

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17**[Docket No. FWS-R8-ES-2020-0151;
FXES1111090FEDR-245-FF09E21000]

RIN 1018-BE33

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Coastal Distinct Population Segment of the Pacific Marten**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the coastal distinct population segment of Pacific marten (coastal marten) (*Martes caurina*), a mammal species from coastal California and Oregon, under the Endangered Species Act of 1973 (Act), as amended. In total, approximately 1,213,752 acres (491,188 hectares) in northwestern California and southwestern Oregon fall within the boundaries of the critical habitat designation. This rule extends the Act's protections to this entity's designated critical habitat.

DATES: This rule is effective June 28, 2024.

ADDRESSES: This final rule is available on the internet at <https://www.regulations.gov>. Comments and materials we received are available for public inspection at <https://www.regulations.gov> at Docket No. FWS-R8-ES-2020-0151.

Availability of supporting materials: Supporting materials we used in preparing this rule, such as the species status assessment report, are available at <https://www.regulations.gov> at Docket No. FWS-R8-ES-2020-0151. For the critical habitat designation, the coordinates or plot points or both from which the maps are generated are included in the decision file for this critical habitat designation and are available at <https://www.regulations.gov> at Docket No. FWS-R8-ES-2020-0151 and on the Service's website at <https://www.fws.gov/office/arcata-fish-and-wildlife>.

FOR FURTHER INFORMATION CONTACT:

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dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:**Executive Summary**

Why we need to publish a rule. Under the Act (16 U.S.C. 1531 *et seq.*), to the maximum extent prudent and determinable, we must designate critical habitat for any species that we determine to be an endangered or threatened species. On October 8, 2020, we published in the **Federal Register** (85 FR 63806) a final rule listing the coastal marten distinct population segment (DPS) as threatened, and on October 25, 2021, we published in the **Federal Register** (86 FR 58831) a proposed rule to designate critical habitat for the DPS. Designating critical habitat can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process (5 U.S.C. 551 *et seq.*).

What this document does. This is a final rule to designate critical habitat for the coastal marten in five units totaling approximately 1,213,752 acres (ac) (491,188 hectares (ha)) in the States of Oregon and California.

The basis for our action. Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary), to the maximum extent prudent and determinable, concurrently with listing designate critical habitat for the species. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. Section 4(b)(2) of the Act states that the Secretary must make the designation on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impacts of specifying any particular area as critical habitat.

Previous Federal Actions

Please refer to the proposed rule to list the coastal marten DPS (83 FR 50574; October 9, 2018), the final rule

to list the DPS (85 FR 63806; October 8, 2020), the proposed rule to designate critical habitat for the DPS (86 FR 58831; October 25, 2021), and the document describing revisions to and reopening the comment period on the October 25, 2021, proposed rule (87 FR 59384; September 30, 2022) for detailed descriptions of the previous Federal actions concerning this DPS.

Peer Review

A species status assessment (SSA) team prepared a revised SSA report for the coastal marten (Service 2023, entire) based on both peer review and public comments. The SSA team was composed of Service biologists, in consultation with other species experts. The 2023 SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species and incorporates the results of peer review, public and agency comments, and new information that has become available since our proposed critical habitat rule was published on October 25, 2021 (86 FR 58831). The 2023 SSA report also identifies habitat needs and requirements for the coastal marten. We used information in the 2019 and 2023 SSA reports to inform our development of the physical or biological features as well as our criteria for determining and designating critical habitat for the coastal marten. The 2019 and 2023 SSA reports (Service 2019 and Service 2023) are available at <https://www.regulations.gov> at Docket No. FWS-R8-ES-2020-0151.

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing and recovery actions under the Act, we solicited independent scientific review of the information contained in the draft coastal marten SSA report (Service 2019, entire). As discussed in the final listing rule (85 FR 63806; October 8, 2020) and the proposed critical habitat rule (86 FR 58831; October 25, 2021), we sent the 2019 SSA report to eight independent peer reviewers and received two responses. The peer reviews can be found at <https://www.regulations.gov> at Docket No. FWS-R8-ES-2020-0151. Regarding comments applicable to this designation of critical habitat, we incorporated the comments which specifically addressed our characterization of coastal marten habitat and the DPS's use of habitat, as

appropriate, into the current SSA report (Service 2023, entire) and into this critical habitat designation.

Summary of Changes From the Proposed Rule

Our proposed critical habitat rule (86 FR 58831; October 25, 2021), contained an error in the acreage identified for Unit 1. The proposed rule identified 94,094 ac (37,673 ha) of Federal lands in Unit 1. The actual acreage of Federal land proposed for Unit 1 should have been 93,091 ac (37,673 ha). The acreages discussed for Unit 1 in this rule reflect this correction.

In addition, in preparing this final rule, we reviewed and fully considered the comments we received during the comment periods on our October 25, 2021, proposed rule (86 FR 58831) and our September 30, 2022, document describing revisions to and reopening the comment period on the October 25, 2021, proposed rule (87 FR 59384). In general, the changes from the proposed rule to this final rule fall into two main categories—the finalization of section 4(b)(2) exclusions and changes (additions and removals) to areas that are based on our consideration of comments and new information we received from land managers and updated land ownership information. These are described below as changes resulting from exclusions and from land manager comments. This final rule also reflects minor nonsubstantive changes (such as clarifications on habitat use) that were made to the SSA report (Service 2023, version 2.2, entire).

Changes as a Result of Exclusions Under Section 4(b)(2) of the Act

As identified in our October 25, 2021 (86 FR 58831), and September 30, 2022 (87 FR 59384), publications, we identified the Green Diamond Resource Company (GDRC) lands and the Yurok Tribal lands (trust lands, fee title lands, and reservation boundary adjustment lands) as being considered for exclusion under section 4(b)(2) of the Act from Unit 5 in California. Subsequent to the publication of our October 25, 2021, proposed rule, we received comments and information from both GDRC and the Yurok Tribe requesting that we exclude their lands from the critical habitat designation for the coastal marten DPS. We have finalized our exclusion analyses and are excluding approximately 49,010 ac (19,834 ha) of GDRC lands, which includes approximately 9,754 ac (3,947 ha) of GDRC lands that are within the Yurok Tribe reservation boundary; 64,979 ac (26,296 ha) of Yurok Tribal lands; and 25,791 ac (10,437 ha) of U.S. Forest

Service lands (reservation boundary adjustment lands) being managed by the Yurok Tribe from Unit 5 in California (for more information, see Consideration of Impacts under Section 4(b)(2) of the Act, below).

In addition, we received information regarding a new law that transferred 1,031 ac (417 ha) of Federal land from the Secretary of Agriculture to the Secretary of the Interior, to be held in trust for the benefit of the Karuk Tribe (Katimiin and Aamekyáaraam Sacred Lands Act, Pub. L. 117–353, January 5, 2023) (Karuk Tribal lands). The Karuk Tribal lands within the proposed critical habitat designation are located in Unit 5 in Siskiyou and Humboldt Counties, California, and total approximately 925 ac (374 ha). As a result of this legislation, we asked and the Karuk Tribe requested that we consider an exclusion of these lands from the final designation of critical habitat for the coastal marten DPS. As a result of the Tribe's request, we reviewed the best information available and conducted an exclusion analysis on the transferred lands and determined that the lands are appropriate for exclusion from the final designation (for more information, see Consideration of Impacts under Section 4(b)(2) of the Act, below).

Changes as a Result of Comments Received From Land Managers

We received comments and information from the U.S. Forest Service regarding whether certain areas within the eastern portion of Unit 1 in the Siuslaw National Forest in Oregon contain the physical or biological features (PBFs) essential to the conservation of the coastal marten and constitute areas of coastal marten habitat use (see *Federal Agency Comments*, below). As a result of our review of their comments, information they provided, subsequent meetings with the Siuslaw National Forest, and a site visit to the area in question, we have determined that the areas identified by the Siuslaw National Forest in Unit 1 do not meet our designation criteria and are not essential to the conservation of the coastal marten. We have, therefore, removed them from this final designation. This is based on information that the area in question does not contain the PBFs to the degree or extent necessary to support the coastal marten. Specifically, the environmental conditions in the more arid areas in the eastern portion of the proposed unit do not support the dense, spatially extensive shrub layer necessary for protection and cover and prey foraging. This final rule adopts a revised eastern boundary for Unit 1 and

does not include those areas that do not meet the definition of critical habitat. The overall acreage for Unit 1 now totals 22,135 ac (8,958 ha).

The Siuslaw National Forest also provided updated land ownership and habitat information for additional areas in Units 2, 3, and 4 and recommended changes to the boundaries of the designation in these units. The changes involve numerous small additions and removals based on habitat conditions, connectivity to previously proposed critical habitat, and land ownership. These changes result in a net reduction of 60 ac (24 ha) in Unit 3, and 3 ac (1.2 ha) in Unit 4. There is a net increase of 7,028 ac (2,844 ha) in Unit 2. See table 1, below, for land ownership and unit total acres for the final critical habitat designation.

As discussed in our October 25, 2021, proposed rule, we do not include areas that are managed by the Bureau of Land Management (BLM) or U.S. Forest Service (USFS) under the Oregon and California Revested Lands Sustained Yield Management Act of 1937 (43 U.S.C. 2601) (O&C lands) and currently allocated to the “harvest land base” (BLM) or “matrix” (USFS) land uses, as these lands are managed for permanent forest production and, therefore, are not likely to contain the physical or biological features essential to the conservation of the coastal marten in sufficient amounts or configuration to meet our criteria to be considered critical habitat for the DPS. However, based on the most current land use information for the entire designation which includes lands identified as O&C harvest land base lands, we identified a total of approximately 177 ac (72 ha) (121 ac (49 ha) in Unit 3 and 56 ac (23 ha) in Unit 5) of such O&C lands that were unintentionally included in the proposed designation, and we remove these lands from this final designation based on our criteria and rule set for designating critical habitat (see Conservation Strategy and Selection Criteria Used to Identify Critical Habitat, below).

Summary of Comments and Recommendations

In our October 25, 2021 (86 FR 58831), and September 30, 2022 (87 FR 59384), **Federal Register** publications, we requested that all interested parties submit written comments on the proposed designation by December 27, 2021, and October 17, 2022, respectively. We also contacted appropriate Federal and State agencies, Tribal entities, scientific experts and organizations, and other interested parties and invited them to comment on

the proposal. Newspaper notices inviting general public comment were published in the Oregonian for the areas in southwestern Oregon and the Times-Standard for areas in northwestern California. We did not receive any requests for a public hearing. All substantive information we received during comment periods has either been incorporated directly into this final determination and/or the 2023 SSA report, or is addressed below.

Peer Review Comments

As discussed in Peer Review, above, we received comments from two peer reviewers on the 2018 SSA report (Service 2018, version 1.1, entire). The peer reviewers generally concurred with our methods and conclusions, and they provided additional information and clarifications that we incorporated into the current version of the SSA report (Service 2023, version 2.2, entire) as appropriate. The SSA report forms the basis of information we used in determining the habitat needs, physical or biological features, and criteria for critical habitat for the coastal marten.

Federal Agency Comments

We reached out to all Federal agencies within the range of the coastal marten or that may be required to consult on critical habitat for the DPS under section 7 of the Act to request their comments on our proposed rule to designate critical habitat for the coastal marten. We received comments regarding the proposed designation from the USFS's Siuslaw National Forest. Their comments are summarized below and may be found at <http://www.regulations.gov> under Docket No. FWS-R8-ES-2020-0151 (Document No. FWS-R8-ES-2020-0151-0039).

(1) *Comment:* The USFS, Siuslaw National Forest requested changes to proposed Units 1, 2, 3, and 4 based on habitat conditions, occupancy, presence of the PBFs within these units, and/or land ownership information. According to their comments, areas within the eastern interior portions of proposed Unit 1 do not currently have the habitat conditions necessary to support coastal marten populations, and surveys of proposed Unit 1 found no evidence of coastal martens outside of the dunes or the dense coastal forest in the western part of proposed Unit 1. As a result, they recommended removing areas in the eastern portion of proposed Unit 1 from the final designation due to a lack of PBFs and use by the coastal marten. They also requested adjusting and including additional areas along the coastal dune habitats as well as east of Highway 101 in Units 2, 3, and 4 due

to presence of additional forested habitat not included in the October 25, 2021, proposed rule. According to the Siuslaw National Forest, these additional areas contain the PBFs and are, in some instances, occupied by the coastal marten. Further, according to the Siuslaw National Forest, including these areas would allow for expansion of currently occupied areas and assist in connectivity between and adjacent to habitat for the coastal marten.

Our response: We reviewed the information provided by the Siuslaw National Forest on potential changes to the proposed designation and considered any changes based on our strategy, criteria, and methodology for determining critical habitat for the coastal marten.

For the recommended changes to Unit 1, we met with the Siuslaw National Forest staff and conducted a site visit to review the habitat conditions of the eastern inland portions of proposed Unit 1 to determine if the PBFs are present in sufficient quantity and quality to be able to support coastal martens. After our review, we determined the areas proposed in the eastern inland portions of Unit 1 do not contain the PBFs in sufficient quantity, quality, or distribution to provide for coastal marten populations and, as a result, do not meet the definition of critical habitat for the DPS. Although some habitat features are present and may over time improve and have better distribution within the eastern inland portions of this unit in the future, we have removed the eastern portion of proposed Unit 1 from the final designation of critical habitat as these areas do not currently meet the definition of critical habitat. See Summary of Changes from the Proposed Rule, above, and the description of Unit 1 under Final Critical Habitat Designation, below, for additional information regarding Unit 1.

For the recommended changes to Units 2, 3, and 4, we reviewed information about the identified areas to determine whether the areas are owned by Federal or State agencies, are adjacent to existing identified critical habitat, contain the PBFs, and/or are occupied by coastal marten. Our review of the information provided by the Siuslaw National Forest resulted in some changes to the areas identified as critical habitat in Units 2, 3, and 4 by adding lands that meet these criteria. Other lands identified by the Siuslaw National Forest that are located on private lands and do not meet our criteria for identifying areas essential to the conservation of the coastal marten as critical habitat, are not included in this

final designation. See Summary of Changes from the Proposed Rule, above, and the descriptions of Units 2, 3, and 4 under Final Critical Habitat Designation, below, for additional information regarding changes to these units.

(2) *Comment:* The Siuslaw National Forest identified and clarified USFS land ownership information and mapping discrepancies within Units 1, 2, 3, and 4 for lands that they suggest should be removed from or included in a critical habitat designation for the coastal marten. The Forest suggested that areas not be included in the designation that are under private ownership or lands identified as critical habitat for the western snowy plover (*Charadrius nivosus nivosus*) that include beach grass (*Ammophila sp.*) or open sand, but to include areas for which the determination for inclusion in the proposed designation was based on habitat modeling. The Siuslaw National Forest provided maps of areas within Units 1, 2, 3, and 4 where they recommended adjustments.

Our response: We appreciate the information and suggestions for changes to the designation provided to us by the Siuslaw National Forest. We used the information to improve this designation for the coastal marten. In our review of the comments provided, we evaluated the suggestions and considered whether any addition or removal met or did not meet our criteria and methodology for determining critical habitat for the coastal marten (see Conservation Strategy and Selection Criteria Used to Identify Critical Habitat below) After consideration of whether the suggested changes are consistent with our criteria and methodology for designating critical habitat, we adjusted the boundaries of Units 1, 2, 3, and 4 (for more information, see Summary of Changes from the Proposed Rule, above).

Comments From States

(3) *Comment:* The Oregon Department of Fish and Wildlife (ODFW) stated that, while they concur that older forests often provide habitat elements needed by the coastal marten, they emphasize that other forest and nonforest cover types provide important habitat for the DPS in Oregon, including younger forests, coastal dune forests, and forested serpentine habitat. As a result, they recommended revisions to the descriptions of the PBFs essential to the conservation of the species to better reflect the use of younger and nontypical forested habitats.

Our response: We acknowledge that the coastal marten does occur in and uses various habitats for one or more of

its life stages. As discussed under Physical or Biological Features Essential to the Conservation of the Species, below, the PBFs we identify for the coastal marten include coastal dune, serpentine, and lower productivity forested habitat components, and the forest overstory within these areas may include highly variable conditions. We also identify forested habitats that have a structural component that supports denning or resting features such as large downed trees, rock piles with interstitial spaces, and large snags or live trees with decay elements or suitable resting structures (e.g., hollows and cavities, forked or broken tops, dead tops, brooms from mistletoe or other tree pathogens, or large platforms including abandoned nests). Younger forested habitat may be considered critical habitat if it provides such features or if it is dispersal or foraging habitat. We have updated the SSA report and this final rule to better clarify this information on the coastal marten's use of variable habitat, including younger forests, serpentine areas, and coastal dune forested habitats.

(4) Comment: The ODFW commented that our proposed designation may not be sufficient to provide for the conservation of the coastal marten and that they would support the designation of additional areas as critical habitat to provide for connectivity and dispersal corridors. To support this comment, ODFW developed a habitat connectivity model that identified high-value corridors between the identified critical habitat areas in Oregon. The three corridors include areas between Units 1 and 2, Units 3 and 4, and Units 4 and 5 (ODFW 2021, pp. 6–7).

Our response: We appreciate our partnership with ODFW and their significant contributions and involvement with coastal marten conservation in Oregon. In identifying critical habitat for the coastal marten, we developed a strategy for determining critical habitat that focuses on identifying areas that would assist in increasing the resiliency, representation, and redundancy of coastal marten populations by maintaining, improving, and expanding existing coastal marten populations and their habitat. Our designation focuses on the core areas that are associated with rearing or denning for the coastal marten and also includes areas of connectivity between habitats or home ranges to allow dispersal and potential establishment of new populations, such as the designated critical habitat in the relatively narrow corridor connecting areas between southern Oregon and northern California near the State border in Unit

5. Although our designation does include areas associated with opportunities for dispersal and connectivity between habitats for the coastal marten, we considered but did not identify the specific areas between the designated units as identified by the ODFW as critical habitat. This was due to the limited information on consistent use of these areas by the coastal marten and the large distances between the units which are outside the dispersal distances from home or denning sites. In addition, our removal of areas from Unit 1 because they did not contain the proper PBFs removed the connectivity of habitat between Unit 1 and 2 as identified by the ODFW. We have determined that the areas we identify as critical habitat provide connectivity and dispersal opportunities between existing coastal marten populations within each unit and make up core areas from which other conservation efforts, such as recovery actions, can expand on.

(5) Comment: The ODFW expressed concern with our use of habitat modeling to establish areas of critical habitat and recommended a cautious interpretation and use of model outputs when identifying critical habitat areas particularly if the modeling effort used surrogate or limited data. Specifically, ODFW stated that the available modeling (Slauson et al. 2019b, entire; Schrott and Shinn 2020, entire) may overemphasize older forested habitats and does not include younger aged forests or lower elevation areas associated with coastal dune forests. ODFW pointed to additional more recent modeling (Moriarty et al. 2021, entire) that includes use of broad-scale forest cover class variables to predict coastal marten habitat and suggested we review that model output to better identify coastal marten critical habitat.

Our response: We acknowledge ODFW's concern regarding dependence on modeling to determine critical habitat areas, but also acknowledge the need to use models when specific and detailed habitat use information may not be available as is the case for the coastal marten. However, in our development and identification of areas as critical habitat for the coastal marten, we did not solely rely on model output to create the critical habitat designation. Rather, we relied heavily on recent verifiable occupancy records, the extant population areas that are based on this occupancy, and known habitat characteristics within these areas. In identifying low-elevation coastal dune forest habitat for the coastal marten, we used the Schrott and Shinn 2020 connectivity model (Schrott and Shinn 2020, entire); however, this model

addresses the inclusion of low-elevation habitat by hand-mapping coastal dune forest for inclusion in the model. Our use of habitat modeling to assist in determining habitat extent and distribution was also informed by aerial imagery and reviewed by Service staff who are familiar with the areas and, in some cases, who have conducted site visits. We also acknowledge publication of Moriarty et al. (2021), a predictive occupancy model, and we compared its results to the areas we identify as critical habitat. Although the Moriarty model provides information on the areas potentially used by the coastal marten, its focus is on determining occupancy based on habitat conditions and not determining what occupied areas containing those features are considered essential to the conservation of the coastal marten, so could not be used as the sole source of data informing our designation. As a result, we consider the process and various sources of information we used to identify critical habitat for the coastal marten to be appropriate and based on the best scientific information available.

Comments From Tribes

(6) Comment: As discussed in our September 30, 2022, publication (87 FR 59384), we received comments from the Yurok Tribe regarding adjustments to land ownership information for the Tribe and a request to exclude lands from this final critical habitat designation for the coastal marten. The Yurok Tribe's request identified Tribal trust lands, Tribal fee lands, and other Tribal reservation boundary adjustment lands owned by the USFS in Unit 5 in California for exclusion from designation as critical habitat.

Our response: In this final rule, we identify 116,562 ac (47,171 ha) of lands affiliated with the Yurok Tribe (including fee, trust, and USFS lands) as critical habitat for the coastal marten, and we exclude all of those lands from this critical habitat designation. See *Tribal Lands under Exclusions Based on Other Relevant Impacts*, below, for additional information regarding Yurok Tribal land exclusions.

Public Comments

(7) Comment: Several commenters questioned our use of a 70 percent or greater threshold for shrub cover as a physical or biological feature for the coastal marten's home range and stated that habitat for the DPS is more variable and should include a range of shrub cover percentage rather than an absolute threshold. Other commenters disagreed with our description of canopy cover and suggested inclusion of younger

forested habitats in our PBFs. The commenters suggested looking at other coastal marten habitat modeling that includes use as habitat of less mature and more variable shrub and canopy cover by the coastal marten.

Our response: We acknowledge that the coastal marten uses a range of shrub cover as habitat especially for foraging, for seeking cover, or when traversing or dispersing to adjacent forested areas. However, because published studies on the specific habitat characteristics of home range for the coastal marten are not available rangewide, we characterize the home-range habitat used by the coastal marten at the stand scale and landscape scale, while being clear that this is a surrogate for knowledge of home-range use by the DPS. The best science available indicates that an extensive, dense, shrub layer is an important predictor of coastal marten occurrences and, most importantly, aligns with our understanding of individual and species needs (cover from predators, resting and denning features, and prey habitat). As discussed under Physical or Biological Features Essential to the Conservation of the Species, below, the identified PBFs for the coastal marten include descriptions that apply to both mature and younger forested habitats, as well as dune forests and forests within serpentine habitats. Critical habitat is not intended to include all habitat used by a species; it focuses on those specific areas occupied by a species on which are found those physical or biological features essential to the conservation of the species in an appropriate quantity and spatial arrangement for survival and reproduction. For the coastal marten, our use of the 70 percent shrub cover layer for foraging and cover and our identification of features that have the appropriate structural components for resting, denning, and reproducing will assist in conserving those areas essential to the conservation of the DPS. We clarify and update our discussion of habitat use by the coastal marten by incorporating information on younger habitat use by the DPS into our SSA report (Service 2023, section 2.5.3) and this final rule (see Background, below), as appropriate.

(8) Comment: Several commenters suggested we modify the description of habitat used by the coastal marten and that we deemphasize the coastal marten's use of mature or older forested habitat and not use the Old Growth Structural Index (OGSI) to determine coastal marten habitat or extrapolate habitat conditions in northern California for the rest of the DPS's range when determining critical habitat.

Our response: Our description and identification of habitat and the PBFs for the coastal marten do not specifically indicate that any particular stand age is necessary for coastal marten or that OGSI information is a component needed as a determining factor for critical habitat. OGSI is a spatial data layer developed by the USFS and Oregon State University and is an index of one to four measurable criteria (*i.e.*, density of large live trees, diversity of live-tree size classes, density of large snags, and percentage cover of downed woody material; Davis et al. 2015, p. 16). Although such features are used by and important to coastal marten, our critical habitat designation for the DPS is not completely focused on these habitat characteristics. Rather, based on habitat descriptions and PBFs, critical habitat should be structurally complex with some measure of the specified habitat characteristics of forest overstory, dense understory, and biologically complex structure that contains snags, logs, other decay elements, or other structures that support the coastal marten's denning, resting, or prey. We also identify less mature or low productive forested habitats (such as coastal dune, serpentine, or less mature habitats) as critical habitat for certain life-history functions. In determining critical habitat, we did not extrapolate the habitat information or conditions from northern California to determine the PBFs or critical habitat elsewhere in the DPS's range, but used both occupancy information and the habitat structure information discussed above. We clarify and update our description of habitat use by the coastal marten in our SSA report (Service 2023, section 2.5.3) and this final rule (see Background, below), as appropriate.

