280.43 Methods of release detection for tanks.
280.44 Methods of release detection for piping.
280.45 Release detection recordkeeping.
280.50 Reporting of suspected releases.
280.51 Investigation due to off-site impacts.
280.52 Release investigation and confirmation steps.
280.53 Reporting and cleanup of spills and overfills.
280.60 General.
280.61 Initial response.
280.62 Initial abatement measures and site check.
280.63 Initial site characterization.
280.64 Free product removal.
280.65 Investigations for soil and groundwater cleanup.
280.66 Corrective action plan.
280.70 Temporary closure.
280.71 Permanent closure and changes-in-service.
280.72 Assessing the site at closure or change-in-service.
280.73 Applicability to previously closed UST systems.
280.74 Closure records.
280.90 Applicability.
280.91 Compliance dates.
280.92 Definition of terms.
280.93 Amount and scope of required financial responsibility.
280.94 Allowable mechanisms and combinations of mechanisms.
280.95 Financial test of self-assurance.
280.96 Guarantee.
280.97 Insurance and risk retention group coverage.
280.98 Surety Bond.
280.99 Letter of credit.
280.100 Use of state-required mechanism [Reserved].
280.101 State fund or other state assurance, except (b) through (e).
280.102 Trust Fund.
280.103 Standby trust fund.
280.104 Local government bond rating test.
280.105 Local government financial test.
280.106 Local government guarantee.
280.107 Local government fund.
280.108 Substitution of financial assurance mechanisms by owner or operator.
280.109 Cancellation or non-renewal by a provider of financial assurance.
280.110 Reporting by owner or operator.
280.111 Recordkeeping.
280.112 Drawing on financial assurance mechanisms.
280.113 Release from the requirements.
280.114 Bankruptcy or other incapacity of owner or operator or provider of financial assurance.
280.115 Replenishment of guarantees, letters of credit, or surety bonds.
280.116 Suspension of enforcement [Reserved].
280.200 Definitions.
280.210 Participation in management.
280.220 Ownership of an underground storage tank or underground storage tank system or facility or property on which an underground storage tank or underground storage tank system is located.
280.230 Operating an underground storage tank or underground storage tank system.
280.240 General requirement for all UST systems, except (b).
280.241 Designation of Class A, B, and C operators.
280.242 Requirements for operator training.
280.243 Timing of operator training.
280.244 Retraining.
280.245 Documentation.
280.250 Definitions.
280.251 General Requirements.
280.252 Additions, exceptions, and alternatives for UST systems with field-constructed tanks and airport hydrant systems.

(C) Copies of the South Carolina statutes and regulations that are incorporated by reference are available from the South Carolina State Register, 223 Blatt Building, 1105 Pendleton Street, Columbia, South Carolina 29201; Phone number: (803) 212–4500; website: *https://www.scstatehouse.gov/.*

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2018–0033; FXES111300000900000 178 FF09E42000]

RIN 1018–BC65

Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of the California Condor in the Pacific Northwest

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service or USFWS), are establishing a nonessential experimental population (NEP) of the California condor (*Gymnogyps californianus*) in the Pacific Northwest, under section 10(j) of the Endangered Species Act of 1973, as amended (Act). Establishment of this NEP will facilitate reintroduction of California condors to the region and provide for allowable legal incidental taking of the California condor within a defined NEP area. The geographic boundaries of the NEP include northern California, northwest Nevada, and Oregon. The best available data indicate that reintroduction of the California condor into the Pacific Northwest is biologically feasible and will promote the conservation of the species.

DATES: This final rule is effective April 23, 2021.

ADDRESSES: This final rule is available on *http://www.regulations.gov* at Docket No. FWS–R1–ES–2018–0033 and on our website at *https://ecos.fws.gov/ecp0/profile/speciesProfile?spcode=B002.* Comments and materials we received, as well as supporting documentation we used in preparing this rule, are also available for public inspection at *http://www.regulations.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1–800–877–8339.

FOR FURTHER INFORMATION CONTACT: Jesse D'Elia, Pacific Regional Office, U.S. Fish and Wildlife Service, Ecological Services, 911 NE 11th Ave., Portland, OR 97232; telephone 503–231–6131. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Endangered Species Act, a population of a threatened or endangered species may be designated as an experimental population prior to its reintroduction. Experimental populations can only be designated by issuing a rule.

