests. These forest characteristics occur through processes such as fire, drought and insect-related tree mortality, disease, and decay. There have also been concerted conservation measures by external partners to improve fisher habitat on private and public managed forest lands.

Contact Information

In accordance with Secretarial Order 3206 and the Service's Native American Policy, the Service consults with Indian tribes when actions taken under authority of the Act may affect Indian lands, tribal trust resources, or the exercise of American Indian tribal rights, as defined in the Secretarial Order. At your request, I am available to discuss the final rule, the two designated DPS of fisher and how your Tribe's information, comments, and expertise was incorporated into this final listing decision.

If you have any questions or would like to discuss further, feel free to contact me by

phone at 503/807-6197 or email paul_henson@fws.gov.

Sincerely,

Paul Henson, Ph.D.
State Supervisor, Oregon Fish and Wildlife Office