(9) Comment: Numerous commenters stated that the coastal marten uses numerous habitat types, including younger forests, and recommended inclusion of additional areas in the critical habitat designation associated with forested coastal dune and serpentine habitat. According to one of the commenters, the forested coastal dune habitats contain the highest known densities and populations of the coastal marten and not including such areas does not incorporate the best scientific information available.

Our response: We acknowledge that the coastal marten does occur in and uses various forested habitats for one or more of its life stages. However, although coastal martens have been detected on younger forested lands, we do not have evidence that they are using these areas as home ranges for denning

or that they remain in these areas for significant periods of time. In our development of this critical habitat designation, we included variable habitat types where the DPS is found, such as forested serpentine and coastal dune habitat. For forested coastal dune habitat, we included those areas that had recent verifiable detections of the DPS. The designation included the vast majority but not all of the records of coastal marten occupying the forested coastal dune habitat (see Final Critical Habitat Designation, Unit 2 and Unit 3, below). The designation of critical habitat does not require we identify the full extent of habitat used or available for use by a species. We acknowledge that areas outside the critical habitat designation are important for recovery of the DPS, but we point out that the designation of critical habitat is only one tool in conserving the coastal marten. Other conservation and recovery efforts outside critical habitat will be necessary, especially on non-Federal lands. We have determined that the areas currently occupied by the coastal marten that are included in this designation will provide for the resiliency, representation, and redundancy of coastal marten populations by maintaining and improving existing coastal marten populations and their suitable habitat.

(10) Comment: Several commenters suggested including additional areas, including unoccupied areas adjacent to or between units, to provide for connectivity or to account for the impacts to habitat resulting from the effects of climate change.

Our response: When designating critical habitat for the coastal marten, we first evaluated areas occupied by the species and reviewed these areas to determine if the areas identified provide sufficient resiliency, representation, and redundancy to conserve the species. We acknowledge the importance of connectivity between habitat for the coastal marten. In this critical habitat designation, we considered the dispersal needs of the DPS as part of our methodology for identifying areas as critical habitat. The areas we proposed and are now finalizing as critical habitat are all occupied by the DPS with recent verifiable records and provide for sufficient connectivity between populations of coastal marten. Therefore, no unoccupied areas are essential for the conservation of the species. With respect to the request that we include additional areas to anticipate the effects of climate change, the commenters did not provide information regarding the habitat changes that may occur or what

additional areas should be included for the coastal marten. However, we consider the amount, distribution, and extent of critical habitat units we are designating in this rule to be relatively resilient to the current effects of climate change, and thus this designation anticipates the effects of climate change to coastal marten habitat. As a result, we do not consider it necessary at this time to add any additional areas to this critical habitat designation to address the effects of climate change.

(11) Comment: Several commenters provided additional occurrence information and information on small, isolated, occupied areas. These commenters suggested we include these locations in our critical habitat designation for the coastal marten.

Our response: As a result of information we received since the October 25, 2021, publication of our proposed rule, including information we received during the two public comment periods, we became aware of additional detections of the coastal marten. These additional records will assist in our understanding of the distribution and range of the DPS. In reviewing the location and distribution information in these additional records, however, we could not determine if these records were actual populations or individuals dispersing to adjacent habitats. Part of our criteria for determining critical habitat for the coastal marten is to include areas that have numerous records of observed populations within the dispersal distance of known populations of the DPS. Some of the new additional records were in areas we had already considered for designation as critical habitat, and others were records of single individuals and most likely not part of a population. Smaller, isolated, occupied habitats, although they may be used by the DPS, are not considered to be critical habitat for the coastal marten due to the uncertainty as to whether these areas would provide sufficient resiliency, redundancy, and representation to maintain coastal marten populations and do not meet our criteria for determining critical habitat.

(12) Comment: One commenter questioned and requested clarification on occupancy within proposed Unit 5.

Our response: Our regulations at 50 CFR 424.02 define the “geographical area occupied by the species” as an area that may generally be delineated around species’ occurrences, as determined by the Secretary (*i.e.*, range). For coastal marten, we delineated extant population areas (EPAs) based on the DPS’s occurrences and contiguous suitable habitat that may support the DPS. We

then identified those PBFs essential to the conservation of the DPS to refine the boundaries of the EPAs and determine the critical habitat for the coastal marten in each unit. Additionally, consistent with the regulations at 50 CFR 424.12(d), when several areas, each satisfying the requirements for designation as critical habitat, are located in proximity to one another, the Secretary may designate an inclusive area as critical habitat. Unit 5 contains multiple occurrences of coastal marten that are in close proximity to one another and are connected by contiguous forested habitat. Therefore, we include all these areas together as a single, occupied unit.

(13) Comment: Several commenters suggested we wait until better information and understanding of habitat for the coastal marten is available before finalizing the designation.

Our response: Under section 4(b)(2) of the Act and our regulations under 50 CFR 424.12, we are required to designate critical habitat concurrent with listing a species under the Act, to the maximum extent prudent and determinable. In our final listing rule, we affirmed that designation of critical habitat was not determinable at the time because information sufficient to perform a required analysis of the impacts of the designation was lacking (85 FR 63806, October 8, 2020, pp. 63829–63830). Later, in our October 25, 2021, proposed rule to designate critical habitat (86 FR 58831), we stated that designation of critical habitat for the coastal marten is both prudent and determinable. As a result, we are required to propose and finalize a designation based on the best scientific information available and not wait until new or more specific information becomes available. If new information becomes available in the future that warrants revisions to the areas we are designating as critical habitat in this rule, we may, upon our own initiative or through the petition process, revise this designation through rulemaking conducted in accordance with the Administrative Procedure Act rulemaking process (5 U.S.C. 551 *et seq.*).

(14) Comment: Several commenters stated that the designation of critical habitat will delay or stop timber and hazardous vegetation fuels-reduction activities that would otherwise provide for better forest health and wildfire resiliency objectives.

Our response: We recognize that land managers have a variety of forest management goals, including maintaining or improving ecological

conditions where the intent is to provide long-term benefits to forest resiliency and restore natural forest dynamic processes. Critical habitat designations do not establish specific land management standards or prescriptions, nor do designations affect land ownership or establish a refuge, wilderness, reserve, preserve, sanctuary, or any other conservation area where no active land management activities can occur.

The consultation requirements under section 7 of the Act apply to Federal agencies. Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. We have worked closely with the USFS, BLM, and National Park Service on implementation of measures to avoid adverse impacts to the physical or biological features for the coastal marten in the areas we are designating as critical habitat in this rule. We will continue to work with them to implement projects to benefit forest resiliency and natural forest dynamic processes on areas designated as critical habitat.

Activities implemented solely by non-Federal entities without Federal authorization or funding are not subject to the destruction/adverse modification standards of critical habitat under section 7 of the Act. Non-Federal activities remain subject to the Act’s prohibitions against take of listed species, such as the coastal marten, unless such take is excepted through a rule issued under section 4(d) or in accordance with an incidental take permit issued under section 10 of the Act. We note that, in our listing of the coastal marten, we issued a 4(d) rule (see 50 CFR 17.40(s)) that excepts from the Act’s section 9 prohibition against take certain forest management activities, including forest management activities for the purposes of reducing the risk or severity of wildfire and forestry management activities consistent with the conservation needs of the coastal marten. Accordingly, we do not consider this critical habitat designation to be a burden on implementation of timber and hazardous vegetation fuels-reduction activities, whether conducted by Federal agencies or non-Federal entities.

(15) Comment: Several commenters stated that the economic analysis is flawed in that it does not consider all economic impacts, including those

associated with listing of the DPS, cost to third parties due to critical habitat restrictions on recreational off-highway vehicle (OHV) use, or increased permitting requirements and costs under the California Environmental Quality Act (CEQA) for non-Federal actions.

Our response: Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. Our implementing regulations at 50 CFR 424.19(b) state that we will consider the probable economic impacts of a critical habitat designation and that we will “compare the impacts with and without the designation” (78 FR 53058; August 28, 2013). Guidelines issued by the U.S. Office of Management and Budget (OMB) for the economic analysis of regulations direct Federal agencies to measure the costs and benefits of a regulatory action against a baseline (*i.e.*, costs and benefits that are “incremental” to the baseline). The baseline includes the economic impacts of listing the species under the Act, even if the listing occurs concurrently with critical habitat designation. Impacts that are incremental to the baseline (*i.e.*, occurring over and above existing constraints) are those that are solely attributable to the designation of critical habitat. Our economic analysis focuses on the likely incremental effects of the critical habitat designation. In our incremental effects memorandum (IEM), we clarified the distinction between the recommendations that will result from the species being listed and those attributable to the critical habitat designation (*i.e.*, difference between the jeopardy and adverse modification standards) for the coastal marten’s critical habitat. As discussed in section 3 of the screening analysis (Industrial Economics, Incorporated (IEc) 2021, pp. 7–14), we do not anticipate making any significant project modification recommendations to avoid adverse modification of coastal marten critical habitat beyond what we already would recommend to avoid impacts to the DPS and other listed species with similar habitat requirements. The economic analysis determined that the critical habitat designation was unlikely to trigger additional State or local regulations (IEc 2021, pp. 14–16). As a result, we have determined our economic analysis appropriately identifies costs associated with the designation.

(16) *Comment:* One commenter stated that the Service improperly certified that the designation will not have a significant impact on a substantial

number of small business entities and did not complete a regulatory flexibility analysis.

Our response: As stated in the proposed rule and this final rule (see *Regulatory Flexibility Act 5 U.S.C. 601 et seq.*) under Required Determinations, below), a regulatory flexibility analysis is not required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. In our October 25, 2021, proposed rule, we certified that, if made final, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small business entities (86 FR 58831, October 25, 2021, p. 58850). We reaffirm that certification in this final rule. Our basis for the certification is that Federal action agencies are the only entities directly regulated when we adopt a critical habitat designation. There is no requirement under the Regulatory Flexibility Act to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities will be directly regulated by this rulemaking, the Service certifies that this critical habitat designation will not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis is not required.

(17) *Comment:* One commenter suggested removing or clarifying table 2 in the October 25, 2021, proposed rule (86 FR 58831 at pp. 58837–58838) since it represents an example of vegetation characteristics at a site located within a small portion of the range.

Our response: Our intent for table 2 in the proposed rule was to provide an example of the vegetation characteristics used by the coastal marten in a portion of the DPS’s range. We described it as such in the paragraph preceding the table. However, to avoid confusion, we do not include the table in this final rule, and we include new language in this rule to highlight the importance of the multiple vegetation types used by the coastal marten throughout its range.

(18) *Comment:* Several commenters had concerns regarding the lands in Unit 5 that we identified as being considered for exclusion from the final designation under section 4(b)(2) of the Act. They stated that the coastal marten is a threatened species and that the habitat needs of the coastal marten should take priority over timber harvest activities that they stated are not adequately conserving habitat for the coastal marten. The commenters stated that our reliance on maintaining

partnerships should not be considered a benefit of exclusion and a complete weighing analysis should be completed before any exclusions are finalized.

Our response: In determining whether we exclude lands under section 4(b)(2) of the Act, we conduct a weighing analysis comparing the benefits of exclusion to the benefits of inclusion. If our analysis finds that the benefits of exclusion outweigh the benefits of designating such areas as critical habitat, the Secretary may then choose to exercise her discretion to exclude any area from critical habitat unless that exclusion would result in the extinction of the species. In making the determination to exclude a particular area, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Currently, our exclusion decisions are governed by the regulations at 50 CFR 424.19 and our Policy Regarding Implementation of Section 4(b)(2) of the Act (hereafter, the “2016 policy”; 81 FR 7226, February 11, 2016). Under our 2016 policy, we can evaluate a variety of factors to determine how the benefits of any exclusion and the benefits of inclusion are affected by the existence of private or other non-Federal conservation plans or agreements and their attendant partnerships when we undertake a discretionary section 4(b)(2) exclusion analysis. In the *Private or Other Non-Federal Conservation Plans or Agreements and Partnerships, in General and Tribal Lands* discussions under Consideration of Impacts under Section 4(b)(2) of the Act, below, we provide our full weighing analysis and our rationale for excluding certain lands in Unit 5 from this final designation of critical habitat. We wish to emphasize that the exclusion of lands from the critical habitat designation should not be construed as a message that these lands are not important to the conservation of the coastal marten, nor should exclusion be interpreted as some indication that these lands are now somehow subject to habitat degradation or destruction because they are not included in the critical habitat designation. Lands excluded on the basis of conservation agreements and the recognition of conservation partnerships are expected to continue to make an important contribution to the conservation and recovery of the coastal marten absent the designation of critical habitat.

(19) *Comment:* One commenter stated that approximately 66,422 ac (26,880 ha) of BLM and USFS lands proposed for designation as critical habitat for the

coastal marten fall under the Oregon and California Revested Lands Sustained Yield Management Act of 1937 (O&C Act; 43 U.S.C. 2601) and that all of these O&C lands should be excluded from the final designation due to the O&C Act's requirements that these lands (O&C lands) be devoted to permanent forest production of timber and that such an exclusion would result in a significant economic benefit to local communities. The commenter further stated that the Service may not indirectly impose reserves on these O&C lands by designating them as critical habitat.

Our response: In determining critical habitat for the coastal marten, we developed specific criteria and a rule set to determine those specific areas occupied at the time of listing that contain the physical or biological features we consider essential to the conservation of the coastal marten. We did not include in the proposed designation, and do not include in this final designation, areas that are managed by the BLM or USFS under the O&C Act that are currently allocated to the "harvest land base" (BLM) or "matrix" (USFS) land uses, as these lands are managed for permanent forest production and are, therefore, not likely to contain the physical or biological features essential to the conservation of the coastal marten in sufficient amounts or configuration to be considered critical habitat for the DPS according to our criteria and rule set. Based on the most current land use information that includes lands identified as O&C harvest land base lands, we identified a total of approximately 177 ac (72 ha) (121 ac (49 ha) in Unit 3 and 56 ac (23 ha) in Unit 5) of such O&C lands that were unintentionally included in the proposed designation, and we remove these lands from this final designation based on our criteria and rule set for designating critical habitat (see Conservation Strategy and Selection Criteria Used to Identify Critical Habitat, below).

As to the commenter's request to exclude the total 66,422 ac (26,880 ha) of O&C lands managed by the BLM or USFS from this final designation, we did not include any USFS matrix lands in the designation. The makeup of BLM managed O&C lands is a mixture of both harvest base lands and other reserve lands such as late-successional reserves, riparian reserves, and other BLM district reserves. These reserve lands are areas managed by BLM to assist in conserving various aspects of the forest ecosystem to benefit not only the forest but also sensitive or other listed species. Based on our exclusion analysis (see

Consideration of Impacts under Section 4(b)(2) of the Act, below), we do not consider the requested exclusion appropriate for several reasons, including: (1) Not all O&C lands are managed as harvest land base/matrix lands; (2) BLM currently manages these lands in part for the purpose of contributing to the recovery of endangered and threatened species, providing clean water, restoring fire-adapted ecosystems, and providing for recreation opportunities (BLM 2016a, p. 20; BLM 2016b, p. 20); (3) the O&C lands that remain within the critical habitat designation are occupied by the coastal marten and contain the physical or biological features essential to conservation of the DPS; and (4) under our 2016 policy (81 FR 7226; February 11, 2016), we generally focus our exclusions on non-Federal lands, as that policy opines that the benefits of designating Federal lands as critical habitat are typically greater than the benefits of excluding Federal lands. The 2016 policy is based on the policy stated in the Act that all Federal departments and agencies seek to conserve endangered species and threatened species and use their authorities in furtherance of the purposes of the Act (16 U.S.C. 1531(c)(1)). Additionally, all Federal agencies have responsibilities under section 7 of the Act to carry out programs for the conservation of listed species and to ensure their actions are not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. *See Exclusion Analysis of Non-Harvest Land Base Lands (Oregon and California Lands (O&C Lands))* under Consideration of Impacts under Section 4(b)(2) of the Act, below, for our section 4(b)(2) exclusion analysis of the non-harvest land base O&C lands.

Our economic analysis did not identify significant economic impacts associated with the critical habitat designation. Because the areas we are designating as critical habitat are occupied by the coastal marten, the main costs associated with this designation are the administrative costs of determining whether an activity authorized, funded, or carried out by a Federal agency would result in the destruction or adverse modification of critical habitat for a listed species. Therefore, the exclusion of O&C lands in Unit 5 in Oregon would not be appropriate based on economic reasons.

Further, when listing the coastal marten as a threatened species, we adopted a section 4(d) rule that excepts certain forestry management activities from take prohibitions (see 50 CFR

17.40(s)). Such an exception allows land managers to continue to conduct certain timber harvest activities without needing take authorization.

Regarding the comment that the designation of critical habitat indirectly establishes reserves, critical habitat designations under the Act affect only Federal agency actions or federally funded or permitted activities. Designating areas as critical habitat does not establish a reserve, preserve, or sanctuary for a species or necessarily restrict further use of an area. Critical habitat is a tool to guide Federal agencies in fulfilling their conservation responsibilities by requiring them to consult with the Service under section 7 of the Act if their actions may destroy or adversely modify critical habitat for listed species.

Critical Habitat

Background

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for endangered and threatened species. On April 5, 2024, jointly with the National Marine Fisheries Service, the Service issued a final rule that revised the regulations in 50 CFR 424 regarding how we add, remove, and reclassify endangered and threatened species to the lists and the criteria we consider for designating listed species' critical habitat (89 FR 24300). This final rule is now in effect and incorporated into the current regulations. Our analysis for this final decision applied our current regulations. Given that we proposed critical habitat for this species under our prior regulations (revised in 2019), we have also undertaken an analysis of whether our decision would be different if we had continued to apply the 2019 regulations and we concluded that the decision would be the same. The analyses under both the regulations currently in effect and the 2019 regulations are available on <https://www.regulations.gov>.

Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, we designate a species' critical habitat concurrently with listing the species. Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are

found those physical or biological features

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

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

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.*, range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.*, migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

This critical habitat designation was proposed when the regulations defining "habitat" (85 FR 81411; December 16, 2020) and governing the section 4(b)(2) exclusion process for the Service (85 FR 82376; December 18, 2020) were in place and in effect. However, those two regulations have been rescinded (87 FR 37757, June 24, 2022; 87 FR 43433, July 21, 2022) and no longer apply to any designations of critical habitat. Therefore, for this final rule designating critical habitat for the coastal marten, we apply the regulations at 50 CFR 424.19 and the Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act (81 FR 7226, February 11, 2016).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that each Federal action agency ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse

modification of designated critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation also does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Rather, designation requires that, where a landowner requests Federal agency funding or authorization for an action that may affect an area designated as critical habitat, the Federal agency consult with the Service under section 7(a)(2) of the Act. If the action may affect the listed species itself (such as for occupied critical habitat), the Federal action agency would have already been required to consult with the Service even absent the critical habitat designation because of the requirement to ensure that the action is not likely to jeopardize the continued existence of the species. Even if the Service were to conclude after consultation that the proposed activity is likely to result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement "reasonable and prudent alternatives" to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat).

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information

Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information from the SSA report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions found in the 4(d) rule for the coastal marten (see 50 CFR 17.40(s)). Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to

contribute to recovery of the coastal marten. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical or Biological Features Essential to the Conservation of the Species

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas we will designate as critical habitat from within the geographical area occupied by the species at the time of listing, we consider the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. The regulations at 50 CFR 424.02 define “physical or biological features essential to the conservation of the species” as the features that occur in specific areas and that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. For example, physical features essential to the conservation of the species might include gravel of a particular size required for spawning, alkaline soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or absence of a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic essential to support the life history of the species.

In considering whether features are essential to the conservation of the

species, we may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

Summary of Physical or Biological Features

We derive the specific physical or biological features essential to the conservation of the coastal marten from studies of the DPS’ habitat, ecology, and life history as described below. Additional information can be found in the SSA report (Service 2023, entire; available on <https://www.regulations.gov> under Docket No. FWS–R8–ES–2020–0151). A more detailed discussion of the physical or biological features for the coastal marten can be found in our proposed critical habitat rule (86 FR 58831, October 25, 2021, pp. 58835–58839). We have determined that the following physical or biological features (PBFs) are essential to the conservation of the coastal marten:

Physical or Biological Feature 1—Habitat that supports a coastal marten home range by providing for breeding, denning, resting, or foraging. This habitat provides cover and shelter to facilitate thermoregulation and reduce predation risk, provides foraging sources for coastal marten prey, and provides structures that provide resting and denning sites. For cover and support denning, resting, and foraging, coastal martens require a dense forest overstory, dense understory development, and biologically complex structure that contains snags, logs, other decay elements, or other structures. Stands meeting the conditions for PBF 1 would also function as meeting PBF 2 (facilitating movement within and between coastal marten home ranges). Stands meeting the condition for PBF 1 contain each of the following three components:

(1) *Mature, conifer-dominated forest overstory*. Overstory canopy cover provides protection to coastal martens from aerial and terrestrial predators, as well as shelter from physical elements such as sun or storms. It also is the general source of structural features that coastal martens use for denning and resting, and provides suitable coastal

marten prey. Suitable overstory conditions vary depending on the productivity of the site as follows:

a. For areas with relatively low productivity (e.g., areas where growing conditions are harsher, such as serpentine sites or coastal shore pine forests, compared to other areas), suitable forest overstory conditions are highly variable. They may contain a sparse conifer overstory, such as in some serpentine areas, or a dense conifer overstory composed mainly of trees smaller than the typical older forest conditions described below in (1)b. (e.g., the dense shore pine overstory found in areas occupied by coastal marten along the Oregon coast) as well as those resting and denning structures necessary that are as of yet undescribed for some populations.

b. For other areas with higher productivity, coastal martens tend to favor forest stands in the old-growth or late-mature seral stages. The specific forest composition and structure conditions found in higher productivity areas will vary by plant series and site class. Structural and composition descriptions of old-growth or late-mature seral stages for local plant community series should be used where available. In general these stands exhibit high levels of canopy cover and structural diversity in the form of: (i) a wide range of tree sizes, including trees with large diameter and height; (ii) deep, dense tree canopies with multiple canopy layers and irregular tree crowns; (iii) high numbers of snags, including large-diameter snags; and (iv) abundant downed wood, including large logs, ideally in a variety of decay stages.

(2) *Dense, spatially extensive shrub layer*. The shrub layer should be greater than 70 percent of the area, comprising mainly shade-tolerant, long-lived, mast-producing species (primarily ericaceous species such as salal, huckleberry, or rhododendron, as well as shrub oaks). An extensive layer of dense shrubs provides protection and cover from coastal marten predators. In addition, ericaceous and mast-producing shrubs provide forage for coastal marten prey.

(3) *Stands with structural features*. Structural features that support denning or resting, such as large downed trees, rock piles with interstitial spaces, and large snags or live trees with decay elements or suitable resting structures (e.g., hollows and cavities, forked or broken tops, dead tops, brooms from mistletoe or other tree pathogens, or large platforms including abandoned nests). These features provide cover and thermal protection for kits and denning females, and for all animals when they are resting between foraging bouts.

Hence, these features need to be distributed throughout a coastal marten's home range. They also tend to be among the largest structures in the stand. Many of these features, such as downed trees and snags or live trees with decayed elements, also support coastal marten prey.