What this document does. This rule will designate California condors *(Gymnogyps californianus)* reintroduced to the Pacific Northwest as a nonessential experimental population on the List of Endangered and Threatened Wildlife in title 50 of the Code of Federal Regulations at 50 CFR 17.11(h) with a rule issued under section 10(j) of the Act (hereafter referred to as a ''10(j) rule'') at 50 CFR 17.84.

The basis for our action. Based on the best scientific and commercial data available (in accordance with 50 CFR 17.81), we find that releasing the California condors into the Pacific Northwest, with the regulatory provisions in this final rulemaking, will further the conservation of the species. The nonessential experimental population status is appropriate for the reintroduced population because we have determined that it is not essential to the continued existence of the species in the wild.

In making our finding that this action will further the conservation of the species, we evaluate any possible adverse effects on extant California condor populations, the likelihood that any such experimental population will become established and survive in the foreseeable future, the relative effects that establishment of an experimental

population will have on the recovery of the species, and the extent to which the reintroduced population may be affected by existing or anticipated Federal or State actions or private activities within or adjacent to the experimental population area. This rule also identifies the boundaries of the experimental population, explains our rationale for why the population is not essential to the continued existence of the species in the wild, describes management restrictions, protective measures, or other special management concerns of that population, and explains a process for periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species. In June 2016, a Memorandum of Understanding (MOU) was finalized to assess the potential to recover California condors in the Pacific Northwest and to work to seek funding to support that effort if it proved feasible. The MOU currently has 16 signatories.

Peer review and public comment. We sought comments from three objective and independent specialists (and received two responses) to ensure that our findings are based on scientifically sound data, assumptions, and analyses. As directed by the Service's Peer Review Policy dated July 1, 1994 (59 FR 34270) and a recent memo updating the peer review policy for listing and recovery actions (August 22, 2016), we invited these peer reviewers to comment on our proposal. We also considered all comments and information received during the public comment period. All comments received during the peer review process and the public comment period have either been incorporated throughout this rule or addressed below in Summary of Comments and Recommendations.

Background

On April 5, 2019, we published in the **Federal Register** a proposed rule to establish a nonessential experimental population of the California condor in the Pacific Northwest (84 FR 13587). The comment period on the proposed rule was open for 60 days, through June 4, 2019. Comments on the proposed rule are addressed below under Summary of Comments and Recommendations.

Statutory and Regulatory Framework

The 1982 amendments to the Endangered Species Act of 1973 (ESA or Act; 16 U.S.C. 1531 *et seq.*) included the addition of section 10(j), which allows for the designation of reintroduced populations of listed species as ''experimental populations.'' Under section 10(j) of the Act and our regulations in title 50 of the Code of Federal Regulations (at 50 CFR 17.81), the Service may designate as an experimental population a population of endangered or threatened species that has been or will be released into suitable natural habitat outside the species' current natural range (but within its probable historic range, absent a finding by the Director of the Service in the extreme case that the primary habitat of the species has been unsuitably and irreversibly altered or destroyed).

Before authorizing the release as an experimental population (including eggs, propagules, or individuals) of an endangered or threatened species, and before authorizing any necessary transportation to conduct the release, the Service must find by regulation that such release will further the conservation of the species. 50 CFR 17.81(b). In making such a finding the Service uses the best scientific and commercial data available to consider:

(1) Any possible adverse effects on extant populations of a species as a result of removal of individuals, eggs, or propagules for introduction elsewhere (see Donor Stock Assessment and Effects on Donor Population, below);

(2) The likelihood that any such experimental population will become established and survive in the foreseeable future (see Likelihood of Population Establishment and Survival and Addressing Causes of Extirpation, below);

(3) The relative effects that establishment of an experimental population will have on the recovery of the species (see Relationship of NEP to Recovery Efforts, below); and

(4) The extent to which the introduced population may be affected by existing or anticipated Federal or State actions or private activities within or adjacent to the experimental population area (see Likelihood of Population Establishment and Survival, below; National Park Service (NPS) 2018, entire).