Physical or Biological Feature 2—Habitat that allows for movement within home ranges among stands that meet PBF 1, or supports individuals dispersing between home ranges. Habitat with PBF 2 includes: (1) stands that meet all three conditions of PBF 1; (2) forest stands that only meet the first two components of PBF 1 (mature, conifer-dominated forest overstory and a dense, spatially extensive shrub layer); or (3) habitats with some lesser amounts of shrub, canopy, forest cover, or lesser amounts of smaller structural features as described in PBF 1, and while not meeting the definition of PBF 1, still provide forage and cover from predators that allow coastal martens to traverse the landscape to areas of higher quality habitat.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection. The features essential to the conservation of the coastal marten may require special management considerations or protection to reduce the following direct or indirect threats: impacts from wildfire; timber harvest and other vegetation management or fuel reduction actions; habitat loss or fragmentation from road or highway construction. A detailed discussion of activities influencing the coastal marten and its habitat can be found in the SSA report (Service 2023, p. 37) and final listing rule (85 FR 63806; October 8, 2020). Special management considerations or protection that may be required within critical habitat areas to address these threats include, but are not limited to, the following: development of wildlife crossings on major roadways; maintaining adequate cover and connectivity of habitats to provide cover from predation; implementation of forest management practices that prevent or reduce risk of catastrophic wildfire; reducing indirect impacts to coastal marten habitat from activities adjacent to critical habitat units; and minimizing habitat disturbance, fragmentation, and

destruction through use of best management practices for vegetation management activities and providing appropriate buffers around coastal marten habitat, including denning and resting structures.

Conservation Strategy and Selection Criteria Used To Identify Critical Habitat

Conservation Strategy

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat. We are not designating any areas outside the geographical area occupied by the DPS because we have not identified any unoccupied areas that meet the definition of critical habitat. Those areas we have identified encompass the varying habitat types and distribution of the DPS and provide sufficient habitat to allow for maintaining and potentially expanding its distribution.

To determine and select appropriate occupied areas that contain the physical or biological features essential to the conservation of the DPS or areas otherwise essential for the conservation of the coastal marten, we developed a conservation strategy for the designation of critical habitat. The goal of our conservation strategy for the coastal marten is to assist in recovery of the DPS to the point where the protections of the Act are no longer necessary. The role of critical habitat in achieving this conservation goal is to identify the specific areas within the coastal marten's range that provide the essential physical or biological features without which the coastal marten's rangewide resiliency, redundancy, and representation could not be achieved. This, in turn, requires an understanding of the fundamental parameters of the species' biology and ecology based on well-accepted conservation-biology and ecological principles for conserving species and their habitats, such as those described by Carroll et al. 1996 (pp. 1–12); Shaffer and Stein 2000 (pp. 301–321); Natural Resources Conservation Service (NRCS) 2004 (entire); Tear et al. 2005 (pp. 835–849); Groom et al. 2006 (pp. 419–551); Redford et al. 2011 (pp. 39–48); and Wolf et al. 2015 (pp. 200–

207); and more specific coastal marten habitat information such as that described in Moriarty et al. 2016 (pp. 71–81); Delheimer et al. 2018 (pp. 510–517); Linnell et al. 2018 (pp. 1–21); Moriarty et al. 2019 (pp. 1–25); and Slauson et al. (2019a, entire).

In developing our conservation strategy, we focused on increasing the resiliency, representation, and redundancy of coastal marten populations by maintaining and improving extant coastal marten populations and suitable habitat. Because coastal martens occur in small and isolated populations, the primary focus of the conservation strategy is to maintain and expand extant populations and suitable habitat within those population areas. Suitable habitat includes areas for cover, resting, denning and foraging and also provides for dispersal habitat when breeding or food resources may not be optimal. To maintain redundancy of coastal marten populations, the conservation strategy also focuses on providing for areas in the diversity of habitats that coastal martens have been documented to use. This includes mesic serpentine, coastal shore pine, and late-seral coniferous forests. These habitats are spread across the species' range and typically provide the physical and biological features essential to the conservation of the species without which rangewide resiliency, redundancy, and representation of the species could not be achieved. As explained further below, this focus led to the inclusion of suitable habitat within the ecological settings where the species occurs as part of the conservation strategy.

Selection Criteria and Methodology Used To Determine Critical Habitat

As discussed above, to assist in determining which areas to identify as critical habitat for the coastal marten, we focused our selection on extant populations in the diversity of habitats represented by coastal marten. To define areas we consider occupied at the time of listing, we started with a set of detection points and grouped those detections into EPAs. The EPAs and the habitat areas adjacent to and within dispersal distance between the EPAs encompass the core areas we consider to be occupied at the time of listing. All current (since 1980) verifiable coastal marten detections were used to delineate EPAs within the historical home range. We selected this timeframe to ensure we were incorporating those records most likely to be extant based on the information available. If the total number of detections in an area was less than five or they were separated by

greater than 3 miles (mi) (5 kilometers (km)) from other verifiable detections, the combined detections were not designated as an EPA due to the insufficient level of information to suggest a likely self-sustaining population (Service 2019, pp. 75–81). EPAs were considered separate from each other if they were not within 4.6 mi (7.5 km) of each other, which is based on half of the average dispersal distance of a coastal marten. This distance assumes that animals are not regularly moving between EPAs and the EPAs are functioning as separate populations. To better focus the areas occupied at the time of listing and considered to be essential to the conservation of the coastal marten, we refined the boundaries of the EPAs using a mapping process (60 percent concave hull method) to better select and focus on those areas with a higher prevalence of coastal marten detections.

Because the EPAs are based on occurrence records and not habitat, we also used two different habitat models specific to coastal marten to incorporate the habitat used by the coastal marten detections associated with each EPA. These modeled areas are considered occupied by the species based on the continuous nature of the habitat and are within the dispersal distance and home ranges of the species. The first model we used found that coastal martens were positively associated with Old-Growth Structural Index (OGSI), precipitation, and serpentine soils, and negatively with elevation (Slauson et al. 2019b, entire). OGSI is a spatial data layer developed by the USFS and Oregon State University and is an index of one to four measurable old-growth structure elements, including (1) density of large live trees, (2) diversity of live-tree size classes, (3) density of large snags, and (4) percentage cover of downed woody material (Davis et al. 2015, p. 16). OGSI serves as a surrogate for the late-seral structural features that are important to coastal marten survival and, in conjunction with the serpentine soil layer, incorporates several of the PBFs defined above. The inclusion of precipitation in the model accounts for the association of the mesic shrub layer that coastal martens depend on for cover, resting, and foraging.

We also used a habitat connectivity model developed by the Service that incorporates OGSI data along with a minimum patch size of habitat to create ‘cores’ of suitable habitat (Schrott and Shinn 2020, entire). We used our model in conjunction with the Slauson et al. 2019b model because the Slauson model does not include low-elevation areas known to be occupied by coastal

martens. The Service model includes modeled output in lower elevation coastal regions of California and Oregon where we know coastal martens occur. Because the entire combined modeled extent of habitat overestimates the amount of habitat used by and needed for coastal marten conservation, we eliminated any modeled areas that were not adjacent to EPAs and eliminated modeled output in arid environments east of the Klamath River in California where suitable habitat is more scarce and localized to moist ravines. In addition, we trimmed the polygons where there were long tendrils displaying high edge-to-interior ratio that were generally artifacts of roads, modeled output, or misaligning of ownership projections and, thus, did not contain the PBFs considered essential to the conservation of the DPS.

We further evaluated the polygons based on the PBFs for coastal marten and current land management practices under the Northwest Forest Plan (NWFP)(USFS and BLM 1994, entire) on federally managed lands and the timber industry on privately owned lands. Large portions of the privately owned lands in Oregon within the range of the coastal marten are used for timber harvest and are clear cut on a rotational basis. This type of management does not always support the maintenance of structural diversity of habitat needed by the coastal marten, and we concluded these areas are unlikely to have the PBFs essential to the coastal marten and would not support denning or resting structures to the degree necessary for the conservation of the species. As a result, we prioritized inclusion of Federal reserve lands and State lands occupied by the species at the time of listing because these lands contribute most to the conservation of the DPS, but also included those private lands that contain the PBFs essential to coastal marten conservation and which may require special management. In Oregon, we relied on Federal and State lands to meet the conservation needs of the coastal marten. The intermingled private lands in Oregon are largely industrial timberlands managed primarily for timber harvest production. Timber harvest practices in western Oregon are generally comprised of rotational clearcut operations that harvest most trees from the clearcut site. The areas are then replanted and the resulting forest is made up of even-aged stands of single tree species composition. Because these areas are uniformly and regularly harvested, the structure and PBFs needed for resting, denning, and cover on these private

timber lands are generally lacking to the degree needed by the coastal marten.

When determining critical habitat boundaries, we used the best land use and ownership information available and made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features necessary for the coastal marten. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this rule have been excluded by text in the rule and are not designated as critical habitat. Due to unverifiable ownership and mapping information, some small portions of private or unclassified lands may occur within the mapping of Units 1, 2, 3, and 4, but they are not intended for inclusion within the designation. These areas are extremely small artifacts of mapping discrepancies and potential overlapping data information, do not contain the PBFs considered essential to the conservation of the species, and are not intended to be included as critical habitat as defined in this rule.

Accordingly, any private lands in Units 1, 2, 3, and 4 in Oregon inadvertently included in the designation due to land ownership irregularities are not considered critical habitat because they are part of inadvertent overlap or are undeterminable and are too small to be significant for coastal marten conservation. Similarly, inadvertent inclusion of private lands covered by buildings, roads, and other structures are not included in the final designation in California, but other private lands containing the physical or biological features are part of the final designation unless otherwise excluded under section 4(b)(2) of the Act (see Consideration of Impacts under Section 4(b)(2) of the Act, below). Private land owner actions on these lands will not trigger section 7 consultation with respect to critical habitat unless their action is federally authorized, funded, or permitted.

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document under Regulation Promulgation. We include more-detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on <https://>

www.regulations.gov at Docket No. FWS-R8-ES-2020-0151, and on our internet site at <https://www.fws.gov/office/arcata-fish-and-wildlife>.

Final Critical Habitat Designation

We are designating five units as critical habitat for the coastal marten.

The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the DPS. The five units we designate as critical habitat are: (1) Siuslaw; (2) Siltcoos; (3) Coos Bay; (4) Cape Blanco; and (5)

Klamath Mountains. Table 1 shows the land ownership and approximate areas of the designated critical habitat units for the coastal marten. All the units are occupied by the DPS.

TABLE 1—CRITICAL HABITAT UNITS FOR THE PACIFIC MARTEN (COASTAL DPS)
[Area estimates reflect all land within critical habitat unit boundaries.]

Unit No. and name	Ownership (in acres (hectares))				Total
	Federal	State	Tribal	Other	
Unit 1: OR-1 Siuslaw	20,092 (8,131)	2,043 (827)	0	0	22,135 (8,958)
Unit 2: OR-2 Siltcoos	15,610 (6,317)	249 (101)	0	0	15,859 (6,418)
Unit 3: OR-3 Coos Bay	14,806 (5,992)	595 (241)	0	0	15,402 (6,233)
Unit 4: OR-4 Cape Blanco	1,019 (412)	3,025 (1,224)	0	0	4,044 (1,636)
Unit 5: OR- CA-5 Klamath Mountains	1,125,492 (455,471)	17,812 (7,208)	0	13,008 (5,264)	1,156,312 (467,943)
Totals	1,177,020 (476,323)	23,724 (9,601)	0	13,008 (5,264)	1,213,752 (491,188)

Note: Area sizes may not sum due to rounding. “Other” represents, city, county, private, or otherwise unidentified land ownership areas.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the coastal marten, below.

Unit 1: Siuslaw Unit; Lincoln and Lane Counties, Oregon

This unit consists of approximately 22,135 ac (8,958 ha) and encompasses the northern portion of the central coastal Oregon population of coastal martens. Almost all of the unit is within Lane County, north of Oregon Highway 126, but a small portion extends north into Lincoln County, Oregon, on lands managed by the Siuslaw National Forest. The unit mostly borders the Pacific Ocean from just south of the town of Yachats, south to near Sea Lion Caves. The unit is largely in Federal ownership (20,092 ac (8,131 ha)) (91 percent), specifically the Siuslaw National Forest, with portions of the unit in Late-Successional Reserve (LSR) land use allocation under the NWFP (USFS and BLM 1994, entire). Rock Creek and Cummins Creek Wilderness Areas make up much of the rest of the Federal lands. Oregon State Park lands along the coast comprise the remainder of the unit (2,043 ac (827 ha)), including Neptune, Heceta Head, Washburne, and Ponsler State Parks. Recreation is a principal land use in this unit. Because the Federal lands are in an LSR allocation, forest management is limited to activities that are neutral or beneficial to the retention or development of late-successional forest conditions.

This unit was occupied at the time of listing (2020), is currently occupied by

coastal martens, and contains all of the physical or biological features essential to the conservation of the species. This unit represents the northernmost distribution of coastal martens in Oregon (based on contemporary detections), as well as relatively unfragmented old forest compared to other forests near the ocean within the DPS. This area may facilitate movement of coastal martens inland. This unit provides all of the features described in PBFs 1 and 2. Overstory conditions as described in PBF 1 are mostly associated with high-productivity sites across much of this unit, characteristic of the mature forests of the Sitka spruce vegetation zone as described in Franklin and Dyrness (1988, pp. 58–59).

The habitat-based threats in this unit that may require special management include removal of forest vegetation, primarily through vegetation management such as timber harvest. Portions of the Federal land within this unit are managed as LSR lands, which requires retaining or developing late-successional conditions that could be suitable for coastal martens. However, some treatments that meet LSR standards and guidelines, such as thinning to increase tree size or stand complexity, can result in loss of dense understories that are valuable to coastal martens to escape from predators and provide suitable prey habitat. This unit has been reduced by 73,083 ac (29,576 ha) from the area proposed as critical habitat based on information received from USFS that the eastern inland portions of the unit do not contain the

PBFs in sufficient quantity, quality, or distribution to provide for coastal marten populations and, as a result, do not meet the definition of critical habitat for the DPS.

Unit 2: Siltcoos Unit; Lane and Douglas Counties, Oregon

This unit consists of approximately 15,859 ac (6,418 ha) and encompasses the central portion of the central coastal Oregon population of coastal martens in coastal Lane and Douglas Counties, Oregon. The unit occurs along the coastline west of Highway 101 and extends from near the city of Florence, Oregon, south approximately 12 mi (19 km) to the vicinity of Tahkenitch Creek, west of Tahkenitch Lake. Land ownership within the unit includes approximately 15,610 ac (6,317 ha) of Federal and 249 ac (101 ha) of State land. The Federal portion is within the Oregon Dunes National Recreation Area, managed by the Siuslaw National Forest. The State portion comprises Honeyman State Park. Recreation, primarily all-terrain vehicle (ATV) use on the open dunes and forested trails within the recreation area and surrounding areas, is the principal land use in this unit.

This unit was occupied at the time of listing (2020) and is currently occupied by coastal martens. Coastal martens in this unit and Unit 3 exhibit the highest densities and smallest home ranges documented in North America (Linnell et al. 2018, p. 13), indicating that the physical or biological features coastal martens require are widely available in

this unit. The unit contains all of the components described in PBFs 1 and 2. For the forest overstory component of PBF 1, this unit falls into the less productive site category, due to the harsher growing conditions along the Oregon coast. Forest vegetation in this unit generally comprises dense strands of shore pine with extremely dense shrub understories, as described in Franklin and Dyrness (1988, pp. 291–294). This unit encompasses one of four known coastal marten populations, which maintains redundancy across the DPS. Coastal martens in this unit and Unit 3 are generally isolated from coastal martens in the rest of the DPS, with limited ability to connect populations across the landscape.

The habitat-based threats in this unit that may require special management include possible loss of shore pine and understory shrub habitat in an effort to restore movement of coastal sand dunes or increase open areas for recreation vehicles. An additional threat that may require management is the invasion of nonnative shrub species (e.g., Scotch broom (*Cytisus scoparius*)) that may preclude the development of ericaceous shrubs and shore pine that are known components of suitable coastal marten habitat. In this unit, we have added approximately 7,028 ac (2,844 ha) beyond what we proposed for this unit on October 25, 2021 (86 FR 58831), based on comments we received on habitat characteristics, coastal marten occupancy of the areas, Federal land ownership information, and the proximity of the subject areas to areas proposed as coastal marten critical habitat.

Unit 3: Coos Bay Unit; Douglas and Coos Counties, Oregon

This unit consists of approximately 15,402 ac (6,233 ha) and encompasses the southern portion of the central coastal Oregon population of coastal martens in coastal Douglas and Coos Counties, Oregon. The unit extends from Winchester Bay south to the north spit of Coos Bay proper, and lies west of U.S. Highway 101. Land ownership includes 14,806 ac (5,992 ha) of Federal and 595 ac (241 ha) of State land. The majority (13,233 ac (5,351 ha)) of the Federal portion is within the Oregon Dunes National Recreation Area, managed by the Siuslaw National Forest. The BLM owns approximately 1,584 ac (641 ha). The State portion comprises Umpqua Lighthouse State Park. This unit is similar to Unit 2 in terms of primary land use, coastal marten occupancy, presence of physical or biological features, vegetation description, essentiality of conservation,

and habitat-based threats. Recreation, primarily ATV use on the open dunes and forested trails within the recreation area and surrounding areas, is the principal land use in this unit.

This unit was occupied at the time of listing (2020) and is currently occupied by coastal martens. Coastal martens in this unit, along with Unit 2, exhibit the highest densities and smallest home ranges in North America (Linnell et al. 2018, p. 13). The physical or biological features coastal martens require are widely available in this unit. The unit contains all of the components described in PBFs 1 and 2. For the forest overstory component of PBF 1, this unit falls into the less productive site category, due to the harsher growing conditions along the Oregon coast. Forest vegetation in this unit generally comprises dense strands of shore pine with extremely dense shrub understories, as described in Franklin and Dyrness (1988, pp. 291–294). This unit encompasses one of four known coastal marten populations, which maintains redundancy across the DPS. Coastal martens in this unit and Unit 2 are generally isolated from coastal martens in the rest of the DPS, with limited ability to connect populations across the landscape.

The habitat-based threats in this unit that may require special management include addressing the possible loss of shore pine and understory shrub habitat in an effort to restore movement of coastal sand dunes or increase open areas for recreation vehicles. Special management may be required to address the invasion of nonnative shrub species (e.g., Scotch broom) that may preclude the development of ericaceous shrubs and shore pine that are known components of suitable coastal marten habitat. In this rule, we have reduced this unit by approximately 60 ac (24 ha) from our proposal based on comments we received on habitat characteristics, coastal marten occupancy of the area, and Federal land ownership information.

Unit 4: Cape Blanco Unit; Coos and Curry Counties, Oregon

This unit consists of approximately 4,044 ac (1,636 ha) and encompasses the immediate coastal portion of the southern coastal Oregon population of coastal martens in coastal Coos and Curry Counties, Oregon. The unit extends from just south of the Bandon State Natural Area, south to Cape Blanco State Park, and lies west of U.S. Highway 101. Land ownership includes 1,019 ac (412 ha) of Federal (BLM) and 3,025 ac (1,224 ha) of State land. The Federal portion is managed by the BLM

as a District Designated Reserve and not being considered as part of any timber harvest program. Portions of the reserve are managed for recreation, while other portions are managed as the New River Area of Critical Environmental Concern to protect and conserve natural resources. The State portion comprises Cape Blanco State Park and Floras Lake State Natural Area. Recreation is the principal land use in this unit.

This unit was occupied at the time of listing (2020) and is currently occupied by coastal martens and contains all of the physical or biological features essential to the conservation of the species. The unit is a mix of shore pine dominated forests in the lowlands near the ocean, and more mature Sitka spruce forest in the higher bluffs around Cape Blanco. This unit encompasses occupied coastal forest that is known to be suitable habitat for coastal martens.

The habitat-based threats in this unit that may require special management are the prevalence of invasive shrub species that may preclude the development of ericaceous shrubs and shore pine that are known components of suitable coastal marten habitat. In this rule, we removed approximately 3 ac (1.2 ha) from our proposal based on comments we received on habitat characteristics, coastal marten occupancy of the area, and Federal land ownership information.

Unit 5: Klamath Mountains Unit; Coos, Curry, Douglas, and Josephine Counties, Oregon, and Del Norte, Humboldt, and Siskiyou Counties, California

This unit consists of approximately 1,156,312 ac (467,943 ha) and occurs mostly within the Klamath Mountains of southwestern Oregon and northwestern California. Within Oregon, the unit occurs in the southern part of Coos County, just south of Powers, Oregon, and extends south through eastern Curry and western Josephine Counties, with the northeastern fringe of the unit extending into Douglas County. The northwestern portion of this unit consists of a non-contiguous portion that encompasses Humbug Mountain State Park. The unit extends south into California, occupying much of the eastern portion of Del Norte County, extending south into Humboldt County and east into Siskiyou County. In California, the unit lies west of U.S. Highway 96 and extends all the way to the Pacific Ocean in northern Humboldt County, encompassing Redwood National and State Parks. The unit is 97 percent federally owned (approximately 1,125,492 ac (455,471 ha)), with an additional 17,812 ac (7,208 ha) of State lands, and the remainder (13,008 ac

(5,264 ha)) owned by private or local governments. The USFS is the principal Federal land manager (Rogue River-Siskiyou, Six Rivers, and Klamath National Forests) (approximately 1,013,456 ac (410,131 ha)) with the BLM managing additional lands in Oregon (approximately 66,489 ac (26,907)) and the National Park Service managing lands in California (Redwood National Park; approximately 45,528 ac (18,425 ha)). LSRs account for approximately 45 percent of the Federal ownership. In addition, several Wilderness Areas are within this unit, including Grassy Knob, Wild Rogue, Copper Salmon, and Kalmiopsis in Oregon, and the Siskiyou Wilderness in California.

This unit was occupied at the time of listing (2020), is currently occupied by coastal martens, and contains all of the physical or biological features essential to the conservation of the species. This unit represents the southernmost distribution of critical habitat for the coastal marten and encompasses the majority of known coastal marten detections. Outside of portions of Unit 1, it also is the only source of non-shore pine habitat, and includes a variety of vegetation conditions that coastal martens use, enhancing representation. This unit contains key connectivity areas for coastal martens to move either north or south in the DPS, as well as inland or towards the coast. Overstory conditions as described in PBF 1 are associated with high productivity sites across much of the unit, but low-productivity serpentine sites also occur across this unit.

The habitat-based threats in this unit that may require special management include removal of forest vegetation, primarily through vegetation management such as timber harvest. Fuels management to reduce the risk of fire is also a regular activity throughout much of this unit. We have excluded portions of Unit 5 under section 4(b)(2) of the Act for the Green Diamond Resource Company, the Yurok Tribe, and the Karuk Tribe (see Consideration of Impacts under Section 4(b)(2) of the Act, below).

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species.

Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species (50 CFR 402.02).

Compliance with the requirements of section 7(a)(2) of the Act is documented through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define “reasonable and prudent alternatives” (at 50 CFR 402.02) as alternative actions identified during formal consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency’s legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Service Director’s opinion, avoid the likelihood of jeopardizing the continued existence of the listed species or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 set forth requirements for Federal agencies to reinstate consultation. Reinitiation of consultation is required and shall be requested by the Federal agency, where discretionary Federal involvement or control over the action has been retained or is authorized by law and: (1) if the amount or extent of taking specified in the incidental take statement is exceeded; (2) if new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) if the identified action is subsequently modified in a manner that causes an

effect to the listed species or critical habitat that was not considered in the biological opinion or written concurrence; or (4) if a new species is listed or critical habitat designated that may be affected by the identified action. As provided in 50 CFR 402.16, the requirement to reinstate consultations for new species listings or critical habitat designation does not apply to certain agency actions (e.g., land management plans issued by the Bureau of Land Management in certain circumstances).

Destruction or Adverse Modification of Critical Habitat

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat as a whole for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires that the **Federal Register** notice “shall, to the maximum extent practicable also include a brief description and evaluation of those activities (whether public or private) which, in the opinion of the Secretary, if undertaken may adversely modify [critical] habitat, or may be affected by such designation.” Activities that may be affected by designation of critical habitat for the coastal marten include those that may affect the physical or biological features of the coastal marten’s critical habitat (see Physical or Biological Features Essential to the Conservation of the Species).

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that the Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense (DoD), or designated for its use, that are subject to an integrated natural resources management plan (INRMP) prepared under section 101 of the Sikes Act Improvement Act of 1997 (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation. There are no DoD lands with a completed INRMP

within the final critical habitat designation.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. Exclusion decisions are governed by the regulations at 50 CFR 424.19 and the 2016 policy (81 FR 7226; February 11, 2016)—both of which were developed jointly with the National Marine Fisheries Service (NMFS). We also refer to a 2008 Department of the Interior Solicitor's opinion entitled, "The Secretary's Authority to Exclude Areas from a Critical Habitat Designation under Section 4(b)(2) of the Endangered Species Act" (M–37016). We explain each decision to exclude areas, as well as decisions not to exclude, to demonstrate that the decision is reasonable.

The Secretary may exclude any particular area if she determines that the benefits of such exclusion outweigh the benefits of including such area as part of the critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making the determination to exclude a particular area, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

We describe below the process that we undertook for deciding whether to exclude any areas—taking into consideration each category of impacts and our analysis of the relevant impacts.

Exclusions Based on Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. In order to consider economic impacts, we prepared an incremental effects memorandum (IEM) and screening analysis which, together with our narrative and interpretation of effects, we consider our economic analysis of the critical habitat designation and related factors (Industrial Economics Inc. (IEC) 2021,

entire; Service 2021, entire). The screening analysis, dated April 15, 2021, was made available for public review from October 25, 2021, through December 27, 2021 (see 86 FR 58831), and again from September 30, 2022, through October 17, 2022 (see 87 FR 59384). The economic analysis addressed probable economic impacts of critical habitat designation for the coastal marten. Following the close of the comment periods, we reviewed and evaluated all information submitted during the comment periods that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. Additional information relevant to the probable incremental economic impacts of critical habitat designation for the coastal marten is summarized below and available in the screening analysis for the DPS (IEc 2021, pp. 1–22), available at <https://www.regulations.gov>.

As identified in the screening analysis (IEc 2021, p. 2), the economic costs of the critical habitat designation for the coastal marten will likely be primarily limited to additional administrative efforts for Federal agencies to consider adverse modification in section 7 consultations. This determination is based on: (1) the areas identified as critical habitat are occupied by the coastal marten and, therefore, any conservation actions taken in order to be protective of the species would typically also provide protection for habitat used by the coastal marten; (2) a large portion (49 percent) of the areas identified are already designated as critical habitat for other listed species (*i.e.*, northern spotted owl (*Strix occidentalis caurina*), marbled murrelet (*Brachyramphus marmoratus*)) that have similar habitat requirements as coastal marten; and (3) the majority of the areas identified (97 percent) are federally managed and have ongoing baseline conservation efforts partly as a result of requirements under the Northwest Forest Plan. As a result, the screening analysis identified that the critical habitat designation for the coastal marten is unlikely to generate costs exceeding \$100 million in a single year; the annual costs to the Service and Federal action agencies are estimated to be approximately \$280,000. See the economic screening analysis (IEc 2021, entire) and our October 25, 2021, proposed rule (86 FR 58831) for additional results and background information on our process for determining the economic costs of critical habitat designation.

As discussed above, we considered the economic impacts of the critical habitat designation, and the Secretary is

not exercising her discretion to exclude any areas from this designation of critical habitat for the coastal marten based on economic impacts.

Exclusions Based on Impacts on National Security and Homeland Security

In preparing this rule, we determined that there are no lands within the designated critical habitat for the coastal marten that are owned or managed by the DoD or Department of Homeland Security, and, therefore, we anticipate no impact on national security or homeland security. We did not receive any additional information during the public comment periods for the proposed designation regarding impacts of the designation on national security or homeland security that would support excluding any specific areas from the final critical habitat designation under the authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19, as well as the 2016 policy.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security as discussed above. To identify other relevant impacts that may affect the exclusion analysis, we consider a number of factors, including whether there are permitted conservation plans covering the species in the area such as HCPs, safe harbor agreements, or candidate conservation agreements with assurances (CCAAs), or whether there are non-permitted conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at whether Tribal conservation plans or partnerships, Tribal resources, or government-to-government relationships of the United States with Tribal entities may be affected by the designation. We also consider any State, local, social, or other impacts that might occur because of the designation.

When identifying the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive due to the protection from destruction or adverse modification as a result of actions with a Federal nexus, the educational benefits of mapping essential habitat for recovery of the listed species, and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat. In the case of the coastal marten, the benefits

of critical habitat include public awareness of the presence of the DPS and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for coastal marten due to protection from destruction or adverse modification of critical habitat.

When identifying the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation, or in the continuation, strengthening, or encouragement of partnerships. Additionally, continued implementation of an ongoing management plan that provides equal to or more conservation than a critical habitat designation would reduce the benefits of including that specific area in the critical habitat designation.

We evaluate the existence of a conservation plan when considering the benefits of inclusion. We consider a variety of factors, including, but not limited to, whether the plan is finalized; how it provides for the conservation of the essential physical or biological features; whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction of the species. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

Based on the information provided by entities seeking exclusion, as well as additional public comments we received, and the best scientific data available, we evaluated whether certain lands in proposed critical habitat Unit 5 in California are appropriate for exclusion from the final designation under section 4(b)(2) of the Act. If our analysis indicates that the benefits of excluding lands from the final designation outweigh the benefits of designating those lands as critical habitat, then the Secretary may exercise her discretion to exclude the lands from the final designation. In the paragraphs

below, we provide a detailed balancing analysis of the areas we evaluated for exclusion under section 4(b)(2) of the Act.

Private or Other Non-Federal Conservation Plans or Agreements and Partnerships, in General

We sometimes exclude specific areas from critical habitat designation based in part on the existence of private or other non-Federal conservation plans or agreements and their attendant partnerships. A conservation plan or agreement describes actions that are designed to provide for the conservation needs of a species and its habitat and may include actions to reduce or mitigate negative effects on the species caused by activities on or adjacent to the area covered by the plan. Conservation plans or agreements can be developed by private entities with no Service involvement or in partnership with the Service.

We evaluate a variety of factors to determine how the benefits of any exclusion and the benefits of inclusion are affected by the existence of private or other non-Federal conservation plans or agreements and their attendant partnerships when we undertake a discretionary section 4(b)(2) exclusion analysis. A non-exhaustive list of factors that we will consider for non-permitted plans or agreements is shown below. These factors are not required elements of plans or agreements, and all items may not apply to every plan or agreement.

a. The degree to which the record of the plan supports a conclusion that a critical habitat designation would impair the realization of benefits expected from the plan, agreement, or partnership.

b. The extent of public participation in the development of the conservation plan.

c. The degree to which there has been agency review and required determinations (e.g., State regulatory requirements), as necessary and appropriate.

d. Whether National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) compliance was required.

e. The demonstrated implementation and success of the chosen mechanism.

f. The degree to which the plan or agreement provides for the conservation of the essential physical or biological features for the species.

g. Whether there is a reasonable expectation that the conservation management strategies and actions contained in the conservation plan or agreement will be implemented.

h. Whether the plan or agreement contains a monitoring program and adaptive management to ensure that the conservation measures are effective and can be modified in the future in response to new information.

During the development of this final designation, we considered additional information we received during both public comment periods on whether any specific areas should be excluded from this final critical habitat designation under authority of section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19. As described above under Summary of Comments and Recommendations, we received four requests to exclude areas from the final critical habitat designation that provided sufficient information to conduct an exclusion analysis of those areas. The first two areas include lands owned and managed by the Green Diamond Resource Company and Yurok Tribal lands in Unit 5 in California. The Yurok Tribal land exclusion includes lands they own or manage, lands held in trust by the Secretary, and lands owned by the USFS that are part of a proposed reservation boundary adjustment. We also received a request from the Karuk Tribe for exclusion of lands recently transferred from USFS lands to trust status, held by the Secretary of the Interior for the benefit of the Karuk Tribe to be used for traditional and customary uses of the Tribe. Lastly, we received a request from the American Forest Resource Council to exclude all O&C lands from the final designation. Below, we provide our exclusion analysis for the Green Diamond Resource Company lands. We then provide our exclusion analysis for the Yurok Tribal owned or managed lands, Yurok Tribe reservation boundary adjustment lands, and Karuk Tribal and transferred lands separately (see *Tribal Lands*, below). We also provide our exclusion analysis for all O&C lands in Units 1, 2, 3, 4, and 5.

Green Diamond Resource Company—Unit 5: OR-CA-5 Klamath Mountains

In our October 25, 2021, proposed rule (86 FR 58831), we identified approximately 1,289,627 ac (521,913 ha) as critical habitat in proposed Unit 5 (Klamath Mountains). The unit is located in southern Oregon and northern California. GDRC owns and manages approximately 49,010 ac (19,834 ha) of land that occurs in Unit 5 in California. We have identified all the lands owned and managed by GDRC in Unit 5 in California for exclusion from the final designation of critical habitat for the coastal marten under section 4(b)(2) of the Act.

To assist in conservation of the coastal marten and its habitat and assist in protecting and conserving the PBFs for the DPS, GDRRC has developed a coastal marten-focused memorandum of understanding (MOU) with the Service (GDRRC-Service 2020, entire) and a State safe harbor agreement (SHA) with the California Department of Fish and Wildlife (CDFW 2018, entire). The five key habitat conservation measures identified for the coastal marten and its habitat in the MOU and State SHA are: (1) Retain older forest areas within riparian corridors and unstable slope areas that increase in age, develop resting and denning structures (PBF 1–3), and provide for connectivity of habitats across watersheds (PBF 2); (2) retain trees with specific habitat structures important for coastal marten resting and denning to accelerate development of habitat during the forest management cycle (PBF 1–3); (3) retain large woody debris existing prior to timber harvest and create slash piles within harvested areas to promote prey base and provide cover for coastal martens in regenerating forest stands (PBF 1–1a, 1–1b, and 2); (4) protect known den sites and retain habitat around those sites (PBF 1–2, 1–3; and (5) under a proposed carbon project, retain and grow mixed tree species forest stands that will increase average forest age over a 100-year time frame (PBF 1–1). In addition, a 2,098-ac (849-ha) area has been designated as a no harvest area to avoid disturbance of habitat and incidental take of coastal martens in an area known to have coastal marten occupancy over the past 20 years. Further, GDRRC will monitor the coastal marten population and collaborate with agencies, other landowners, and researchers to increase understanding of coastal marten habitat use and needs, which will inform future commitments through adaptive management.

GDRRC has been and continues to be a member of a multi-agency management group for conservation of the coastal marten in California and Oregon. The group has developed a conservation assessment and strategy for conserving the coastal marten in California and Oregon (Slauson et al. 2019a, entire). The strategy outlines measures to protect existing populations of the coastal marten, reestablish populations in areas currently suitable but unoccupied, restore habitat conditions in specific areas to increase population size, distribution, and connectivity between populations, and outlines next steps and research needed for coastal marten conservation. Although the

conservation strategy was developed to address coastal marten declines and synthesizes current knowledge on the DPS and identifies current threats, management goals, and outlines numerous conservation actions and information needs, the intent of the strategy is to establish an integrated regional approach to address the immediate research and conservation needs of the coastal marten. Implementation of the strategy is being completed by those Federal, State, Tribal, private, and nongovernmental organizations with an interest in conservation and management of the coastal marten. GDRRC and others have implemented measures to assist in conservation of habitat for the coastal marten identified in the strategy and has committed by participation in the working group to continue to implement such measures in the future.

Additionally, in August 2023, GDRRC finalized the California Timberlands Forest Management Plan (GDRRC 2023, entire). The plan provides an overview of GDRRC's land and resource management objectives, forest planning and operation practices, and implementation of measures and processes for conservation of the coastal marten and other listed or sensitive species and important habitat in California. The management plan provides for adaptive management and will be updated as new information becomes available or in response to changing conditions.

Benefits of Inclusion—Green Diamond Resource Company Lands

The principal benefit of including an area in a critical habitat designation is the requirement of Federal agencies to ensure that actions that they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, which is one of the regulatory standards of section 7(a)(2) of the Act under which consultation is completed. Under section 7 of the Act, Federal agencies must also consult with the Service on actions that may affect a listed species, and refrain from actions that are likely to jeopardize the continued existence of such species. The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. Thus, critical habitat designation may provide greater benefits to the recovery of a species than listing would alone.

Accordingly, a critical habitat designation may provide a regulatory

benefit for the coastal marten when there is a Federal nexus present for a project that may affect critical habitat. However, as this is private property and consultations have been and are expected to be rare, critical habitat is not anticipated to have much effect due to the lack of a Federal nexus. Given the anticipated lack of section 7 consultations, the regulatory benefit is limited and dependence on private conservation actions is more important.

Another important benefit of including lands in a critical habitat designation is that it can serve to educate landowners, agencies, Tribes, and the public regarding the potential conservation value of an area, and may help focus conservation efforts on areas of high value for certain species. Any information about coastal marten that reaches a wide audience, including parties engaged in conservation activities, would be considered valuable. However, the coastal marten was petitioned for listing in 2010, was a candidate species beginning in 2015, was listed by the State of California as endangered in 2018 (CDFW 2019, entire), was federally listed as a threatened species under the Act in 2020 (see 85 FR 63806; October 8, 2020), and had critical habitat proposed in 2021 (see 86 FR 58831; October 25, 2021). These actions have provided numerous opportunities for public outreach and education and have ensured that the GDRRC and others are fully aware of the importance of coastal marten habitat and conservation. GDRRC is also a member of a working group made up of landowners and researchers and has developed a conservation strategy for the coastal marten in California. Because the majority of lands surrounding or adjacent to GDRRC lands will be designated as critical habitat, there will still be opportunities for us to raise public awareness of the conservation value of the area for the coastal marten. In addition, GDRRC is already working with the Service and has a demonstrated history of implementing conservation actions for the coastal marten on their lands and for conservation of the DPS in larger scale conservation efforts and management. As a result, the educational value of the designation is also reduced.

Benefits of Exclusion—Green Diamond Resource Company Lands

The benefits of excluding GDRRC land from the designation of critical habitat are substantial. The area will continue to provide conservation value to the species by: (1) Continuing and strengthening our effective working relationship with GDRRC to promote

voluntary, proactive conservation and recovery of the coastal marten and its habitat on their lands; (2) fostering current and future potential collaboration with GDRC and adjacent private land owners for additional conservation of the coastal marten and its habitat as well as conservation of other federally listed species; and (3) contributing to educational benefits and public awareness through our partnership with GDRC on coastal marten conservation.

In this case, the benefits of excluding the GDRC lands include the recognition of the important role of voluntary conservation actions in the conservation of the coastal marten, facilitating cooperation with neighboring landowners, and acknowledging the good faith efforts on their part to date in conserving the coastal marten. GDRC has demonstrated a partnership with the Service and others to promote coastal marten conservation through the development of the conservation assessment and strategy for conserving the coastal marten.

The success of GDRC's management is demonstrated in the development and implementation of the MOU and State SHA. In addition, GDRC has finalized their California Timberlands Forest Management Plan (management plan) (GDRC 2023, entire). The plan identifies measures that provide for conservation of the coastal marten that GDRC include in their timber harvest plans (THPs) that are required by the State of California prior to commencement of timber harvest activities. Additional evidence of the partnership between the Service and GDRC is shown by GDRC's commitment in the MOU to provide for adaptive management, where mutually agreed-upon changes to the MOU's conservation commitments in response to changing conditions or new information would avoid or minimize take and conserve habitat of the coastal marten to the maximum extent practicable. Conservation measures identified in the SHA and MOU are included in GDRC's management plan and are implemented through their THPs. Exclusion of this area from designation will maintain and strengthen the partnership between the Service and GDRC and provide a conservation benefit for the coastal marten.

Our collaborative relationship with GDRC also makes a difference in our partnership with the numerous stakeholders involved in coastal marten management and recovery and influences our ability to form partnerships with others. Concerns over perceived added regulation potentially

imposed by critical habitat could harm this or other future collaborative relationships.

Because important areas with coastal marten habitat occur on private lands, collaborative relationships with private landowners will be essential in order to recover coastal marten. The coastal marten and its habitat are expected to benefit substantially from voluntary landowner management actions that implement appropriate and effective conservation strategies. It is beneficial to implement policies that provide positive incentives to private landowners to voluntarily conserve natural resources and that remove or reduce disincentives to conservation (Wilcove et al. 1996, entire; Bean 2002, pp. 1–7). Thus, it is essential for coastal marten recovery to build on continued conservation activities such as these with a proven partner, and to provide positive incentives for other private landowners who might be considering implementing voluntary conservation activities, but who have concerns about incurring incidental regulatory or economic impacts.

Because GDRC-owned lands in Unit 5 are occupied by the coastal marten, conservation measures that may be implemented to protect or conserve coastal marten habitat would occur regardless of the critical habitat designation due to the requirements of protecting a listed species and its habitat under both section 7 and section 10 of the Act and as a result of the GDRC MOU with the Service and State SHA with CDFW. As a result, the benefits of a critical habitat designation are lessened for GDRC lands that are occupied. Also, because this portion of the unit is privately owned, we do not anticipate future Federal actions to impact the area. Because of the lack of past section 7 consultations within this portion of Unit 5, the reduced likelihood of future Federal actions altering the current management of this portion of Unit 5, the presence of coastal marten, and the commitment to continue implementing land management actions that maintain coastal marten habitat, the benefits of a critical habitat designation on this portion of Unit 5 (Klamath Mountains) are minimal.

Benefits of Exclusion Outweigh the Benefits of Inclusion—Green Diamond Resource Company Lands

We have determined that the benefits of exclusion of private lands owned by GDRC in Unit 5 (Klamath Mountains), with the implementation of measures identified in the coastal marten conservation strategy, GDRC's

management plan, MOU, and State SHA, outweigh the benefits of inclusion because the current management efforts maintain the physical or biological features necessary to develop, maintain, and protect habitat essential to coastal marten conservation. These actions serve to manage and protect habitat needed for the coastal marten above those conservation measures that may be required if the area were designated as critical habitat. In making this finding, we have weighed the benefits of exclusion against the benefits of including these lands as critical habitat.

Past, present, and future coordination with GDRC has provided and will continue to provide sufficient education regarding coastal marten habitat conservation needs on these lands, such that there would be minimal additional educational benefit from designation of critical habitat. The incremental conservation benefit of designated critical habitat on GDRC-owned lands would largely be redundant with the benefits of the existing management. Therefore, the incremental conservation and regulatory benefits of designating critical habitat on GDRC lands in Unit 5 (Klamath Mountains) are minimal.

The benefits of designating critical habitat for coastal marten on GDRC lands in Unit 5 (Klamath Mountains) are relatively low in comparison with the benefits of exclusion. Based on our 2016 policy, we find that GDRC's implementation of the conservation strategy, management plan, MOU, and State SHA meets several factors for exclusion, including: (1) the conservation strategy, MOU, and SHA documents have been developed in conjunction with resource agency review, and we have received required determinations (e.g., State regulatory requirements), as necessary and appropriate; (2) the measures identified in the documents have been implemented and have demonstrated success (such as establishment of specific protected areas for coastal marten conservation); (3) the documents identify measures that provide for the conservation of the physical or biological features essential for the coastal marten; (4) the conservation management strategies and actions contained in the documents have been and will continue to be implemented; and (5) the documents contain monitoring program and adaptive management components to ensure that the conservation measures are effective and can be modified in the future in response to new information.

The implementation of the conservation strategy, management plan, MOU, and State SHA is focused

on long-term land management commitments and continued conservation of the coastal marten and has solidified our partnership with GDRC to help foster the maintenance and development of future coastal marten habitat conservation. We anticipate that greater coastal marten conservation can be achieved through these management actions and relationships than through consultation regarding impacts to designated critical habitat on a project-by-project basis on private land where such consultations are expected to be rare.

The benefits of excluding GDRC-owned lands in Unit 5 from critical habitat are considerable and greater than inclusion for the reasons that follow. GDRC's implementation of the conservation strategy, management plan, MOU, and State SHA establish frameworks for cooperation and coordination with the Service and the State in connection with resource management activities for the coastal marten and its habitat based on adaptive management principles. Most importantly, the participation of GDRC in development and implementation of measures identified in these documents indicates GDRC's continuing commitment to ongoing management and conservation actions that has resulted in benefits to the coastal marten and its habitat. Exclusion of these lands from critical habitat designation will help preserve and strengthen the conservation partnership we have developed with GDRC, reinforce those we are building with other entities, and foster future partnerships and development of management plans. Conversely, inclusion of these lands in the designation would negatively impact our relationships with GDRC and other existing and future partners. We are committed to working in partnership with GDRC to further conservation of coastal marten and other endangered and threatened species. GDRC has agreed to continue to implement their management plans and play an active role to protect the coastal marten and its habitat. Thus, we find that our partnership with and actions taken by GDRC provide significant benefits to coastal marten conservation and outweigh the small regulatory benefits of including the GDRC lands in the final critical habitat designation.

Therefore, after weighing the benefits of inclusion in the coastal marten critical habitat designation against the benefits of exclusion, we determined that the benefits of excluding the approximately 49,010 ac (19,834 ha) of GDRC lands within Unit 5 with long-term GDRC management commitments

outweigh the benefits of including the area in a designation of critical habitat.

Exclusion Will Not Result in Extinction of the Species—Green Diamond Resource Company Lands

We have determined that the exclusion of GDRC lands within the boundaries of Unit 5 (Klamath Mountains) will not result in extinction of the coastal marten. The protections and conservation measures afforded the coastal marten and its habitat by the MOU and State SHA, as well as our partnership with GDRC on managing for coastal marten, provide assurances that the DPS will not go extinct as a result of excluding these lands from the critical habitat designation. In addition to the conservation actions being implemented on the areas being excluded, the areas remaining as critical habitat in Unit 5 for the coastal marten total 1,156,312 ac (467,943 ha). These remaining areas are occupied and will continue to provide support to and conserve the DPS throughout the area. Further, for any projects having a Federal nexus and potentially affecting the coastal marten, the jeopardy standard of the Act will provide a level of assurance that the DPS will not go extinct as a result of excluding GDRC lands from the critical habitat designation. As a result, the Secretary is excluding 49,010 ac (19,834 ha) of GDRC land under section 4(b)(2) of the Act from the final designation of critical habitat for the coastal marten in Unit 5 (Klamath Mountains).

Tribal Lands

Several Executive Orders, Secretary's Orders, and policies concern working with Tribes. These guidance documents generally confirm our trust responsibilities to Tribes, recognize that Tribes have sovereign authority to control Tribal lands, emphasize the importance of developing partnerships with Tribal governments, and direct the Service to consult with Tribes on a government-to-government basis.

A joint Secretary's Order that applies to both the Service and the National Marine Fisheries Service (NMFS)—Secretary's Order 3206, "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act" (June 5, 1997) (S.O. 3206)—is the most comprehensive of the various guidance documents related to Tribal relationships and Act implementation, and it provides the most detail directly relevant to the designation of critical habitat. In addition to the general direction discussed above, the appendix to S.O. 3206 explicitly recognizes the right of

Tribes to participate fully in any listing process that may affect Tribal rights or Tribal trust resources; this includes the designation of critical habitat. Section 3(B)(4) of the Appendix requires us to consult with affected Tribes "when considering the designation of critical habitat in an area that may impact Tribal trust resources, Tribally-owned fee lands, or the exercise of Tribal rights." That provision also instructs the Service to avoid including Tribal lands within a critical habitat designation unless the area is essential to conserve a listed species, and it requires the Service to "evaluate and document the extent to which the conservation needs of the listed species can be achieved by limiting the designation to other lands."

Our implementing regulations at 50 CFR 424.19 and the 2016 policy are consistent with S.O. 3206. When we undertake a discretionary exclusion analysis, in accordance with S.O. 3206, we consult with any Tribe whose Tribal trust resources, Tribally-owned fee lands, or Tribal rights may be affected by including any particular areas in the designation, and we evaluate the extent to which the conservation needs of the species can be achieved by limiting the designation to other areas. When we undertake a discretionary section 4(b)(2) exclusion analysis, we always consider exclusion of Tribal lands, and give great weight to Tribal concerns in analyzing the benefits of exclusion.