Further, as set forth in 50 CFR 17.81(c), all regulations designating experimental populations under section 10(j) must provide:

(1) Appropriate means to identify the experimental population, including, but not limited to, its actual or proposed location, actual or anticipated migration, number of specimens released or to be released, and other criteria appropriate to identify the experimental population(s) (see Location and Boundaries of the NEP, below);

(2) A finding, based solely on the best scientific and commercial data available, and the supporting factual basis, on whether the experimental population is, or is not, essential to the continued existence of the species in the wild (see Is the Experimental Population Essential or Nonessential?, below);

(3) Management restrictions, protective measures, or other special management concerns of that population, which may include but are not limited to, measures to isolate and/or contain the experimental population designated in the regulation from natural populations (see Management, below); and

(4) A process for periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species (see Monitoring and Evaluation, below).

Under 50 CFR 17.81(d), the Service must consult with appropriate State fish and wildlife agencies, local governmental entities, affected Federal agencies, and affected private landowners in developing and implementing experimental population rules. To the maximum extent practicable, 10(j) rules represent an agreement between the FWS, the affected State and Federal agencies, and persons holding any interest in land that may be affected by the establishment of an experimental population.

Under 50 CFR 17.81(f), the Secretary may designate critical habitat as defined in section 3(5)(A) of the Act for an essential experimental population. No designation of critical habitat will be made for nonessential populations. In those situations where a portion or all of an essential experimental population overlaps with a natural population of the species during certain periods of the year, no critical habitat will be designated for the area of overlap unless implemented as a revision to critical habitat of the natural population for reasons unrelated to the overlap itself.

Any population determined by the Secretary to be an experimental population will be treated as if it were listed as a threatened species for purposes of establishing protective regulations with respect to that population. The protective regulations adopted for an experimental population will contain applicable prohibitions, as appropriate, and exceptions for that population. 50 CFR 17.82.

Any experimental population designated for a listed species (1) determined not to be essential to the survival of that species and (2) not occurring within the National Park

System or the National Wildlife Refuge System will be treated for purposes of section 7 (other than paragraph (a)(1) thereof) as a species proposed to be listed under the Act as a threatened species. 50 CFR 17.83(a).

Any experimental population designated for a listed species that either (1) has been determined to be essential to the survival of that species or (2) occurs within the National Park System or the National Wildlife Refuge System as now or hereafter constituted will be treated for purposes of section 7 of the Act as a threatened species. Notwithstanding the foregoing, any biological opinion prepared pursuant to section 7(b) of the Act and any agency determination made pursuant to section 7(a) of the Act will consider any experimental and nonexperimental populations to constitute a single listed species for the purposes of conducting the analyses under such sections. 50 CFR 17.83(b).

Legal Status

We listed the California condor as an endangered species under the Endangered Species Preservation Act of 1966 (ESPA) on March 11, 1967 (32 FR 4001, March 11, 1967). This list was later codified in part 17 of title 50 in the U.S. Code of Federal Regulations (35 FR 16048, October 13, 1970). With the passage of the Endangered Species Act of 1973 (ESA), those species previously listed in the Code of Federal Regulations were directly incorporated into the Lists of Endangered and Threatened Wildlife and Plants under the ESA, found at 50 CFR 17.11 and 17.12. In October 1996, we designated a nonessential experimental population of the California condor in portions of northern Arizona, southern Utah, and southern Nevada (61 FR 54044, October 16, 1996). Therefore, the California condor is currently listed as an endangered species wherever it is found, except in portions of northern Arizona, southern Utah, and southern Nevada, where it is considered a nonessential experimental population.

The California condor is protected by the State of California under both the State Endangered Species Act and the California Fish and Game Code as a Fully Protected species. It is also listed as a Sensitive Species under California Forest Practice Rules. In September of 2018, the State of California passed legislation that allows the California Department of Fish and Wildlife (CDFW) to consider the content of any final rules under section 10(j) of the Federal Endangered Species Act for the California condor. This legislation (AB2640) allows the Director of the CDFW to evaluate the final rule, and exempt take associated with the rule if the Director finds the Service's final rule would further the conservation of the species.

If we are compelled, through court order or other means, to change the California condor's NEP status to essential, threatened, or endangered, FWS would meet with the parties to the 2016 MOU to discuss options on how to proceed, including the option of attempting to capture and relocate all condors in the wild within the NEP. We would make a fact-specific assessment of how to proceed based on the information at that time, including whether there was general agreement from the MOU partners that the condors should remain in the wild. Changes in the legal status and/or removal of this population of California condors will be made in compliance with any applicable Federal rulemaking and other procedures.