However, S.O. 3206 does not override the Act's statutory requirement of designation of critical habitat. As stated above, we must consult with any Tribe when a designation of critical habitat may affect Tribal lands or resources. The Act requires us to identify areas that meet the definition of "critical habitat" (*i.e.*, areas occupied at the time of listing that contain the essential physical or biological features that may require special management or protection and unoccupied areas that are essential for the conservation of a species), without regard to land ownership. While S.O. 3206 provides important direction, it expressly states that it does not modify the Secretaries' statutory authority under the Act or other statutes.

Yurok Tribe-Owned or -Managed Lands—Unit 5: OR-CA-5 Klamath Mountains

In our October 25, 2021, proposed rule (86 FR 58831), we identified approximately 1,289,627 ac (521,913 ha) as critical habitat in Unit 5 (Klamath Mountains). The unit is located in southern Oregon and northern California. Approximately 64,979 ac (26,296 ha) of the critical habitat is

owned or managed by the Yurok Tribe. We have identified all lands owned and managed by the Yurok Tribe in Unit 5 in California (64,979 ac (26,296 ha)) for exclusion from the final designation of critical habitat for the coastal marten under section 4(b)(2) of the Act. This includes Yurok Tribe Reservation lands, fee lands owned by the Yurok Tribe, and lands held in trust for the Yurok Tribe, which we characterize here as Yurok Tribe-owned or -managed Lands.

Throughout the development of critical habitat for the coastal marten, we have been in contact and coordinated with the Yurok Tribe on implementing numerous conservation efforts and management strategies for the coastal marten and other listed species. The Yurok Tribe has a demonstrated record of maintaining its lands for natural resources through implementation of several binding agreements including the following: the Yurok Tribe Sustained-Yield Unit (SYU) Cooperative Agreement, the Yurok Forest Management Plan (FMP) (Yurok 2012, entire), the Blue Creek Interim Management Plan (BCMP) (Yurok Tribe and Western Rivers Conservancy 2018, entire), and the Pacific marten memorandum of understanding (MOU) with the Service (Yurok Tribe-Service 2021, entire). These agreements are described in more detail below.

The SYU cooperative agreement with the BIA was executed in October 2013 pursuant to 25 U.S.C. 3115(a)(1), under which the BIA may enter into a cooperative agreement with an Indian tribe regarding forestry and natural resource management, and to 16 U.S.C. 583a, the Sustained-Yield Management Act (SYMA), under which the BIA may enter into a cooperative agreement with a private owner of forest land for coordinated management of private and federally administered forest land. This binding agreement covers Phase I lands, lands known as Cook/Koppala and Gerber/Gleason, as well as all lands recorded as restricted within the SYU boundary, and is designed to encompass lands that the Yurok Tribe may so designate in the future, but over which they currently have no management authority. This agreement establishes that these lands are managed under the jurisdiction of the BIA in a Trust relationship in accordance with SYMA, with the purpose, in part, to protect, restore, and enhance water quality and improve fish habitat, improve forest structure and increase natural biodiversity, protect and restore Tribal cultural resources (including those species of cultural importance to the Yurok Tribe, such as the Pacific marten), and implement and maintain a

functionally integrated wildfire protection system.

The FMP pertains to lands identified in the SYU cooperative agreement described above. It describes management of the Tribe's forest resources, elucidating that they should be managed to provide for multiple use, sustained yield, and maximum benefit, and should protect non-timber resources such as cultural features, wildlife, water qualities, aesthetics, and soil. It is explicit that the preferred approach to forest management is one that is both adaptive and mainly provides for uneven-age timber management. The goals identified in the FMP include limiting the use of clear cutting, eliminating the use of herbicides, protecting and enhancing areas considered culturally significant, and protecting and enhancing fisheries. It also provides for wildfire suppression, creation of fuel breaks, fuels reductions, use of prescribed fire, and implementation of stand improvement projects in order to safeguard forest structures and forest stands against wildfire. The FMP includes limitations on harvest of old growth forests specifically to reduce the chance for impacts to habitat for traditional species and to avoid direct take of endangered and threatened species. It also requires intensive surveys for such species and subsequent dedication of no-cut areas around such species' sensitive sites, including nesting and den sites. Further, it includes a requirement to consider preservation of trees with significant wildlife uses, such as denning and resting sites.

The BCMP is a co-management agreement established between the Yurok Tribe and Western Rivers Conservancy (WRC) for those Phase II lands currently within WRC ownership, and approved by the State Coastal Conservancy, Wildlife Conservation Board, and the Yurok Tribal Council. It establishes the Blue Creek Salmon Sanctuary, land set aside specifically for biological and cultural restoration. The primary goal of the BCMP is to protect and restore the area to a healthy ecosystem, rich in biodiversity and resilient to resource threats such as drought and climate change, and to reestablish the traditional Yurok role in the management and stewardship of their ancestral territory. The BCMP includes specific conservation measures for special status species including: advanced surveys if there is proposed ground disturbance, retention of potential nest or den trees or other suitable habitat components during forest restoration activities, assumption of stand occupancy until appropriate

surveys are conducted and retention of stands with known activity areas, and prohibition of use of mechanized equipment within 0.25 mi (0.4 km) of stands occupied by endangered or threatened species in coordination with the Service. It also allows for designation of special management areas (SMAs), which guide proactive restoration and enhancement of critical forest structure and species habitat within the Sanctuary. Conservation measures within SMAs of particular importance to coastal marten include that the SMAs are designated for late-seral forest reestablishment; focused on coastal marten habitat and connectivity restoration, including creation of surrogate structures to meet key life-history needs; and managed to conserve and restore aquatic and riparian habitat.

The Tribe has also developed and executed a MOU in collaboration with the Service to promote cooperation and coordination in the conservation, management, and recovery of the coastal marten population that resides on portions of Yurok Tribe forest lands (Yurok Tribe-Service 2021, entire). Within the MOU, the Yurok Tribe and the Service formally recognize that the coastal marten is a species of significant management concern throughout its historical range, and that a proactive conservation approach to evaluating and implementing conservation actions based on sound science will benefit the species. The MOU is designed on an adaptive management principle to support coastal marten connectivity, and overall forest health. The MOU further outlines actions that will allow the Yurok Tribe to continue restoration and use of lands occupied by the coastal marten while remaining consistent with the Yurok Tribe's land use management plans and existing agreements with State and other Federal agencies, including strategies that support Yurok Tribal goals stated in the Yurok Community Forest and Blue Creek Salmon Sanctuary management plans. For habitat-related conservation, the MOU calls for implementation of thinning and removal of overly dense understory vegetation to restore unhealthy and fire-prone forests with poor coastal marten habitat by implementing uneven age stand management and retention of at least 40 percent overstory cover. In combination, these measures are intended to reestablish late-seral forest characteristics beneficial to the coastal marten on an accelerated timeline. The MOU also includes deliberate retention of known coastal marten denning and rest structure and creation of

supplementary artificial structures. It further commits to completing pre-treatment surveys within proposed treatment areas, as well as post-treatment surveys to monitor the results of restoration whenever possible. Finally, the MOU formalizes the Tribe's prohibition on the use of pesticides on these lands, which can harm coastal martens.

The Yurok Tribe has also been and continues to be a member of a multi-agency management group for the conservation of the coastal marten in California and Oregon. The group has developed a conservation strategy and management plan for conserving the coastal marten in California (Slauson et al. 2019a, entire). The document provides guidance and recommended conservation measures for protecting habitat and resource needs for the coastal marten in California.

Benefits of Inclusion—Yurok Tribe-Owned or -Managed Lands

The principal benefit of including an area in a critical habitat designation is the requirement of Federal agencies to ensure that actions that they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, which is one of the regulatory standards of section 7(a)(2) of the Act under which consultation is completed. Although the Yurok Tribe is not a Federal agency, some actions taken by the Tribe may fall under the jurisdiction of the BIA due to Federal funding or authorization or because actions are occurring on lands held in trust for the Tribe. As a result, the BIA may be the Federal nexus for some activities implemented by the Tribe. Under section 7 of the Act, Federal agencies must also consult with the Service on actions that may affect a listed species, and refrain from actions that are likely to jeopardize the continued existence of such species. The analysis of the effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. Thus, critical habitat designation may provide greater benefits to the recovery of a species than listing would alone.

We have provided the Yurok Tribe and the BIA with technical assistance on project implementation and conducted informal consultations with agencies implementing actions on Tribal lands. However, since the listing of the coastal marten as threatened in 2020, no actions determined to likely adversely affect the coastal marten and require

formal section 7 consultations have occurred within lands owned or managed by the Yurok Tribe. Because of the Tribe's practice of implementing conservation measures and management actions for the coastal marten and the lack of actions requiring formal section 7 consultation, we do not anticipate an increase in section 7 consultations in the future and, as a result, the regulatory benefit of critical habitat would be minimal.

Another important benefit of including lands in a critical habitat designation is that the designation can serve to inform and educate landowners and the public regarding the potential conservation value of an area, and it may help focus management efforts on areas of high value for certain species. Any information about the coastal marten that reaches a wide audience, including parties engaged in conservation activities, is valuable. However, the coastal marten was petitioned for listing in 2010, was a candidate species beginning in 2015, was listed by the State of California as endangered in 2018 (CDFW 2019, entire), was federally listed as a threatened species under the Act in 2020 (see 85 FR 63806; October 8, 2020), and had critical habitat proposed in 2021 (see 86 FR 58831; October 25, 2021). These actions have provided numerous opportunities for public outreach and education and have ensured that the Yurok Tribe and others are fully aware of the importance of coastal marten habitat and conservation. The Yurok Tribe has been and is currently working with the Service to conserve the coastal marten and its habitat, participating in working groups, and exchanging management and resource information regarding the DPS. In addition, because the majority of lands surrounding or adjacent to the Yurok Tribe Lands are included in this critical habitat designation for the coastal marten, there will still be opportunities for us to raise public awareness of the conservation value of the area for the coastal marten. Given that the listing of the coastal marten has already informed the public about the value of these areas and helped to focus potential conservation actions, the educational benefits from designating critical habitat on Yurok Tribe-owned or -managed Lands would be small.

Finally, there is the possible benefit that additional funding could be generated for habitat improvement actions in areas designated as critical habitat. Some funding sources may rank a project higher if the area is designated as critical habitat. Tribes often seek additional sources of funding in order to

conduct wildlife-related conservation activities. Therefore, having an area designated as critical habitat could improve the chances of receiving section 6 or other recovery funding for coastal marten habitat-related projects. However, areas where coastal marten occur, as is the case here, may also benefit from funding for projects based on the presence of the species.

Therefore, because of the development and implementation of management plans, habitat conservation, lack of additional section 7 conservation measures, occurrence of breeding and dispersing coastal martens on Tribal lands, and overall coordination with the Yurok Tribe on coastal marten-related issues, it is expected that there may be limited benefits from including these Tribal lands in a coastal marten critical habitat designation. The principal benefit of any designated critical habitat is that federally authorized or funded activities in and affecting such habitat require consultation under section 7 of the Act. Such consultation would ensure that adequate protection is provided to avoid destruction or adverse modification of critical habitat.

Benefits of Exclusion—Yurok Tribe-Owned or -Managed Lands

The benefits of excluding the Yurok Tribe Lands from designated critical habitat include: (1) Our deference to the Tribe and recognition of their sovereignty to develop and implement their own conservation and natural resource management plans for their lands and resources, which includes benefits to the coastal marten and its habitat that might not otherwise occur; (2) the continuance and strengthening of our effective working relationship with the Tribe to promote the conservation of the coastal marten and its habitat; and (3) the maintenance of effective partnerships with the Tribe and working in collaboration and cooperation to promote conservation of coastal marten and its habitat, as well as conservation for other listed or sensitive species.

During the development of the proposed rule to designate critical habitat for the coastal marten (86 FR 58831; October 25, 2021) and the development of the MOU for coastal marten, as well as coordination for other endangered or threatened species actions, we have communicated and coordinated with the Yurok Tribe on how they might be affected by listed species regulations in general and those associated with listing and designating critical habitat for the coastal marten. As such, we have established a beneficial relationship to support coastal marten

conservation. As part of our relationship, we have provided technical assistance to the Yurok Tribe to develop measures to conserve the coastal marten and its habitat on their lands. These measures are contained within the extensive management plans developed by the Yurok Tribe. During our coordination efforts with the Yurok Tribe, we recognized and endorsed their fundamental right to provide for Tribal resource management activities, including those relating to forested habitat.

As stated above, the Yurok Tribe has developed and implemented multiple management plans that benefit the coastal marten and its habitat. The Yurok Tribe has expressed that their lands, and specifically forest habitat, are connected to their cultural and religious beliefs, and as a result they have a strong commitment and reverence toward their stewardship and conservation and have common goals with the Service on species and habitat conservation. The management plans identify actions to maintain, improve, and preserve forest habitat, including those physical or biological features identified as essential for the coastal marten, such as managing for late-seral forest; establishing specific coastal marten management areas; implementing harvest restriction near water courses; conducting wildfire and fuels management actions; and implementing monitoring, assessment, and adaptive management actions. Overall, the commitments toward management of coastal marten habitat by the Yurok Tribe likely accomplish greater conservation than would be available through the implementation of a designation of critical habitat on a project-by-project basis.

The designation of critical habitat on lands owned and managed by the Yurok Tribe could have an adverse impact on our working relationship with the Tribe. The designation of critical habitat could be viewed as an intrusion and perceived as infringing on the Tribe's sovereign ability to manage natural resources in accordance with their own policies, customs, and laws. Critical habitat could be seen as potentially: (1) Interfering with the sovereign and constitutional rights of the Yurok Tribe to protect and control its own resources on the Reservation; (2) undermining the positive and effective relationship that has been built between the Tribe and the Service—a relationship that serves to protect federally listed species and their habitats; and (3) hampering or confusing the Tribe's own long-standing protections for the Klamath Mountains. The perceived restrictions of a critical

habitat designation could have a damaging effect on coordination efforts, possibly preventing actions that might maintain, improve, or restore habitat for the coastal marten and other species.

For these reasons, we have determined that our working relationship with the Tribe would be better maintained if we exclude their lands from the designation of critical habitat for the coastal marten. We view this as a substantial benefit since we have developed a trusting, cooperative working relationship with the Yurok Tribe for the mutual benefit of the coastal marten and other endangered and threatened species that has resulted in substantial conservation commitments by the Tribe.

In addition, we anticipate future management plans addressing conservation efforts for other listed species and their habitats may be hampered if critical habitat is designated on Tribal lands that are already being managed for sensitive species conservation. We have determined that other Tribes are willing to work cooperatively with us and others to benefit other listed and sensitive species, but only if they view the relationship as mutually beneficial. Consequently, the development of future voluntary management actions for other listed species may be compromised if these Tribal lands are designated as critical habitat for the coastal marten. Thus, a benefit of excluding these lands would be future conservation efforts that would benefit other listed or sensitive species.

Benefits of Exclusion Outweigh the Benefits of Inclusion—Yurok Tribe-Owned or -Managed Lands

The benefits of including Yurok Tribal Lands in the critical habitat designation are limited to the incremental benefits gained through the regulatory requirement for Federal agencies (*i.e.*, BIA) to consult under section 7 and consideration of the need to avoid adverse modification of critical habitat, agency and educational awareness, potential additional grant funding, and the implementation of other law and regulations. However, due to the rarity of Federal actions resulting in formal section 7 consultations within the Yurok Tribal Lands, the benefits of a critical habitat designation are minimized. In addition, the benefits of consultation are further minimized because any conservation measures that may have resulted from consultation are already provided through other mechanisms, such as (1) the conservation benefits to the coastal marten and its habitat from implementation of the Yurok Tribe

management plans, and (2) the maintenance of effective collaboration and cooperation to promote the conservation of the coastal marten and its habitat.

Based on our 2016 policy for exclusions, we find that the Yurok Tribe's management of their lands through their management plans meet several factors for exclusion including: (1) The measures identified in the Yurok Tribe management plans have been implemented and have demonstrated success; (2) the documents identify measures that provide for the conservation of the physical or biological features essential for the coastal marten; (3) the conservation management strategies and actions contained in Yurok Tribe management plans have been and will continue to be implemented; and (4) the Yurok Tribe management plans contain monitoring program and adaptive management components to ensure that the conservation measures are effective and can be modified in the future in response to new information.

Because the Yurok Tribe has developed specific management plans, has been involved with the critical habitat designation process, and is aware of the value of their lands for coastal marten conservation, the educational benefits of a coastal marten critical habitat designation are minimized.

Allowing the Yurok Tribe to implement its own resource conservation programs gives the Tribe the opportunity to manage their natural resources to benefit forest habitat for the coastal marten, without the perception of Federal Government intrusion. This philosophy is also consistent with our published policies on Native American natural resource management. The exclusion of these areas will likely also provide additional benefits to the coastal marten and other listed species that would not otherwise be available without a cooperative working relationship between the Service and the Yurok Tribe. The actions taken by the Tribe to manage and protect habitat needed for the coastal marten would most likely provide a greater benefit than those conservation measures that may be required if the area were designated as critical habitat. As a result, we have determined that the benefits of excluding these Tribal lands from critical habitat designation outweigh the benefits of including these areas.

After weighing the benefits of including Yurok Tribe-owned or -managed Lands in the critical habitat designation for the coastal marten

against the benefits of excluding them from the designation, we have concluded that the benefits of excluding the approximately 64,979 ac (26,296 ha) of Unit 5 (Klamath Mountains) owned and managed by the Yurok Tribe outweigh the benefits that would result from designating this area as critical habitat.

Exclusion Will Not Result in Extinction of the Species—Yurok Tribe-Owned or -Managed Lands

We have determined that exclusion of land owned and managed by the Yurok Tribe from the critical habitat designation will not result in the extinction of the coastal marten. We base this determination on several points. First, the amount of critical habitat within Unit 5 (Klamath Mountains) remaining within the designation for the coastal marten totals 1,156,312 ac (467,943 ha).

Complimentary to the excluded area, this remaining area is occupied and will continue to provide support to and conserve the coastal marten and its habitat. Second, for any projects having a Federal nexus and potentially affecting the coastal marten, the jeopardy standard of the Act will provide a level of assurance that the DPS will not go extinct as a result of excluding the Yurok Tribe's Lands from the critical habitat designation. Third, the Yurok Tribe has a long-term record of conserving species and habitat and is committed to protecting and managing coastal marten habitat according to their cultural history, management plans, and natural resource management objectives.

We have determined that this commitment accomplishes greater conservation than would be available through the implementation of a designation of critical habitat on a project-by-project basis. With the implementation of conservation measures, which are based upon strategies developed in the management plans, as well as significant areas remaining as critical habitat and assurances of consultation with the Service for Federal actions that may likely adversely affect the species, we have concluded that the coastal marten will not become extinct as a result of this exclusion of Yurok Tribe-owned or managed Lands from the critical habitat designation.

Accordingly, we have determined that the benefits of excluding the Yurok Tribe-owned or managed Lands outweigh the benefits of their inclusion, and the exclusion of these lands from the designation will not result in the extinction of the species. As a result, the Secretary is excluding 64,979 ac (26,296

ha) of Yurok Tribe-owned or managed Land under section 4(b)(2) of the Act from the final designation of critical habitat in Unit 5 for the coastal marten.

Yurok Tribe Reservation Boundary Adjustment Lands—Unit 5: OR-CA-5 Klamath Mountains

We have identified approximately 25,791 ac (10,437 ha) within Unit 5 (Klamath Mountains) in California for exclusion from this final critical habitat designation. The area is part of the Yurok Tribe ancestral territory currently owned and managed by the USFS, Six Rivers National Forest. The Yurok Tribe is currently working with Congress to introduce legislation to revise the boundaries of the Yurok Tribe's Reservation. The proposed legislation would include an adjustment of the Tribe's reservation boundaries, place the identified USFS land into trust for the Tribe, transfer the resource management responsibilities to the Tribe, and affirm the Tribal-Federal partnership for the Federal lands.

The Yurok Tribe has shown a commitment to managing forest and sensitive species habitat on their lands or lands held in trust for the Tribe and has shown to be an effective partner in conservation of the coastal marten as discussed above. The Tribe has also been working with the USFS on coordinated management of the Federal lands within the reservation boundary adjustment lands and the USFS is supportive of a coordinated management approach. On October 19, 2023, the USFS Regional Office (Region 5) authorized the Six Rivers National Forest to work closely with the Yurok Tribe on developing forest management plans for the area under the Tribal Forest Protection Act of 2004, and to identify co-stewardship and conservation responsibilities (USFS 2023, entire). Should legislation transferring management responsibilities or land ownership or trust responsibilities to the Tribe be delayed or not occur, we are confident that the Yurok Tribe and USFS would coordinate management of the area and continue to provide for conservation of the coastal marten based on their past and current implementation of conservation and management of forest and sensitive habitats, include those measures identified for the coastal marten and its habitat. As a result, even if legislation transferring management responsibilities is delayed or does not occur, we expect that the management of the area by the Yurok Tribe and/or the Forest Service would provide for conservation of the area equal to if not

better than designating the area as critical habitat.

Benefits of Inclusion—Yurok Tribe Reservation Boundary Adjustment Lands

The principal benefit of including an area in a critical habitat designation is the requirement for Federal agencies to ensure that actions that they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, which is one of the regulatory standards of section 7(a)(2) of the Act under which consultation is completed. Under section 7 of the Act, Federal agencies must also consult with the Service on actions that may affect a listed species, and refrain from actions that are likely to jeopardize the continued existence of such species. The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. For some cases, the outcome of these analyses will be similar, because effects to habitat will often result in effects to the species. In this case, given the absence of a binding agreement focused on coastal marten conservation, section 7 consultations are the primary mechanism in which take is avoided and conservation measures are implemented.

Our section 7 consultation history within the USFS lands considered for this boundary adjustment shows that since the coastal marten's listing in 2020, no formal consultations and four informal consultations have been completed for actions conducted on those lands. Other coastal marten consultations are in progress, including conferencing on areas proposed as critical habitat for the coastal marten. We anticipate that the USFS actions will likely increase in the future given that numerous salvage, hazard tree abatement, fuels management, infrastructure management, and other projects associated with recent catastrophic wildfires are in the planning stages. However, this may not be the case if the lands are transferred to the Tribe in the future. Coastal marten conservation measures, reasonable and prudent measures, and other management practices would still continue to be developed and implemented on these lands whether they remain with USFS or are transferred to the Tribe, as informal or formal section 7 consultation will still be necessary to address impacts to coastal marten for actions associated

with any Federal nexus with the USFS or BIA.

Another important benefit of including lands in a critical habitat designation is that the designation can serve to educate landowners and the public regarding the potential conservation value of an area, and it may help focus management efforts on areas of high value for certain species. Any information about the coastal marten that reaches a wide audience, including parties engaged in conservation activities, is valuable.

Finally, there is the possible benefit that additional Tribal funding could be generated for habitat improvement actions in areas designated as critical habitat. Some funding sources may rank a project higher if the area is designated as critical habitat. Therefore, having an area designated as critical habitat could improve the chances of receiving funding for coastal marten habitat-related projects.

Benefits of Exclusion—Yurok Tribe Reservation Boundary Adjustment Lands

The benefits of excluding the Yurok Tribe Reservation Boundary Adjustment Lands from designated critical habitat include: (1) Our deference to the Tribe and recognition of their sovereignty to develop and implement their own conservation and natural resource management plans for their lands and resources, which includes benefits to the coastal marten and its habitat that might not otherwise occur; (2) the continuance and strengthening of our effective working relationship with the Tribe to promote the conservation of the coastal marten and its habitat; and (3) the maintenance of effective partnerships with the Tribe and working in collaboration and cooperation to promote conservation of coastal marten and its habitat, as well as conservation for other listed or sensitive species. As stated above, the Yurok Tribe has developed and implemented multiple management plans that benefit the coastal marten and its habitat; however, these binding agreements are not currently extended to Yurok Tribe Reservation Boundary Adjustment Lands that are at present owned and managed by the USFS, Six Rivers National Forest. However, the USFS is currently in the process of working and developing an agreement with the Yurok Tribe to conduct forest management and habitat restoration activities on the Yurok Tribe Reservation Boundary Adjustment Lands under the Tribal Forest Protection Act of 2004 (Pub. L. 108–278).