Biological Information

Species Description

The California condor is one of seven New World vultures in the Cathartidae family and the only extant species in the genus *Gymnogyps* (Amadon 1977, pp. 413–414; Johnson et al. 2016, pp. 193, 197). It is the largest of the North American vultures and the largest soaring land bird on the continent with a wingspan of approximately 9.5 feet (ft) (2.9 meters (m)) (Koford 1953, p. 3; Finkelstein et al. 2015, Introduction, Appearance). Males weigh slightly more than females (average weight of 19.4 pounds (lb) (8.8 kilograms (kg)) for males and 17.9 lb (8.1 kg) for females) and have slightly higher wing loading, but otherwise there are no obvious differences in coloration or morphology between the sexes (Finkelstein et al. 2015, Appearance). California condors exhibit age-related coloration changes (Koford 1953, p. 5; Snyder and Snyder 2000, pp. 14–19). Adults have black feathers except for prominent white underwing linings and edges of the upper secondary coverts. The head and neck of adults are mostly naked and range in color from yellowish to reddish orange on the head to gray, yellow, orange, and red on the neck (Koford 1953, pp. 4–5). The heads of juveniles up to 3 years old are grayish-black, and their wing linings are variously mottled or completely dark (Koford 1953, p. 5; Snyder and Snyder 2000, pp. 14–19). During the third year, the head develops yellow coloration, and the dark juvenile underwing linings are gradually replaced with white adult feathers (Snyder and Snyder 2000, pp. 15, 17). By the time individuals are 5 or 6 years of age, they are essentially indistinguishable from adults, but full development of the adult wing patterns may not be completed until 7 or 8 years of age (Snyder and Snyder 2000, pp. 15, 17; Finkelstein et al. 2015, Appearance).

As obligate scavengers (*i.e.,* relying entirely on dead animals for food), California condors have a number of physical and physiological adaptations that accommodate their highly specialized diet, including: (1) Large size, which is important for maintaining low-energy soaring flight, and enduring long periods without food; (2) excellent eyesight, which helps condors efficiently find food; (3) hooked bills and long necks, which allow condors to access muscle tissue deep within a carcass and to rip pieces of meat from a carcass; and (4) resistance to bacterial toxins, which is necessary for species that rely on carcasses (Snyder and Snyder 2005, pp. 7–31).

Historical Range

During the Pleistocene Epoch, the California condor was broadly distributed in North America from southern British Columbia to Baja California, and eastward throughout the southern United States and northern Mexico to Florida (Koford 1953, p. 7; Brodkorb 1964, pp. 253–254; Messing 1986, pp. 284–285; Steadman and Miller 1987, p. 423; Snyder and Snyder 2005, p. 6; D'Elia and Haig 2013, p. 17). The extent of its distribution along the east coast of North America during the late Pleistocene also extended to the boreal forests of upstate New York (Steadman and Miller 1987, pp. 416–423). The disappearance of the California condor from its prehistoric range in North America east of the Rocky Mountains occurred about 10,000–11,000 years ago coinciding with the late-Pleistocene extinction of the North American megafauna (Emslie 1987, pp. 768–770; Steadman and Miller 1987, pp. 422–425). Analysis of stable isotopes in bone collagen suggests that the California condor's persistence along the Pacific coast at the end of the Pleistocene was at least partially due to the availability of marine-derived carrion (Chamberlain et al. 2005, p. 16710; Fox-Dobbs et al. 2006, p. 688).

Historical observations of California condors indicate that they were widespread and locally abundant from southern British Columbia, Canada, to Baja California, Mexico, during Euro-American colonization (Koford 1953, pp. 8–19; Wilbur 1978, pp. 13, 72–85; Snyder and Snyder 2005, pp. 4–5; D'Elia and Haig 2013, pp. 38–59). At that time they were apparently restricted to the

area west of the Rocky Mountains, with most observations occurring from the Cascade Mountains and Sierra Nevada to the coast (Snyder and Snyder 2000, p. 12; D'Elia and Haig 2013, pp. 38–59). California condor population declines and range contractions were concurrent with Euro-American settlement of the West, with condors disappearing from the Pacific Northwest in the early 1900s (D'Elia and Haig 2013, pp. 58–59), and from Baja California by the end of the 1930s (Wilbur and Kiff 1980, entire). By the middle of the 20th century, the species was reduced to about 150 individuals limited to the mountains of southern California (Snyder and Snyder 2000, pp. 81–82), and at the time we formally classified them as an endangered species in 1967, the population had further declined to an estimated 60 condors (Snyder and Snyder 2000, pp. 82–83). Most probable causes of their historical decline include: (1) Secondary poisoning from predator removal campaigns, (2) direct persecution, and (3) lead poisoning from spent ammunition that fragmented in animals condors later fed upon (D'Elia and Haig 2013, pp. 77–122).

Captive Breeding, Reintroduction Efforts, and Current Range

Due to concerns over the few remaining California condors and the population's continued downward trend, beginning in 1983, we took all condor eggs from the wild to the San Diego Wild Animal Park and Los Angeles Zoo for artificial incubation to form a captive flock (Snyder and Hamber 1985, p. 378; Snyder and Snyder 2000, pp. 278–293). By taking all wild eggs and inducing multiple clutches and annual nesting, the productivity of the population was increased several-fold, allowing the captive population to grow rapidly (Snyder and Hamber 1985, p. 378). However, with the sudden loss of several wild California condors in 1984 and 1985, it became necessary for us to capture the remaining wild individuals to ensure the genetic viability of the species and enhance the chances of the captive-breeding program's success (Snyder and Snyder 2000, pp. 298–304). By 1987, the California condor existed only in captivity, having suffered a severe population bottleneck and loss of genetic diversity (Ralls and Ballou 2004, p. 225; D'Elia et al. 2016, pp. 707–708). Thus, the conservation of the species was dependent upon captive breeding and releases back into the wild.

We first released captive-reared California condors in 1992 in southern California, but because of behavioral problems exhibited by these individuals we returned them all to captivity in early 1995 (Snyder and Snyder 2000, pp. 344–345). We reinitiated releases of captive-reared and formerly wild California condors in southern California in 1995, and additional release sites were established in northern Arizona in 1996, central California near Big Sur in 1997, Sierra de San Pedro Mártir in Baja California, Mexico, in 2002, Pinnacles National Park (formerly Pinnacles National Monument) in 2003, and in the mountains near San Simeon, California, in 2015. Currently, these release sites comprise four general release areas (central California, southern California, Baja California, and Arizona/Utah) in three condor populations (a population in central and southern California—where individuals from each release area occasionally intermingle—and independent populations in northern Arizona/southern Utah and Baja California). The California condor is currently absent from the northern portion of its historical range and remains reliant on the release of captive-bred individuals for population growth (USFWS 2013, p. 14).

As of December 2019, there were 337 California condors in the wild, divided among the four release areas: Central and southern California (200 condors); northern Arizona and southern Utah (98 condors); and the Sierra de San Pedro Mártir release site in Baja California (39 condors) (USFWS 2019a, p. 1). There were also 181 California condors in captivity (USFWS 2019a, p. 1) distributed among release sites, zoos, and four captive-breeding facilities in the United States. Breeding facilities include the Peregrine Fund's World Center for Birds of Prey, the Oregon Zoo's Jonsson Center for Wildlife Conservation, the Los Angeles Zoo, and the San Diego Zoo's Safari Park.

Despite population growth, the total number of wild California condors is still relatively small and the species requires intensive management for survival, including: (1) Monitoring a large proportion of condors in the wild to track resource use, identify behavioral problems, and detect mortalities; (2) biannual trapping for health screening, to test blood samples for lead, inoculate for West Nile virus, and to attach or replace wing tags and transmitters; (3) taking injured or poisoned condors back into captivity temporarily to administer treatment; and (4) nest observations and interventions to maximize productivity in the wild (Walters et al. 2010, pp. 972, 976, 982–984; USFWS 2017, pp. 5–19).

Habitat Use and Movement Ecology

Along with our conservation partners, we have reintroduced California condors to a variety of habitats, including coastal mountains, old-growth forests, desert cliffs, and temperate montane shrublands and grasslands. Within these habitats they can have enormous home ranges (Meretsky and Snyder 1992, p. 321; Hunt et al. 2007, pp. 84–87; Romo et al. 2012, pp. 43–47; Rivers et al. 2014a, pp. 496–498) and often use different portions of their range for nesting and foraging (Meretsky and Snyder 1992, p. 329; Snyder and Snyder 2000, pp. 140–147; D'Elia et al. 2015, p. 96). Estimates of home range size varied among release sites (95 percent confidence intervals for southern California: 173,295–282,760 acres (ac) (70,130–114,429 hectares (ha)); Pinnacles National Park: 86,825–174,266 ac (35,137–70,523 ha); and Big Sur: 42,613–90,495 ac (17,245–36,622 ha)), probably as a result of geography, food availability (Rivers et al. 2014a, pp. 496–497, 500), years since the release program started, and flock size (Bakker et al. 2017, p. 100).