During the development of the proposed rule to designate critical habitat for the coastal marten (86 FR 58831; October 25, 2021), development of the MOU for coastal marten, and coordination on other endangered or threatened species actions, we have communicated and coordinated with the Yurok Tribe on how they might be affected by listed species regulations in general and those associated with listing and designating critical habitat for the coastal marten. As such, we have established a beneficial relationship to support coastal marten conservation. As part of our relationship, we have provided technical assistance to the Yurok Tribe to develop measures to conserve the coastal marten and its habitat on their lands. These measures are contained within the extensive management plans developed by the Yurok Tribe. During our coordination efforts with the Yurok Tribe, we recognized and endorsed their fundamental right to provide for Tribal resource management activities, including those relating to forested habitat.

As stated above, the Yurok Tribe has developed and implemented multiple management plans that benefit the coastal marten and its habitat. The Yurok Tribe has expressed that forested habitats are intimately connected to their cultural and religious beliefs, and as a result they have a strong commitment and reverence toward their stewardship and conservation and the Tribe has common goals with the Service on species and habitat conservation. We expect that Yurok Tribe's land management practices on the Yurok Tribe Reservation Boundary Adjustment Lands would be similar to those on lands directly owned or held in trust for the Tribe. Because the Tribe has an excellent record of performance and commitment toward management of the coastal marten and its habitat, we have determined that the Yurok Tribe will likely accomplish greater conservation than would be available through the implementation of a designation of critical habitat on a project-by-project basis.

If critical habitat were designated on these lands, we would expect that the designation could have an adverse impact on our working relationship with the Tribe. The designation of critical habitat could be viewed as an intrusion and perceived as infringing on the Tribe's sovereign ability to manage these future Tribal natural resources in accordance with the Tribe's own policies, customs, and laws. These perceived impacts include, but are not limited to: (1) Interfering with the

sovereign and constitutional rights of the Tribe to protect and control its own resources, once these lands are transferred to the Tribe; (2) undermining the positive and effective relationship between the Tribe and the Service—a relationship that serves to protect federally listed species and their habitats; and (3) hampering or confusing the Tribe's own long-standing protections for the Klamath Mountains, which the Tribe has indicated as its intent for management of these lands upon transfer. The perceived restrictions of a critical habitat designation could have a damaging effect on coordination efforts, possibly preventing actions that might maintain, improve, or restore habitat for the coastal marten and other species. For these reasons, we have determined that our working relationship with the Tribe would be better maintained if we exclude these lands from the critical habitat designation for the coastal marten. We view this as a substantial benefit since we have developed a productive and cooperative working relationship with the Yurok Tribe for the mutual benefit of the coastal marten and other endangered and threatened species that has resulted in substantial conservation commitments by the Tribe.

In addition, we anticipate that development of future management plans by the Tribe that could include additional conservation efforts for other listed species and their habitats may be hampered if critical habitat is designated on these lands. We have determined that other Tribes are willing to work cooperatively with us and others to benefit other listed and sensitive species, but only if they view the relationship as mutually beneficial. Consequently, the development of future voluntary management actions for other listed species may be compromised if these potential Tribal lands are designated as critical habitat for the coastal marten. Thus, a benefit of excluding these lands would be future conservation efforts that would benefit other listed or sensitive species.

Benefits of Exclusion Outweigh the Benefits of Inclusion—Yurok Tribe Reservation Boundary Adjustment Lands

The benefits of including the Yurok Tribe Reservation Boundary Adjustment Lands in the critical habitat designation are limited to the incremental benefits gained through the regulatory requirement for Federal agencies (*i.e.*, BIA) to consult under section 7 and consideration of the need to avoid adverse modification of critical habitat, agency and educational awareness,

potential additional grant funding, and the implementation of other law and regulations. In addition, any conservation measures that may result from future consultations are already expected to be implemented by the Tribe due to their MOU with the Service and implementation of the Tribal Forest Protection Act authorization with the USFS, which the Tribe has indicated will be applicable to these lands upon transfer. We have determined that our working relationship with the Tribe will provide for and promote the conservation of the coastal marten and its habitat, based on the maintenance of our effective collaboration and cooperation to date.

Because the Yurok Tribe has developed specific management plans for actions on their lands, has been involved with the critical habitat designation process, and is aware of the value of their lands for coastal marten conservation, the educational benefits of a coastal marten critical habitat designation are minimized.

By excluding critical habitat, the Tribe will have more flexibility to manage natural resources that benefit forest habitat for the coastal marten without the perception of Federal Government intrusion. This philosophy is also consistent with our published policies on Native American natural resource management. The exclusion of these areas will likely also provide additional benefits to the coastal marten and other listed species that would not otherwise be available should the designation impair the cooperative working relationship between the Service and the Yurok Tribe. The actions taken by the Tribe to manage and protect habitat needed for coastal marten are above those conservation measures that may be required if the area were designated as critical habitat. As a result, we have determined that the benefits of excluding the Yurok Tribe Reservation Boundary Adjustment Lands from the critical habitat designation for the coastal marten outweigh the benefits of including these areas in the designation.

After weighing the benefits of including Yurok Tribe Reservation Boundary Adjustment Lands in the coastal marten critical habitat designation against the benefits of excluding them from the designation, we have concluded that the benefits of excluding the approximately 25,791 ac (10,437 ha) of Unit 5 located on Yurok Tribe Reservation Boundary Adjustment Lands outweigh those that would result from designating this area as critical habitat.

Exclusion Will Not Result in Extinction of the Species—Yurok Tribe Reservation Boundary Adjustment Lands

We have determined that exclusion of Yurok Tribe Reservation Boundary Adjustment Lands from the critical habitat designation will not result in the extinction of the coastal marten. We base this determination on several points. First, the amount of critical habitat within Unit 5 (Klamath Mountains) remaining as critical habitat for the coastal marten totals 1,156,312 ac (467,943 ha). Complimentary to the area excluded, this remaining area is occupied and will continue to provide support to and conserve the coastal marten and its habitat. Second, the area is anticipated to be transferred to be held in trust for the Yurok Tribe and any actions requiring Federal authorization or funding will require section 7 consultation under the jeopardy standard of the Act, which will provide a level of assurance that the DPS will not go extinct as a result of excluding these lands from the critical habitat designation.

We have determined that our relationship with the Tribe and their commitments to sensitive species and habitat management will provide greater opportunities to accomplish conservation than would be available through the implementation of a designation of critical habitat on a project-by-project basis. With the USFS and Tribe as partners in implementation of the conservation strategy for the coastal marten in California and the Act's requirement for consultation under the jeopardy standard, as well as the occupancy by and management of these lands for the benefit of coastal martens, we have concluded that the coastal marten will not become extinct as a result of the exclusion of this area from the critical habitat designation for the coastal marten.

Accordingly, we have determined that the benefits of excluding the Yurok Tribe Reservation Boundary Adjustment Lands from the critical habitat designation for the coastal marten outweigh the benefits of their inclusion in the designation, and the exclusion of these lands from the designation will not result in the extinction of the species. As a result, the Secretary is excluding 25,791 ac (10,437 ha) of Yurok Tribe Reservation Boundary Adjustment Lands under section 4(b)(2) of the Act from Unit 5 of this designation of critical habitat for the coastal marten.

Karuk Tribe Managed Lands—Unit 5: OR-CA-5 Klamath Mountains

On January 5, 2023, legislation was signed by the President of the United States to transfer management and resource responsibilities of approximately 1,031 ac (417 ha) of land from the USFS, Six Rivers National Forest, to be held in trust by the Secretary of the Interior for the Karuk Tribe under the Katimiin and Aameekyaaraam Sacred Lands Act (Pub. L. 117–353). The legislation takes certain Federal land located in Siskiyou County and Humboldt County, California, into trust for the benefit of the Karuk Tribe, and for other purposes. The trust lands include approximately 925 ac (374 ha) of land that overlaps with the proposed designation of critical habitat for the coastal marten in Unit 5 (Klamath Mountains) near the intersection of the Klamath River and Salmon River in California. We have identified these Karuk Tribe Trust Lands for exclusion from this final critical habitat designation.

The Karuk Tribe has a demonstrated record of maintaining and managing its lands for natural resources and sensitive species through implementation of its Eco-Cultural Resources Management Plan (Karuk Tribe 2010, entire), and through its partnership with the USFS to restore healthy forests in the region through the Western Klamath Restoration Partnership Project (USFS 2014, entire). The Eco-Cultural Resources Management Plan and the Tribe's partnership with the USFS on forest management are discussed below.

The Karuk Tribe Department of Natural Resources has developed the Eco-Cultural Resources Management Plan to serve as a long-term adaptive management strategy for the protection, enhancement, and utilization of cultural and natural resources. The plan outlines cultural environmental management practices through the use of traditional ecological knowledge (TEK) and existing western scientific information. The plan provides measures and guidance for environmental education, wildfire suppression and fuels reduction activities, fisheries management and enhancement, forestry management, watershed and water quality restoration, and wildlife resource conservation and protection. Measures in the plan to conserve and restore wildlife including the coastal marten and its habitat (PBFs) include: (1) Coordinating efforts to conserve and monitor wildlife species and their habitats with Tribal, Federal, State, and county governments, nongovernmental organizations, and local community

groups; (2) managing wildlife through forest, shrub, and grassland habitat restoration activities, including utilizing hand and mechanical treatments in conjunction with identifiable prescribed fire ignition strategies (PBF 1–3); (3) implementing landscape-level planning to support holistic ecosystem management (PBF 1–1, 1–2); (4) reestablishing interconnectivity between various habitat types across the landscape to foster wildlife movement and dispersal (PBF 2); and (5) where appropriate, managing for single/indicator species in an effort to prevent further habitat loss or degradation (PBF 1–1, 1–2, 1–3), species endangerment, and local extirpations of the species, as well as to allow for potential reintroductions.

The Karuk Tribe has also been working with the USFS and others since 2007 as a member of a multi-partner management group for the management and conservation of forested habitat in the western Klamath River region known as the Western Klamath Restoration Partnership (WKRP). The WKRP works collaboratively among all stakeholders and across all landscapes, integrating TEK and western science to achieve three goals: (1) resilient landscapes; (2) fire-adapted communities; and (3) safe and effective wildfire response. These goals will be partly accomplished by restoring the landscape through measures such as forest thinning and prescribed burns to help preclude severe, catastrophic wildfire; restore native plant communities; improve terrestrial and aquatic habitats; and provide monitoring and adaptive management.

In our October 25, 2021, proposed rule (86 FR 58831) and September 30, 2022, publication (87 FR 59384), we stated that our final designation may not include all areas proposed, may include some additional areas that meet the definition of critical habitat, or may exclude some areas if we find the benefits of exclusion outweigh the benefits of inclusion and that the exclusion will not result in the extinction of the species. Our balancing analysis for these Karuk Tribe Trust Lands, concerning whether the benefits of exclusion of these lands from the critical habitat designation outweigh the benefits of their inclusion in the designation and whether such an exclusion will result in the extinction of the coastal marten, is discussed below.

Benefits of Inclusion—Karuk Tribe Trust Lands

The principal benefit of including an area in a critical habitat designation is the requirement of Federal agencies to

ensure that actions that they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, which is one of the regulatory standards of section 7(a)(2) of the Act under which consultation is completed. Although the Karuk Tribe is not a Federal agency, the ownership of the lands in question is now held by the Secretary of the Interior in trust for the Tribe. As a result, actions requiring Federal authorization or funding on the Karuk Tribal Trust Lands require consultation under section 7 of the Act if the action may affect a listed species, and such consultation regarding an adverse effect to the species would consider whether the action is likely to jeopardize the continued existence of such species. The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. Thus, critical habitat designation may provide greater benefits to the conservation of a species than listing would alone.

We have provided the Karuk Tribe and the BIA with technical assistance on project implementation and conducted informal consultations with the Federal agencies implementing actions on Tribal lands. However, since the listing of the coastal marten as threatened in 2020, no actions determined to likely adversely affect the species and require formal section 7 consultations for the coastal marten have occurred within the areas that are now part of the Karuk Tribe Trust Lands. Because of the Karuk Tribe's practice of implementing conservation measures and management actions for the coastal marten and its habitat or designing projects that result in insignificant, discountable, or wholly beneficial effects to the DPS and its habitat, we do not anticipate a significant increase in section 7 consultations in the future, and, as a result, the regulatory benefit of critical habitat will be minimal.

Another important benefit of including lands in a critical habitat designation is that the designation can serve to inform and educate landowners and the public regarding the potential conservation value of an area, and it may help focus management efforts on areas of high value for certain species. Any information about the coastal marten that reaches a wide audience, including parties engaged in conservation activities, is valuable. However, the coastal marten was petitioned for listing in 2010, was a

candidate species beginning in 2015, was listed by the State of California as endangered in 2018 (CDFW 2019, entire), was federally listed as a threatened species under the Act in 2020 (see 85 FR 63806; October 8, 2020), and had critical habitat proposed in 2021 (see 86 FR 58831; October 25, 2021). These actions have provided numerous opportunities for public outreach and education and have ensured that the Karuk Tribe and others are fully aware of the importance of coastal marten habitat and conservation. The Karuk Tribe has been and is currently working with the Service to conserve the coastal marten and its habitat, participate in working groups, and exchange management and resource information regarding the species. In addition, because the majority of lands surrounding or adjacent to the Karuk Tribe Trust Lands will be designated as critical habitat, there will still be opportunities for us to raise public awareness of the conservation value of the area for the coastal marten. Given that the listing of the coastal marten has already informed the public about the value of these areas and helped to focus potential conservation actions, the educational benefits from including the Karuk Tribe Trust Lands in the critical habitat designation would be small.

Finally, there is the possible benefit that additional funding could be generated for habitat improvement actions in areas designated as critical habitat. Some funding sources may rank a project higher if the area is designated as critical habitat. Tribes often seek additional sources of funding in order to conduct wildlife-related conservation activities. Therefore, having an area designated as critical habitat could improve the chances of receiving section 6 or other recovery funding for coastal marten habitat-related projects. However, the occurrence of coastal martens on the Karuk Tribe Trust Lands may also promote the evaluation of projects within this area for funding, regardless of whether the lands are designated as critical habitat.

Therefore, because of the development and implementation of management plans, the Tribe's commitment to habitat conservation, the unlikelihood that a critical habitat designation would prompt more section 7 consultations than those that would occur due to the presence of breeding and dispersing coastal martens on these Tribal lands, and overall coordination with the Karuk Tribe on coastal marten-related issues, it is expected that there may be limited benefits from including the Karuk Tribe Trust Lands in a coastal marten critical habitat designation. The

principal benefit of any designated critical habitat is that federally authorized or funded activities in and affecting such habitat require consultation under section 7 of the Act. Such consultation would ensure that adequate protection is provided to avoid destruction or adverse modification of critical habitat.

Benefits of Exclusion—Karuk Tribe Trust Lands

The benefits of excluding the Karuk Tribe Trust Lands from designated critical habitat include: (1) Our deference to the Tribe and recognition of their sovereignty to develop and implement their own conservation and natural resource management plans for their lands and resources, which includes benefits to the coastal marten and its habitat that might not otherwise occur; (2) the continuance and strengthening of our effective working relationship with the Tribe to promote the conservation of the coastal marten and its habitat; and (3) the maintenance of effective partnerships with the Tribe and working in collaboration and cooperation to promote conservation of the coastal marten and its habitat, as well as conservation for other listed or sensitive species.

During the development of our October 25, 2021, proposed rule (86 FR 58831), as well as during coordination for other endangered species or land management actions, we have communicated and coordinated with the Karuk Tribe on how they might be affected by listed species regulations in general and those associated with listing and designating critical habitat for the coastal marten. As such, we have established a beneficial relationship to support the Karuk Tribe's coastal marten conservation efforts. As part of our relationship, we have provided technical assistance to the Karuk Tribe to develop measures to conserve the coastal marten and its habitat on their lands. These measures are contained within the extensive management actions developed by the Karuk Tribe. During our coordination efforts with the Karuk Tribe, we recognized and endorsed their fundamental right to provide for Tribal resource management activities, including those relating to forested habitat.

As stated above, the Karuk Tribe has developed and implemented their Eco-Cultural Resources Management Plan that benefits the coastal marten and its habitat. The Karuk Tribe has expressed that their lands, and specifically forest habitat, are connected to their cultural and religious beliefs, and, as a result, they have a strong commitment to and

reverence for their lands' stewardship and conservation and have common goals with the Service on species and habitat conservation. The management plan identifies actions to maintain, improve, and preserve forest habitat, including those physical or biological features essential to the coastal marten. We have determined that the measures identified in the Karuk Tribe's Eco-Cultural Resources Management Plan meet several factors for exclusion under our 2016 policy including the: (1) Coordination of efforts to conserve wildlife species and their habitats with Tribal, Federal, State, and county governments, nongovernmental organizations, and local community groups; (2) management of wildlife habitat restoration activities, including utilizing hand and mechanical treatments in conjunction with identifiable prescribed fire ignition strategies; (3) implementation of landscape-level planning to support holistic ecosystem management; (4) reestablishment of interconnectivity between various habitat types across the landscape to foster wildlife movement and dispersal; (5) management for single/indicator species to prevent further habitat loss or degradation, species endangerment, and local extirpations of the species, as well as to allow for potential reintroductions; and (6) implementation of a monitoring program and adaptive management components to ensure that the conservation measures are effective and can be modified in the future in response to new information. The Karuk Tribe has identified that the measures identified above would be applied to the newly acquired Karuk Tribe Trust Lands

Overall, the commitments toward management of coastal marten habitat by the Karuk Tribe likely accomplish greater conservation than would be available through the implementation of a designation of critical habitat on a project-by-project basis.

Because of the above-mentioned and established conservation efforts and coordination, the designation of critical habitat on the Karuk Tribe Trust Lands could have an adverse impact on our working relationship with the Karuk Tribe. The designation of critical habitat could be viewed as an intrusion and perceived as infringing on the Tribe's sovereign ability to manage natural resources in accordance with their own policies, customs, and laws. These perceived impacts include, but are not limited to: (1) Interfering with the sovereign and constitutional rights of the Karuk Tribe to protect and control its own resources within the Karuk

Tribe Trust Lands; and (2) undermining the positive and effective relationship between the Karuk Tribe and the Service—a relationship that serves to protect federally listed species and their habitats. The perceived restrictions of a critical habitat designation could have a damaging effect on coordination efforts, possibly preventing actions that might maintain, improve, or restore habitat for the coastal marten and other species. For these reasons, we have determined that our working relationship with the Karuk Tribe would be better maintained if we exclude the Karuk Tribe Trust Lands from the critical habitat designation for the coastal marten. We view this as a substantial benefit since we have developed a trusting cooperative working relationship with the Karuk Tribe for the mutual benefit of the coastal marten and other endangered, threatened, and at-risk species that has resulted in substantial conservation commitments by the Karuk Tribe, such as development and implementation of resource management plans and continued partnerships and coordination with the Service and others.

In addition, we anticipate that future management plans addressing conservation efforts for other listed species and their habitats may be hampered if critical habitat is designated on Karuk Tribe Trust Lands. The Tribal Trust Lands have been managed for sensitive species conservation under the WKRP and the Tribe has committed to continuing this management, and to bring these lands within its ERMP. We have determined that other Tribes are willing to work cooperatively with us and others to benefit other listed and sensitive species, but only if they view the relationship as mutually beneficial. Consequently, the development of future voluntary management actions for other listed species may be compromised if these Karuk Tribe Trust Lands are designated as critical habitat for the coastal marten. Thus a benefit of excluding these lands would be future conservation efforts that would benefit other listed or sensitive species.

Benefits of Exclusion Outweigh the Benefits of Inclusion—Karuk Tribe Trust Lands

The benefits of including the Karuk Tribe Trust Lands in the critical habitat designation for the coastal marten are limited to the incremental benefits gained through the regulatory requirement for Federal agencies (*i.e.*, BIA) to consult under section 7 and consideration of the requirement to avoid adverse modification or

destruction of critical habitat, agency and educational awareness, potential additional grant funding, and the implementation of other law and regulations. However, due to the rarity of Federal actions resulting in formal section 7 consultations, the benefits of a critical habitat designation are minimized. In addition, the benefits of consultation are further minimized because any conservation measures that may have resulted from consultation are already provided through other mechanisms, such as (1) the conservation benefits to the coastal marten and its habitat from application to and implementation of the Karuk Tribe management plans to Karuk Tribe Trust Lands; and (2) the maintenance of effective collaboration and cooperation to promote the conservation of the coastal marten and its habitat.

Because the Karuk Tribe has developed specific management plans applicable to the Karuk Tribe Trust Lands, has been involved with the critical habitat designation process, and is aware of the value of their lands for coastal marten conservation, the educational benefits of a coastal marten critical habitat designation are minimized.

Allowing the Karuk Tribe to implement its own resource conservation programs gives the Tribe the opportunity to manage their natural resources to benefit forest habitat for the coastal marten without the perception of Federal Government intrusion. This philosophy is also consistent with our published policies on Native American natural resource management. The exclusion of these areas will likely also provide additional benefits to the coastal marten and other listed species that would not otherwise be available through maintenance of a cooperative working relationship between the Service and the Karuk Tribe. The actions taken by the Tribe to manage and protect habitat needed for coastal marten and that the Tribe has committed will be applied to the Karuk Tribe Trust Lands are above those conservation measures that may be required if the area were designated as critical habitat. As a result, we have determined that the benefits of excluding the Karuk Tribe Trust Lands from critical habitat designation outweigh the benefits of including these areas in the designation.

After weighing the benefits of including the Karuk Tribe Trust Lands in the coastal marten critical habitat designation against the benefits of excluding them from the designation, we have concluded that the benefits of excluding the approximately 925 ac

(374 ha) of Karuk Tribe Trust Lands from Unit 5 (Klamath Mountains) outweigh those that would result from designating this area as critical habitat.

Exclusion Will Not Result in Extinction of the Species—Karuk Tribe Trust Lands

We have determined that exclusion of the Karuk Tribe Trust Lands from this critical habitat designation will not result in the extinction of the coastal marten. We base this determination on several points. First, the amount of critical habitat designated for the coastal marten within Unit 5 (Klamath Mountains) surrounding the trust lands is large, totaling 1,156,312 ac (467,943 ha). This remaining area is occupied and will continue to provide support to and conserve the coastal marten and its habitat. Second, for any projects having a Federal nexus and potentially affecting the coastal marten, the jeopardy standard of the Act will provide a level of assurance that the DPS will not go extinct as a result of excluding the Karuk Tribe Trust Lands from the critical habitat designation. Third, the Karuk Tribe has a long-term record of conserving species and habitat and is committed to protecting and managing coastal marten habitat according to their cultural history, management plans, and natural resource management objectives.

We have determined that this commitment accomplishes greater conservation than would be available through the implementation of a designation of critical habitat on a project-by-project basis. With the implementation of these conservation measures, which are based upon strategies developed in the Karuk Tribe's Eco-Cultural Resources Management Plan, as well as significant areas remaining as critical habitat and assurances of consultation with the Service for Federal actions that may likely adversely affect the species, we have concluded that the coastal marten will not become extinct as a result of this exclusion of Karuk Tribe Trust Lands from the critical habitat designation.

Accordingly, we have determined that the benefits of excluding the Karuk Tribe Trust Lands from the critical habitat designation outweigh the benefits of including them in the designation, and the exclusion of these lands from the designation will not result in the extinction of the species. As a result, the Secretary is excluding 925 ac (374 ha) of Karuk Tribe Trust Lands under section 4(b)(2) of the Act from the final designation of critical habitat in Unit 5 for the coastal marten.