Nesting habitat is generally characterized by steep, rugged terrain (Wilbur 1978, p. 7; Snyder and Snyder 2000, p. 18; D'Elia et al. 2015, pp. 94–95). Within these areas, nests have been documented in various types of rock formations including crevices, overhung ledges, potholes, and in cavities or broken tops of giant sequoia (*Sequoia giganteus*) (Snyder et al. 1986, pp. 235–236) or coast redwood (*Sequoia sempervirens*) trees (Burnett et al. 2013, pp. 478–479). Breeding adults segregate themselves into nesting territories, rarely crossing into the nesting territories of other California condors (Finkelstein et al. 2015, Behavior). California condors will generally use the same nesting territory in successive years as long as pairs remain intact, but will often switch nesting sites within that territory, regardless of whether they fail or succeed in their nesting efforts (Snyder et al. 1986, p. 236).

California condors roost communally along rocky outcrops, steep canyons, and in tall trees or snags near foraging grounds, water sources, and nests (Koford 1953, pp. 35–36; Snyder and Snyder 2000, p. 167). California condors select roosts that offer winds or thermals favorable for soaring flight (Poessel et al. 2018, pp. 48–50), good peripheral visibility, where there is a long unobstructed space for taking off downhill and for approaching the roost in flight, and areas where there is some protection from high winds (Koford 1953, pp. 35–36). There may be trade-

offs for condors between these factors and selecting roosts that provide protection from predators (Poessel et al. 2018, pp. 48–50). While at a roost, condors devote considerable time to preening, sunning, and other maintenance activities (Snyder and Snyder 2000, p. 24).

California condors are obligate scavengers and obligate soaring birds, making them reliant on the availability of sufficient food resources and upward air movement (Ruxton and Houston 2004, p. 434, Poessel et al. 2018, pp. 36–37). Foraging habitats generally have high landscape productivity, moderate to steep slopes, sparse vegetation, and updrafts necessary to keep California condors aloft (Rivers et al. 2014b, pp. 7–9; D'Elia et al. 2015, p. 96). In coastal areas condors show strong selection for beaches, likely because of the relative abundance of marine mammal carcasses (Rivers et al. 2014b, p. 8). A feature of carrion is that dead animals are highly dispersed and ephemeral (Ruxton and Houston 2004, p. 433). This exclusive food resource has resulted in evolutionary pressure for condors to be large, obligate soaring birds that forage socially (Ruxton and Houston 2004, p. 433). Social foraging means the population is particularly susceptible to contaminated food resources, as a contaminated carcass can poison a large number of individuals in a single feeding (Green et al. 2004, pp. 796–800; Green et al. 2008, pp. 6–9; Finkelstein et al. 2012, p. 11453; D'Elia and Haig 2013, p. 87).

As birds with a large wingspan that use soaring and gliding flight, California condors can move long distances while expending minimal energy (see Pennycuick 1969, pp. 542–545; Ruxton and Houston 2004, p. 435; Horvitz et al. 2014, pp. 676–678). Examples of exceptional flight distances include: California condor movements between the central and southern California flocks—a distance of approximately 150 miles (mi) (241 kilometers (km)) (*e.g.,* USFWS 2017, pp. 20–21); a condor released at Pinnacles National Park flying to the southern Sierra Nevada and back—a one-way distance of approximately 249 mi (400 km) (USFWS, unpublished data); a condor released in the Sierra de San Pedro Mártir in Baja California, Mexico, traveling north to San Diego County, a distance of approximately 140 mi (225 km) (Romo et al. 2012, p. 44); and observations of condors released in northern Arizona traveling to southern Wyoming, Colorado, and New Mexico, at distances of approximately 340 mi (547 km), 400 mi (643 km), and 325 mi (523 km), respectively. In addition, GPS telemetry data are now revealing that California condors in southern California are beginning to regularly travel 93–124 mi (150–200 km) away from core use areas (USFWS unpublished data). As the populations continue to grow, the number of long-distance flights is likely to increase.