Exclusion Analysis of Non-Harvest Land Base Lands (Oregon and California Lands (O&C Lands))

In our October 25, 2021, proposed rule (86 FR 58831), we did not include existing "harvest land base" lands (O&C lands) as critical habitat. We did include other O&C lands in Units 2, 3, 4, and 5 that are currently identified as either congressionally reserved, late-successional reserves, riparian reserve, or otherwise reserve lands. During the public comment period on the October 25, 2021, proposed rule, we received a request to exclude all O&C lands from the critical habitat designation for the coastal marten. O&C lands occur in western Oregon in a checkerboard pattern intermingled with private land across 18 counties. All O&C lands were reverted to the Federal Government under the Chamberlain-Ferris Act of 1916 (39 Stat. 218, June 9, 1916). The Oregon and California Revested Lands Sustained Yield Management Act of 1937 (O&C Act; 43 U.S.C. 2601) addresses the management of O&C lands. Most of these lands (82 percent) are administered by BLM. The remaining lands are administered by the USFS. The O&C Act identifies the primary use of revested timberlands for permanent forest production. The O&C Act provides that these lands are to be managed for permanent forest production, and the timber thereon shall be sold, cut, and removed in conformity with the principle of sustained yield for the purpose of providing a permanent source of timber supply, protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational facilities (43 U.S.C. 2601).

The counties where the O&C lands are located participate in a revenue-sharing program with the Federal Government wherein the counties receive 50 percent of the revenues based on commercial receipts (e.g., income from commercial timber harvest) generated on these Federal lands (43 U.S.C. 2605(a)).

The majority of O&C lands within the areas we proposed as critical habitat for the coastal marten occur in Unit 5 in Oregon and are managed by the BLM. No O&C lands in California or managed by the USFS are within the areas proposed as critical habitat. In 2016, BLM revised its resource management plans for western Oregon, resulting in two separate plans. These two BLM plans, the Northwestern Oregon and Coastal Oregon Record of Decision and Resource Management Plan (BLM 2016a) and the Southwestern Oregon Record of Decision and Resource

Management Plan (BLM 2016b), address all or part of six BLM districts across western Oregon, including the management of O&C lands.

Benefits of Inclusion—Non-Harvest Land Base O&C Lands

The lands included in the designation that are managed by BLM under the O&C Act as reserves and not as “harvest land base” lands total approximately 69,094 ac (27,961 ha) of land in units 2, 3, 4, and 5 in Oregon. These areas are occupied by the coastal marten, contain the physical or biological features essential to the conservation of the DPS, and are composed primarily of late-successional reserve on BLM lands. These lands provide important habitat for reproduction, connectivity, and survival for the coastal marten and provide connectivity to more northerly habitat in Oregon as well as extensive habitat farther south into northwestern California.

A significant effect of designating any particular area as critical habitat is the requirement for Federal agencies to consult with us under section 7 of the Act to ensure actions they carry out, authorize, or fund do not destroy or adversely modify designated critical habitat. Absent critical habitat designation, Federal agencies remain obligated under section 7 of the Act to consult with us on actions that may affect a federally listed species to ensure such actions do not jeopardize the species' continued existence. The critical habitat designation benefits the coastal marten and identifies areas as part of a rangewide conservation strategy and network that connects large blocks of habitat that are able to support multiple home ranges and populations of the coastal marten in the variable habitats where the DPS occurs. The non-harvest land base O&C lands and other lands included in the designation provide connectivity and habitat areas in a spatial configuration that is essential to the conservation of the coastal marten.

The critical habitat designation also identifies areas on the landscape on which are found the physical or biological features that may require special management considerations or protection. Through the critical habitat designation and the section 7 consultation process, the Service is able to work collaboratively with the BLM, and other Federal agencies to help design how timber harvest can occur in these areas while minimizing impacts to coastal marten recovery. Conserving extant, high-quality habitat and addressing the threat from severe wildfire are key management actions

that can be undertaken by the BLM and are components of the special management considerations for conserving the PBFs within the areas identified as critical habitat for the coastal marten.

Because the threat of wildfire is present throughout the range of the coastal marten, special management considerations or protection may be required in all of the critical habitat units to ensure the coastal marten has sufficient habitat available to withstand large-scale, landscape-altering wildfire events. Based on the small population size of the DPS, its limited distribution, and its relatively unknown specific habitat requirements, the protection of high-quality habitat such as that found on non-harvest land base O&C lands is extremely important. The types of management or protection that may be required to achieve these goals and maintain the physical or biological features essential to the conservation of the coastal marten in occupied areas vary across the range of the DPS. Some areas of coastal marten habitat, particularly in wetter forest types, are unlikely to be enhanced by active management activities, but instead need protection of the essential features. Other forest areas would likely benefit from more proactive forestry management, especially when considering the effects of large-scale wildfire.

The designation of non-harvest land base O&C lands as critical habitat benefits the DPS by ensuring that the impact of actions identified in the Special Management Considerations or Protection section in this rule are considered in the design and implementation of timber harvest projects and avoiding or minimizing impacts to PBFs in these areas. The additional analysis required for critical habitat in a section 7 consultation requires action agencies to evaluate the effects on the physical or biological features that are essential to the conservation of the coastal marten that provide for denning, resting, foraging, and dispersal. In our consultations, the Service evaluates how those actions affect the conservation value of a critical habitat subunit and its essential physical or biological features, and then the analysis is scaled up to evaluate those effects at the critical habitat unit scale and the critical habitat designation as a whole. Evaluating habitat at multiple scales in consultations on timber harvest actions in designated critical habitat ensures the landscape continues to support the habitat network locally, regionally, and rangewide.

Another benefit of including lands in a critical habitat designation is that it generally serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. Identifying areas of high conservation value for the coastal marten can help focus and promote conservation efforts by other parties. Any additional information about the needs of the coastal marten or its habitat that reaches a wider audience can be of benefit to future conservation efforts. There is a benefit to communicating to the public and land managers that habitat found on O&C lands is essential to the conservation of the coastal marten. We work closely with the BLM in our coordinated section 7 consultation processes, and we have a keen understanding of the agency's missions and mandates. Our local biologists meet regularly to discuss upcoming and ongoing Federal projects and their effects to both listed species and their critical habitats, and to address any concerns about the section 7 consultation process. Additionally, we meet regularly with local and regional forest managers to advise and coordinate management and conservation of forested lands. This process and partnership, established under the NWFP (USFS and BLM 1994, entire), has been effective for many years. We conclude that this collaborative approach, which includes reviewing projects and discussing how they may affect the physical and biological features of critical habitat for the coastal marten, is a substantial benefit of including these lands in the critical habitat designation.

Benefits of Exclusion—Non-Harvest Land Base O&C Lands

There would be benefits realized by excluding all non-harvest land base O&C lands managed by the BLM from critical habitat. Executive Order 12866 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Excluding non-harvest land base O&C lands from the coastal marten critical habitat designation would reduce the burden of additional section 7 consultation beyond any requirements to consult because the DPS occurs on these lands. However, that burden reduction would be minor, as it would only reduce the administrative costs associated with conducting an adverse modification analysis.

Our economic analysis for the proposed designation found that there would be some additional administrative costs associated with the designation of critical habitat. These costs would be associated with the determination by the Federal agency of whether an action they conduct, fund, or authorize would adversely modify or destroy critical habitat. However, the economic analysis of the proposed critical habitat found the incremental effects of the designation to be relatively small due to the extensive conservation measures already in place for the DPS because of its listed status under the Act and because of the measures provided under the NWFP (USFS and BLM 1994, entire), BLM resource management plans for western Oregon (BLM 2016a, entire; BLM 2016b, entire), and those measures identified for other listed species such as the northern spotted owl and marbled murrelet (IEc 2021, p. 2).

In addition, we find value in consulting programmatically and at the project level under section 7 of the Act on Federal projects on O&C lands outside of those lands allocated by BLM to the harvest land base. The benefits derived in these section 7 consultations include avoiding or minimizing impacts to the PBFs and providing an opportunity to evaluate the effects those timber harvest projects have on the functionality of the overall critical habitat designation. The consultations allow the Service to evaluate the effects on the functionality of the critical habitat network and ensure that functionality is not significantly impaired. We find that focusing our consultation and administrative capacity on section 7 consultations in the O&C lands outside of the BLM's harvest land base lands is a priority given that the majority of this area is designated as late-successional reserve and riparian reserve and contributes to conservation of habitat for the coastal marten. Additionally, as stated above, the O&C lands outside of the BLM harvest land base allocation provide areas of higher quality habitat that coastal martens prefer for denning, resting, and foraging behavior and lower quality habitat that coastal martens use for dispersal. Therefore, the benefits of excluding the O&C lands outside of the

BLM harvest land base from this critical habitat designation are reduced.

Benefits of Inclusion Outweigh the Benefits of Exclusion—Non-Harvest Base O&C Lands

When weighing the benefits of inclusion and the benefits of exclusion of areas, the Secretary has broad discretion as to what factors to consider as benefits of inclusion and benefits of exclusion, and what weight to assign to each factor. We have determined that the benefits of including non-harvest land base O&C lands in units 2, 3, 4, and 5 in this critical habitat designation outweigh the benefits of excluding them because the habitat on these lands are of a high conservation value for the coastal marten and exclusion of these areas would most likely reduce the current management efforts being implemented to maintain the physical or biological features necessary to develop, maintain, and protect habitat essential to coastal marten conservation. These efforts, therefore, serve to manage and protect habitat needed for the coastal marten. In making this finding, we have weighed the benefits of excluding these lands from the critical habitat designation against the benefits of including these lands in the designation. We acknowledge that many counties depend on timber harvest production; however, our economic analysis (IEc 2021, entire) did not identify significant economic impacts due to the designation itself. The disruptions noted by the commenters in Federal timber production are caused by a range of factors, including the listing of species, timber sale design factors unrelated to listed species, market conditions, and a number of other factors that are not attributable to critical habitat designation.

Even assuming the high end of the economic impacts identified in our economic analysis, ultimately, we give greater weight to the conservation value of the O&C lands outside of the BLM harvest land base than to the potential economic benefits of excluding these lands from the designation, for several reasons. First, these areas are of significant conservation value to the coastal marten given the geographical location and the essential habitat features they provide for the DPS. Second, the section 7 consultation

requirements (*i.e.*, the USFS and BLM must consult with the Service on proposed impacts to designated critical habitat from Federal projects) that will apply to the O&C lands outside of the BLM's harvest land base/USFS matrix lands provide for meaningful coordination between the Service and the agencies regarding actions they are proposing and the needs of the coastal marten, which, in turn, provides a conservation benefit to the DPS in Oregon and California. The benefits derived in these section 7 consultations include avoiding or minimizing impacts to the PBFs and providing an opportunity to evaluate the effects those projects have on the functionality of the overall critical habitat designation. In sum, we find that the benefits of including the areas of O&C lands outside of BLM's harvest land base (*i.e.*, non-harvest land base lands) in this critical habitat designation outweigh the benefits of excluding them from the designation. As a result, we are not excluding the O&C lands outside of BLM's harvest land base (*i.e.*, non-harvest land base lands) as allocated under the 2016 RMPs from this final designation.

Because we are not excluding the O&C lands outside of BLM's harvest land base (*i.e.*, non-harvest land base lands) from this final designation, we are not required to conduct an extinction analysis for any exclusion.

Summary of Exclusions

As discussed above, based on the information provided to us by entities seeking exclusion, as well as additional public comments and other information we received, we evaluated whether certain lands in the proposed critical habitat designation were appropriate for exclusion from this final designation pursuant to section 4(b)(2) of the Act. We are excluding the following areas from Unit 5 of the critical habitat designation for the coastal marten: (1) areas in California owned and managed by the GDRC; (2) areas owned or managed by the Yurok Tribe; (3) areas identified by the Yurok Tribe as reservation boundary adjustment lands; and (4) lands held in trust for the Karuk Tribe as part of recent legislation. Table 2, below, presents a summary of these exclusions.

TABLE 2—AREAS EXCLUDED FROM CRITICAL HABITAT DESIGNATION IN UNIT 5
[Klamath Mountains]

Unit	Specific area	Areas meeting the definition of critical habitat	Areas excluded from critical habitat	Final critical habitat in Unit 5
Unit 5: OR—CA—5 Klamath Mountains.	Green Diamond Resource Company lands ... Yurok Tribe-owned or -managed lands. Yurok Tribe Reservation boundary adjustment lands (USFS-owned). Karuk Tribe trust lands.	1,289,627 ac (521,913 ha).	49,010 ac (19,834 ha) 64,979 ac (26,296 ha). 25,791 ac (10,437 ha). 925 ac (374 ha).	1,156,312 ac (467,943 ha)*.

* Unit total represents exclusions plus any minor adjustments based on habitat features or land designations.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866, 13563, and 14094)

Executive Order 14094 reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with E.O. 12866, E.O. 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Executive Order 12866, as reaffirmed by E.O. 13563 and E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will

not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term “significant economic impact” is meant to apply to a typical small business firm’s business operations.

Under the RFA, as amended, as understood in light of recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the

Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies will be directly regulated by this designation. The RFA does not require evaluation of the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities will be directly regulated by this rulemaking, we certify that this critical habitat designation will not have a significant economic impact on a substantial number of small entities.

During the development of this final rule, we reviewed and evaluated all information submitted during the two comment periods on October 25, 2021, proposed rule (86 FR 58831), and the September 30, 2022, document that describes revisions to and reopened the comment period on the October 25, 2021, proposed rule (87 FR 59384) that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. Based on this information, we affirm our certification that this critical habitat designation will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use— *Executive Order 13211*

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare statements of energy effects “to the extent permitted by law” when undertaking actions identified as significant energy actions (66 FR 28355;

May 22, 2001). E.O. 13211 defines a “significant energy action” as an action that (i) is a significant regulatory action under E.O. 12866 or E.O. 14094 (88 FR 21879; Apr. 11, 2023)); and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy. This rule is not a significant regulatory action under E.O. 12866 or 14094. We are currently unaware of and do not expect any planned activities to occur in the areas identified as critical habitat for the coastal marten that would significantly affect energy supply, distribution, or use. In our economic analysis, we did not find that this critical habitat designation will significantly affect energy supplies, distribution, or use. The economic costs of the critical habitat designation for the coastal marten are likely to be minor and primarily limited to administrative efforts that consider adverse modification during consultation. Therefore, this action is not a significant energy action, and no statement of energy effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.), we make the following finding:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both “Federal intergovernmental mandates” and “Federal private sector mandates.” These terms are defined in 2 U.S.C. 658(5)–(7). “Federal intergovernmental mandate” includes a regulation that “would impose an enforceable duty upon State, local, or Tribal governments” with two exceptions. It excludes “a condition of Federal assistance.” It also excludes “a duty arising from participation in a voluntary Federal program,” unless the regulation “relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,” if the provision would “increase the stringency of conditions of assistance” or “place caps upon, or otherwise decrease, the Federal Government’s responsibility to provide funding,” and the State, local, or Tribal governments “lack authority” to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational

Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. “Federal private sector mandate” includes a regulation that “would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.”

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions are not likely to destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments because it will not produce a Federal mandate of \$100 million or greater in any year; that is, it is not a “significant regulatory action” under the Unfunded Mandates Reform Act. The economic analysis concludes that the majority of incremental impacts would most likely occur as a result of Federal agency actions and primarily limited to administrative efforts that consider adverse modification during consultation. Therefore, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the coastal marten in a takings implications assessment. The Act does not authorize us to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any

closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed and concludes that this designation of critical habitat for the coastal marten does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this critical habitat designation with, appropriate State resource agencies. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, this final rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary for the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist State and local governments in long-range planning because they no longer have to wait for case-by-case section 7 consultations to occur.

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) of the Act will be required. While non-Federal entities

that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, this rule identifies the physical or biological features essential to the conservation of the species. The designated areas of critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) is not required. 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 (42 U.S.C. 4321 et seq.)

Regulations adopted pursuant to section 4(a) of the Act are exempt from the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.) and do not require an environmental analysis under NEPA. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This includes listing, delisting, and reclassification rules, as well as critical habitat designations and species-specific protective regulations promulgated concurrently with a decision to list or reclassify a species as threatened. The courts have upheld this position (e.g., *Douglas County v.*

Babbitt, 48 F.3d 1495 (9th Cir. 1995) (critical habitat); *Center for Biological Diversity v. U.S. Fish and Wildlife Service*, 2005 WL 2000928 (N.D. Cal. Aug. 19, 2005) (concurrent 4(d) rule)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951, May 4, 1994), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), the President's memorandum of November 30, 2022 (Uniform Standards for Tribal Consultation; 87 FR 74479, December 5, 2022), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes and Alaska Native Corporations (ANCs) on a government-to-government basis. In accordance with Secretary's Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes.

In our development of the proposed critical habitat designation and again after our proposed rule published, we reached out to all federally recognized Tribes in southern Oregon and northern California including the Yurok and Karuk Tribes, and provided them with information on our processes for designating critical habitat and met with them to discuss the management of lands under their control, their concerns, and their request for potential exclusion of lands under section 4(b)(2) of the Act. As a result of our coordination with the Yurok Tribe, we developed a MOU regarding their activities and conservation of coastal marten habitat. We used the MOU as part of our rationale for excluding Yurok Tribe-owned or managed Lands under section 4(b)(2) of the Act, and we are excluding the lands identified by the Yurok Tribe, including Yurok Tribe Reservation Boundary Adjustment Lands from this final designation. We also excluded lands recently transferred

from the USFS to be held in trust by the Secretary of the Interior for the benefit of the Karuk Tribe (for more information, see *Tribal Lands* under Consideration of Impacts under Section 4(b)(2) of the Act, above).

References Cited

A complete list of references cited in this rulemaking is available on the internet at <https://www.regulations.gov> and upon request from the Arcata Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this final rule are the staff members of the Fish and Wildlife Service's Species Assessment Team, the Arcata Fish and Wildlife Office in California, and the Service's Roseburg Field Office in Oregon.

List of Subjects in 50 CFR Part 17

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

Signing Authority

Martha Williams, Director of the U.S. Fish and Wildlife Service, approved this action on April 3, 2024, for publication. On May 17, 2024, Martha Williams authorized the undersigned to sign the document electronically and submit it to the Office of the Federal Register for publication as an official document of the U.S. Fish and Wildlife Service.

Regulation Promulgation

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

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

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

■ 2. In § 17.11, in paragraph (h), amend the List of Endangered and Threatened Wildlife by revising the entry for “Marten, Pacific [Coastal DPS]” under MAMMALS to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *
(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
Mammals				
*	*	*	*	*
Marten, Pacific [Coastal DPS].	<i>Martes caurina</i>	U.S.A. (CA (north-western), OR (south-western)).	T	85 FR 63806, 10/8/2020; 50 CFR 17.40(s); ^{4d} 50 CFR 17.95(a). ^{CH}
*	*	*	*	*

■ 3. In § 17.95, amend paragraph (a) by adding an entry for “Pacific Marten (*Martes caurina*), Coastal Distinct Population Segment (DPS)” after the entry for “Florida Manatee (*Trichechus manatus*)” to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

(a) *Mammals.*

* * * * *

Pacific Marten (*Martes caurina*), Coastal Distinct Population Segment (DPS)

(1) Critical habitat units are depicted for California and Oregon on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of Coastal DPS of the Pacific marten consist of the following components:

(i) Habitat that supports a coastal marten home range by providing for breeding, denning, resting, or foraging. This habitat provides cover and shelter to facilitate thermoregulation and reduce predation risk, provides foraging sources for coastal marten prey, and provides structures that provide resting and denning sites. For cover and support denning, resting, and foraging, coastal martens require a dense forest overstory, dense understory development, and biologically complex structure that contains snags, logs, other decay elements, or other structures. Stands meeting the conditions for this physical or biological feature would also function as meeting the physical or biological feature described in paragraph (2)(ii) of this entry. Stands meeting the condition for this physical or biological feature contain each of the following three components:

(A) *Mature, conifer-dominated forest overstory.* Overstory canopy cover provides protection to coastal martens from aerial and terrestrial predators, as well as shelter from physical elements such as sun or storms. It also is the general source of structural features that coastal martens use for denning and resting, and provides suitable coastal marten prey. Suitable overstory conditions vary depending on the productivity of the site as follows:

(1) For areas with relatively low productivity (e.g., areas where growing conditions are harsher, such as serpentine sites or coastal shore pine forests, compared to other areas), suitable forest overstory conditions are highly variable. They may contain a sparse conifer overstory, such as in some serpentine areas, or a dense conifer overstory composed mainly of trees smaller than the typical older forest conditions described in paragraph (2)(i)(A)(2) of this entry (e.g., the dense shore pine overstory found in areas occupied by coastal marten along the Oregon coast) as well as those resting and denning structures necessary that are as of yet undescribed for some populations.

(2) For other areas with higher productivity, coastal martens tend to favor forest stands in the old-growth or late-mature seral stages. The specific forest composition and structure conditions found in higher productivity areas will vary by plant series and site class. Structural and composition descriptions of old-growth or late-mature seral stages for local plant community series should be used where available. In general, these stands exhibit high levels of canopy cover and structural diversity in the form of:

- (i) A wide range of tree sizes, including trees with large diameter and height;
- (ii) Deep, dense tree canopies with multiple canopy layers and irregular tree crowns;
- (iii) High numbers of snags, including large-diameter snags; and
- (iv) Abundant downed wood, including large logs, ideally in a variety of decay stages.

(B) *Dense, spatially extensive shrub layer.* The shrub layer should be greater than 70 percent of the area, comprising mainly shade-tolerant, long-lived, mast-producing species (primarily ericaceous species such as salal, huckleberry, or rhododendron, as well as shrub oaks). An extensive layer of dense shrubs provides protection and cover from coastal marten predators. In addition, ericaceous and mast-producing shrubs provide forage for coastal marten prey.

(C) *Stands with structural features.* Structural features that support denning or resting, such as large downed trees, rock piles with interstitial spaces, and large snags or live trees with decay elements or suitable resting structures (e.g., hollows and cavities, forked or broken tops, dead tops, brooms from mistletoe or other tree pathogens, or large platforms including abandoned nests). These features provide cover and thermal protection for kits and denning females, and for all animals when they are resting between foraging bouts. Hence, these features need to be distributed throughout a coastal marten’s home range. They also tend to be among the largest structures in the stand. Many of these features, such as downed trees and snags or live trees with decayed elements, also support coastal marten prey.

(ii) Habitat that allows for movement within home ranges among stands that meet the conditions of the physical or biological feature described in paragraph (2)(i) of this entry or that supports individuals dispersing between home ranges. Habitat with this physical or biological feature includes:

(A) Stands that meet all three conditions of the physical or biological feature described in paragraph (2)(i) of this entry;

(B) Forest stands that meet only the conditions of paragraphs (2)(i)(A) and (B) of this entry; or

(C) Habitats with lesser amounts of shrub, canopy, or forest cover, or lesser amounts of smaller structural features as described in paragraph (2)(i) of this entry, and while not meeting all of the conditions of the physical or biological feature described in paragraph (2)(i) of this entry, still provide forage and cover from predators that allow a coastal marten to traverse the landscape to areas of higher quality habitat.

(3) Critical habitat does not include humanmade structures (such as buildings, aqueducts, runways, roads, and other paved or hardened areas as a result of development) and the land on which they are located existing within the legal boundaries on June 28, 2024. Due to the scale on which the critical

habitat boundaries are developed, some areas within the legal boundaries may not contain the physical or biological features and, therefore, are not considered critical habitat.

(4) Data layers defining map units were created using ArcGIS Pro 2.5.2 (Environmental Systems Research Institute, Inc. (ESRI)), a Geographic Information Systems (GIS) program. ESRI base maps of world topographic, world imagery, and the program's world imagery U.S. Geological Survey (USGS)

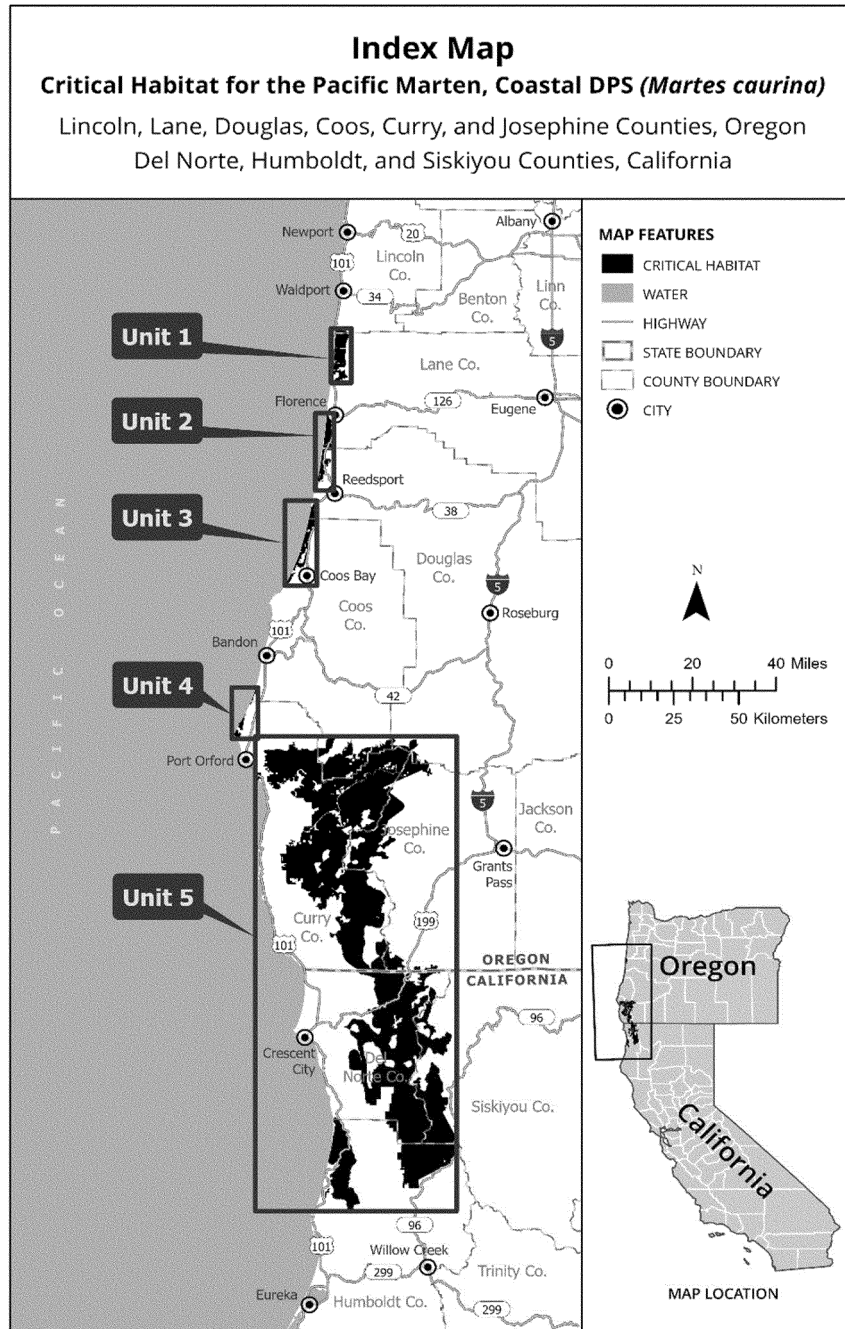
Imagery were used. Critical habitat units were then mapped using North American Datum (NAD) 1983, Albers. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's Arcata Fish and Wildlife Office's internet site at <https://www.fws.gov/office/arcata-fish-and-wildlife>

wildlife, or on <https://www.regulations.gov> at Docket No. FWS-R8-ES-2020-0151. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Index map of critical habitat follows:

Figure 1 to Pacific Marten (*Martes caurina*), Coastal DPS paragraph (5)

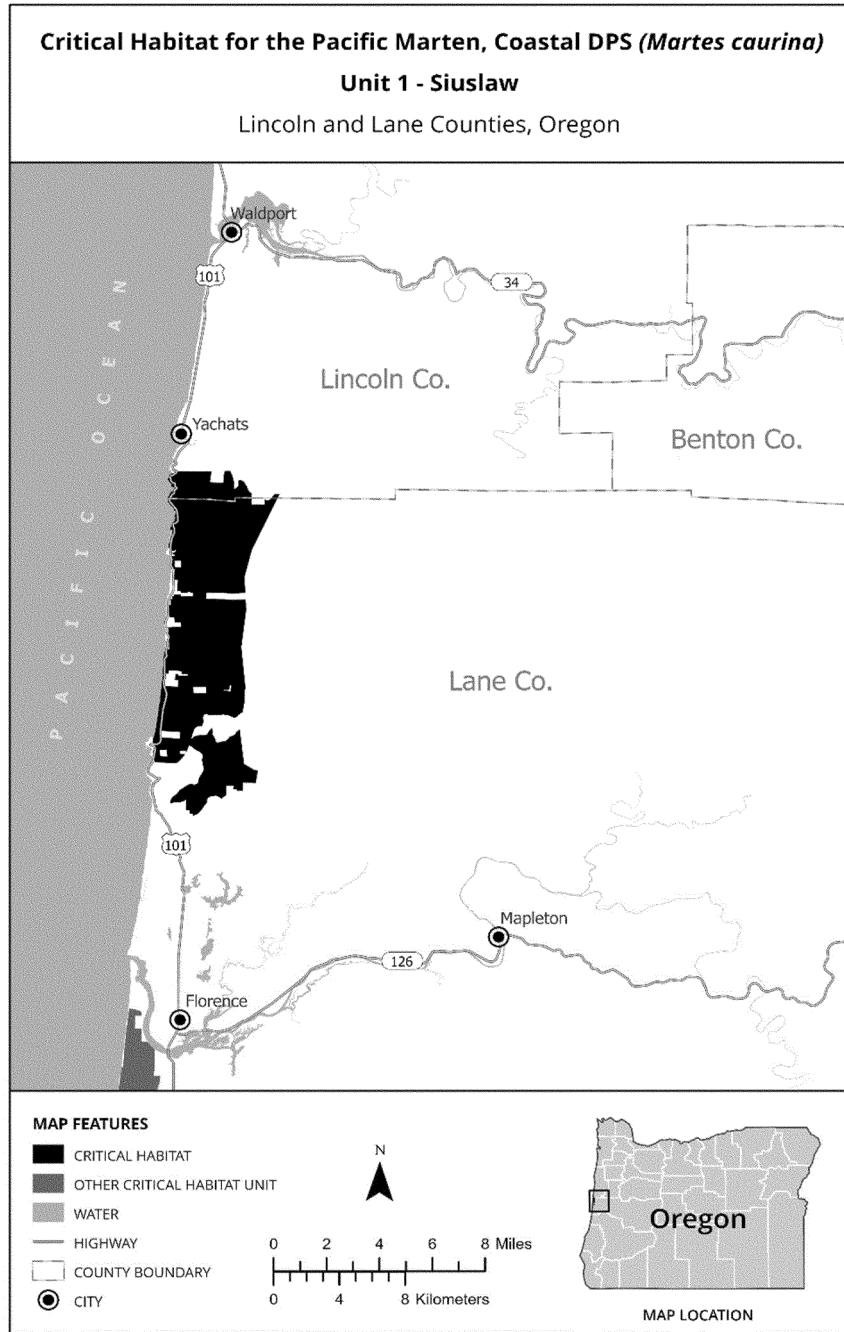
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(6) Unit 1: Siuslaw Unit; Lincoln and Lane Counties, Oregon.
 (i) Unit 1 consists of 22,135 acres (ac) (8,958 hectares (ha)) and is composed of

Federal (20,092 ac (8,131 ha)) and State (2,043 ac (827 ha)) lands.
 (ii) Map of Unit 1 follows:

Figure 2 to Pacific Marten (*Martes caurina*), Coastal DPS paragraph (6)(ii)

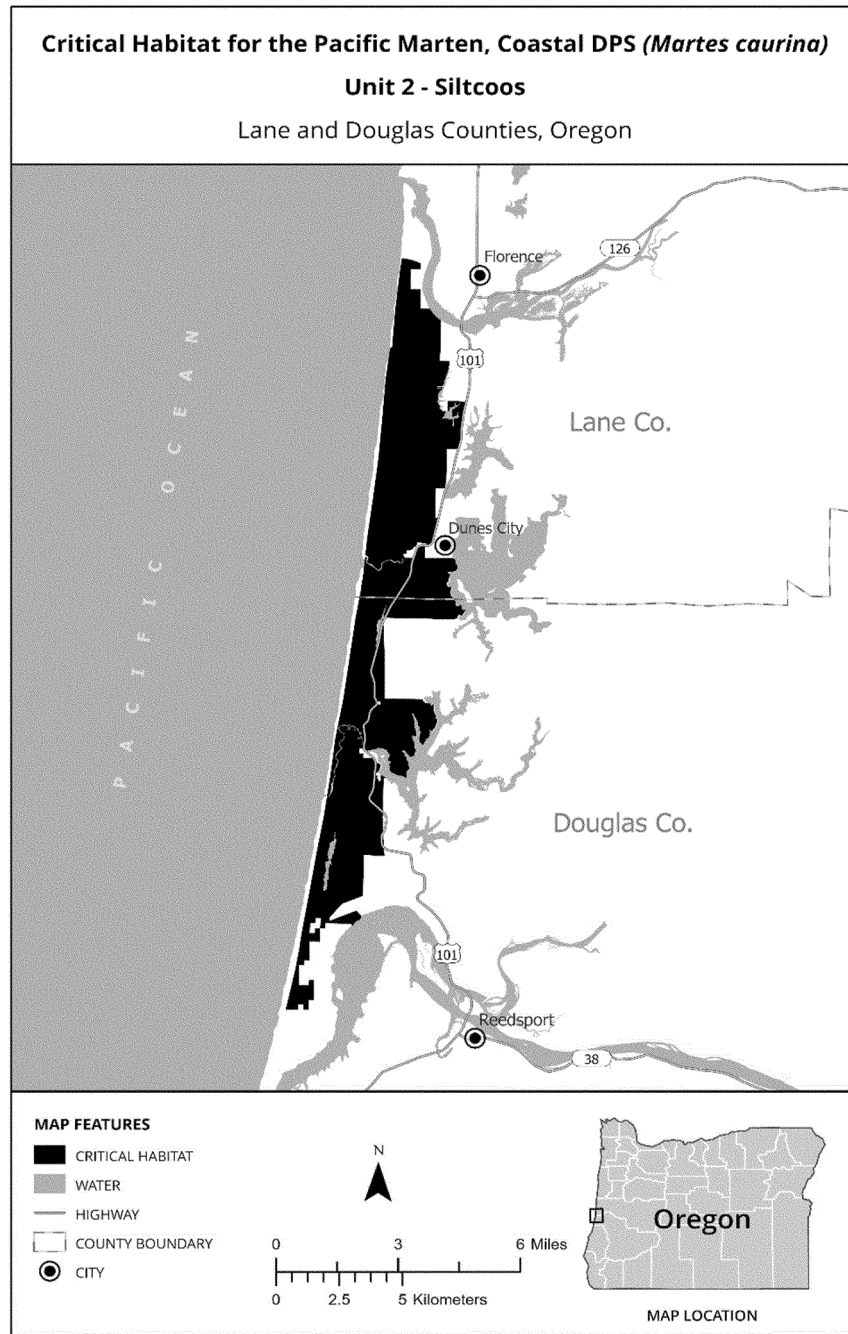


(7) Unit 2: Siltcoos Unit; Lane and Douglas Counties, Oregon.

(i) Unit 2 consists of 15,859 ac (6,418 ha) and is composed of Federal (15,610

ac (6,317 ha)) and State (249 ac (101 ha)) lands.
 (ii) Map of Unit 2 follows:

Figure 3 to Pacific Marten (*Martes caurina*), Coastal DPS paragraph (7)(ii)



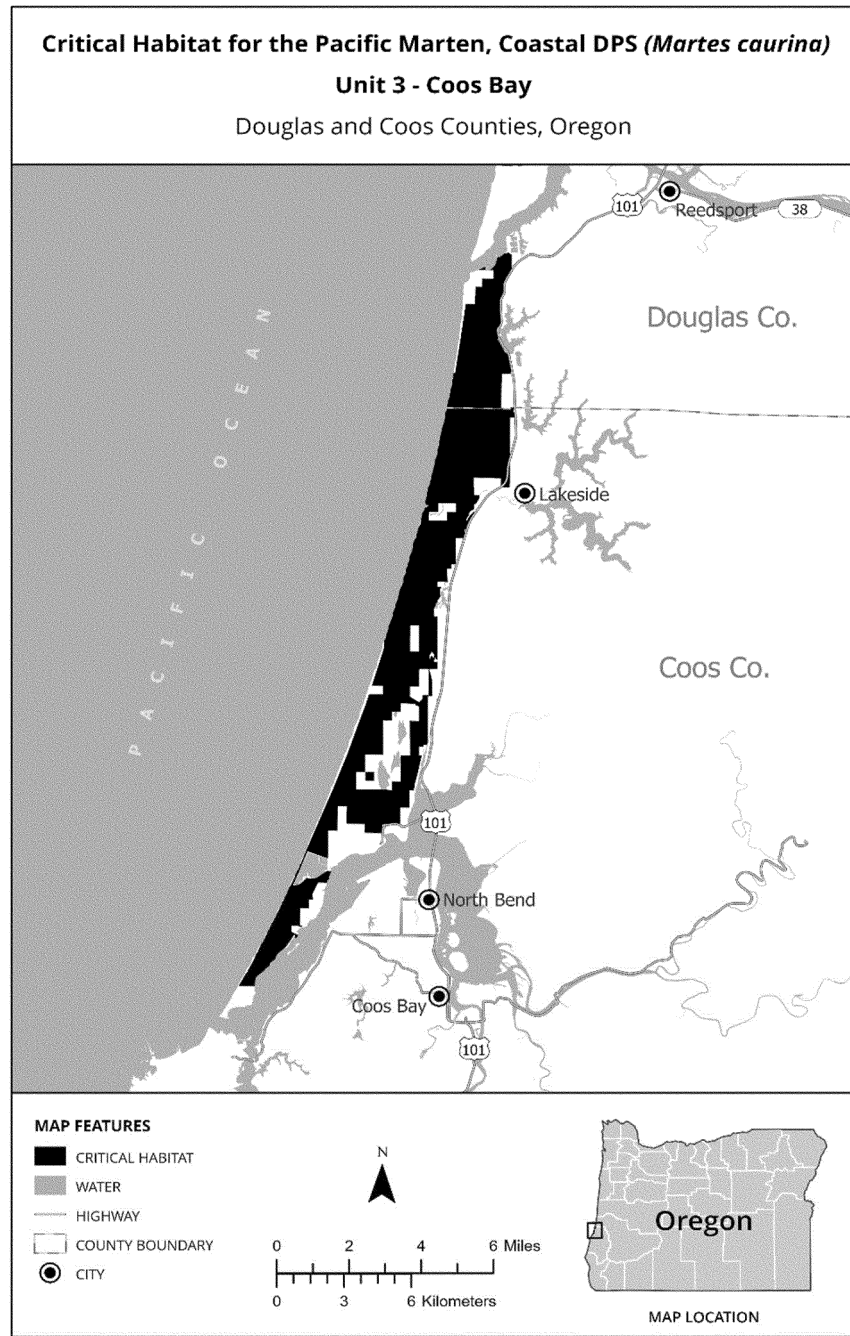
(8) Unit 3: Coos Bay Unit; Douglas and Coos Counties, Oregon.

(i) Unit 3 consists of 15,402 ac (6,233 ha) and is composed of Federal (14,806

ac (5,992 ha)) and State (595 ac (241 ha)) lands.

(ii) Map of Unit 3 follows:

Figure 4 to Pacific Marten (*Martes caurina*), Coastal DPS paragraph (8)(ii)



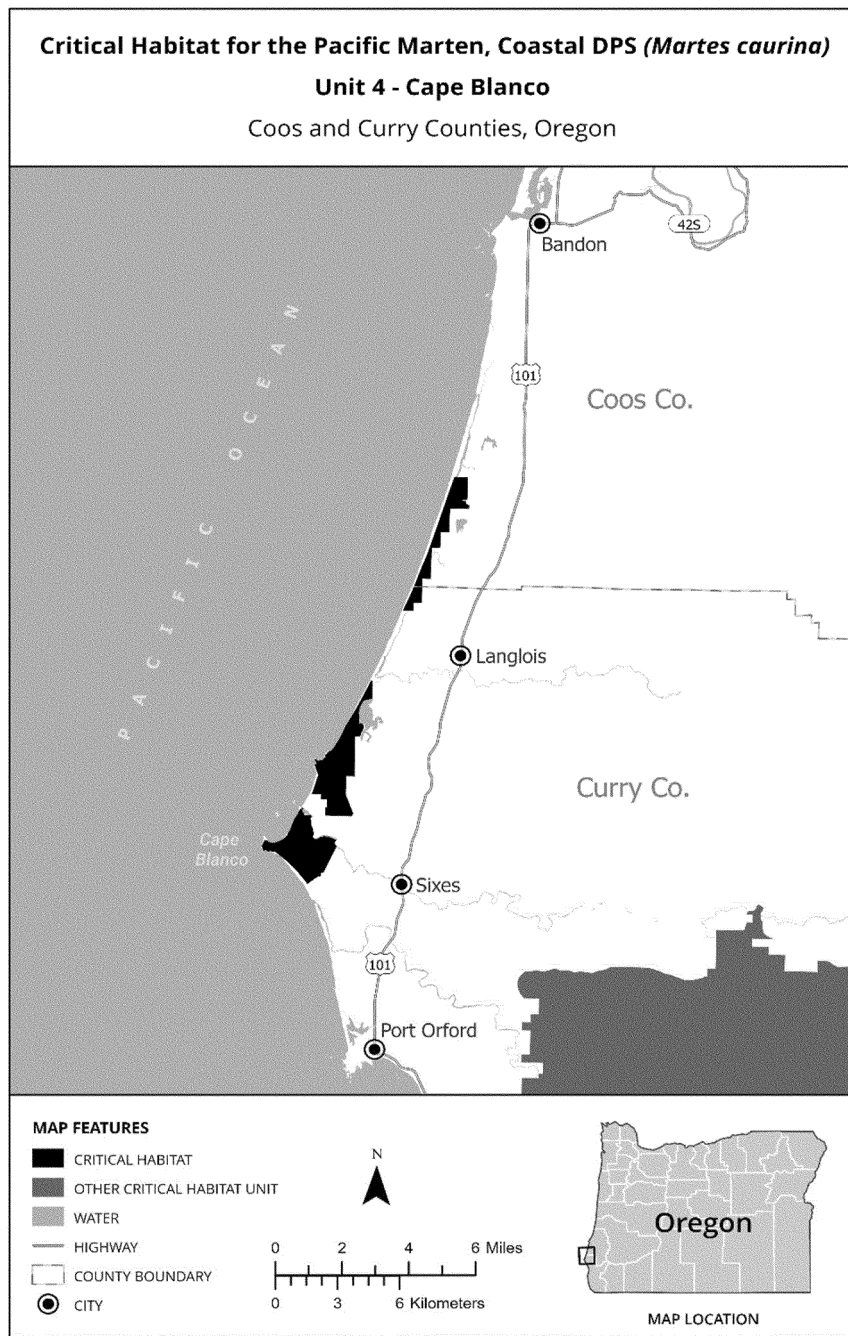
(9) Unit 4: Cape Blanco Unit; Coos and Curry Counties, Oregon.

(i) Unit 4 consists of 4,044 ac (1,636 ha) and is composed of Federal (1,019

ac (412 ha)) and State (3,025 ac (1,224 ha)) lands.

(ii) Map of Unit 4 follows:

Figure 5 to Pacific Marten (*Martes caurina*), Coastal DPS paragraph (9)(ii)



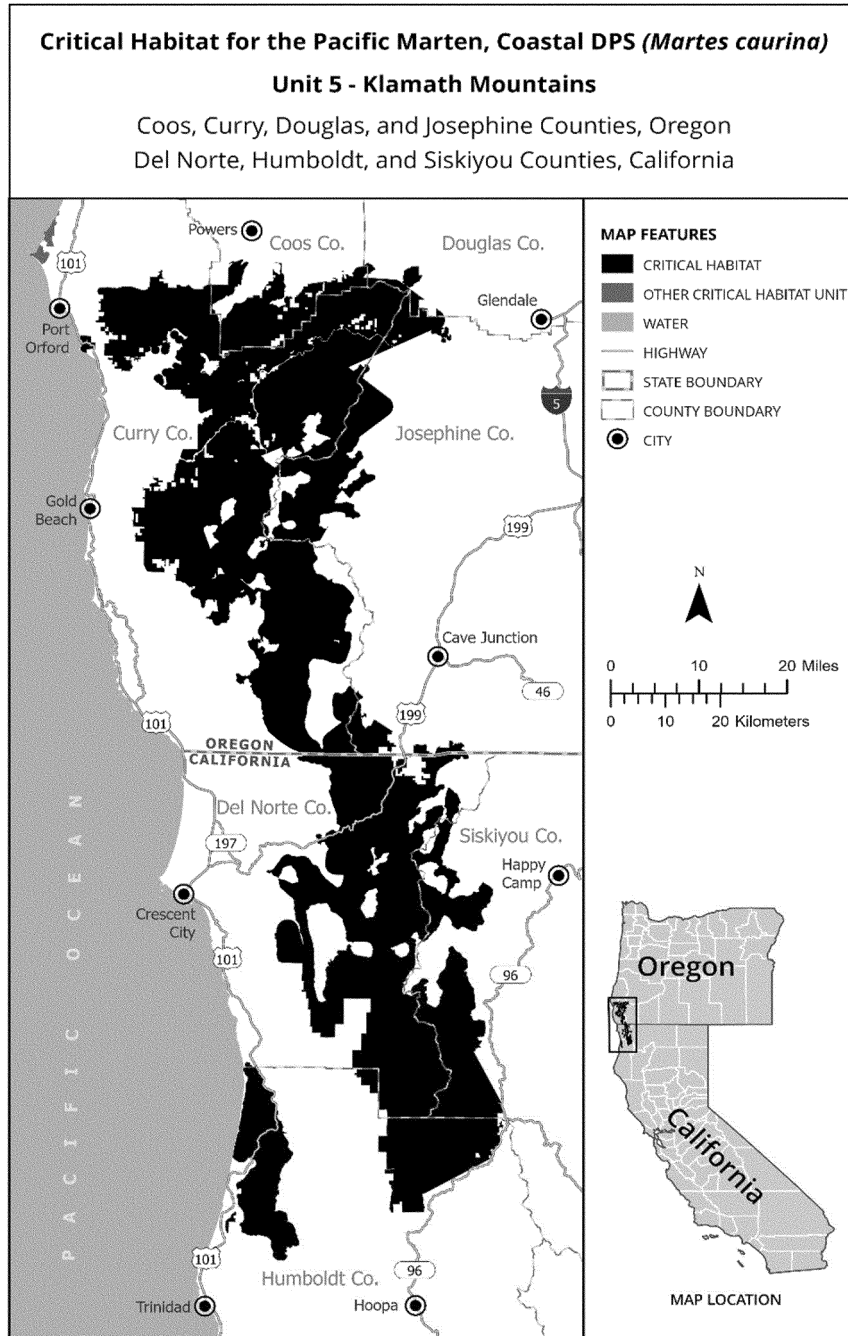
(10) Unit 5: Klamath Mountains Unit; Coos, Curry, Douglas, and Josephine

Humboldt, and Siskiyou Counties, California.

(i) Unit 5 consists of 1,156,312 ac (467,943 ha) and is composed of Federal (1,125,492 ac (455,471 ha)), State (17,812 ac (7,208 ha)), and private or undefined (13,008 ac (5,264 ha)) lands.

(ii) Map of Unit 5 follows:

Figure 6 to Pacific Marten (*Martes caurina*), Coastal DPS paragraph (10)(ii)



* * * * *

Madonna Baucum,
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[FR Doc. 2024-11254 Filed 5-28-24; 8:45 am]

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