To date, nests have been concentrated in a relatively limited area around release sites when compared to exceptional flight distances. The farthest nest documented from release sites in each release area is approximately 47 mi (76 km) in central California, 57 mi (92 km) in southern California, 62 mi (100 km) in Arizona/Utah, and 15 mi (24 km) in Baja California. We expect that as flock size grows the population will continue to expand and nest sites will eventually be located farther from release sites.

Seasonal shifts in movements to foraging grounds occur with changes in food availability, and perhaps as a result of social factors (*e.g.,* traditional movements) (Meretsky and Snyder 1992, p. 328; Snyder and Snyder 2000, pp. 145–147; Hunt et al. 2007, pp. 85–87). There are also seasonal changes in home range, with larger home ranges in late summer and fall compared to late fall and early winter (Rivers et al. 2014a, pp. 497, 499).

Life Cycle

Breeding California condors form pairs in late fall or early winter and visit various potential nest sites within their nesting territory in January and February (Finkelstein et al. 2015, Breeding). Once pairs are formed they tend to stay together year-round for multiple years until one member of the pair dies (Snyder and Snyder 2000, p. 19). However, the death of one member of a pair can trigger a chain reaction with multiple pairs switching mates. This situation can occur because each California condor that loses its mate represents a potentially more desirable mate to individuals of lower rank in the social hierarchy of the flock. Breeding California condors lay a single egg between late January and early April (Finkelstein et al. 2015, Breeding). The egg is incubated by both parents and hatches after approximately 53–60 days (Snyder and Snyder 2000, p. 19). California condor pairs that lose their egg early in the breeding season (February through mid-April) will generally lay a replacement egg (Snyder and Hamber 1985, p. 377). When a replacement egg is lost, it has occasionally been followed by a third egg (Finkelstein et al. 2015, Breeding).

Both parents share responsibilities for feeding the nestling (Snyder and Snyder 2000, p. 19). Feeding, via regurgitation, usually occurs daily for the first 2 months, then gradually diminishes in frequency (Snyder and Snyder 2000, p. 197). As early as 6 weeks after hatching, California condor chicks leave the nest cavity but remain in the vicinity of the nest where they are fed by their parents (Snyder and Snyder 2000, p. 201). The chick takes its first flight at about 5.5 to 6 months of age but does not become fully independent of its parents until the following year (Snyder and Snyder 2000, pp. 201–202). Parents occasionally continue to feed a fledgling even after it has begun to make longer flights to foraging grounds (Koford 1953, p. 103; Snyder and Snyder 2000, pp. 202–203).

Because of the long period of parental care, it was formerly assumed that successful California condor pairs normally nested every other year (Koford 1953, pp. 22–23). However, this pattern can vary, depending mostly on the time of year that the nestling fledges. If a nestling fledges relatively early (in late summer or early fall), its parents can nest again in the following year, but late fledging may inhibit nesting in the following year (Snyder and Hamber 1985, pp. 377–378; Snyder and Snyder 2000, p. 19).

Once independent, juvenile California condors often associate with one another on the foraging grounds and join adults and other juveniles at communal roosts (Finkelstein et al. 2015, Breeding). In a study of the remnant wild population in southern California (1982–1987), Meretsky and Snyder (1992, pp. 324–325; 329–330) found that California condors in their first 2 years after fledging were generally limited to natal nest areas and adjacent foraging areas. Older juveniles would forage more widely, but it was not until age 4 or 5 that condors visited virtually all foraging and nesting areas within a given population. However, more recent data from the reintroduced populations show that fledglings under 1 year of age can be fully integrated into the flock, foraging hundreds of miles from natal or release areas and by 2 years of age some individuals have demonstrated the ability to cover the flock's entire range (USFWS, unpublished data). This difference between the remnant wild population in the 1980s and the current population is likely a product of the larger size of the current population, and the larger number of older California condors that are available to serve as mentors to recently fledged condors.

Demography and Threats

California condors are long-lived birds. In captivity, they can live more than 50 years. Average age of first breeding is 8 years and 6 months for females and 9 years and 10 months for males (Mace 2017, pp. 240, 243). The oldest known breeding female was 38 years old (Mace 2017, p. 239).

Slow maturation and low reproductive rates in California condors mean that low mortality rates are necessary for populations to be stable or to grow (Mertz 1971, p. 448; Verner 1978, pp. 19–21; Meretsky et al. 2000, pp. 960–961). Demographic models indicate that annual adult mortality rates certainly must average <10 percent annually to achieve stable or increasing populations (Verner 1978, pp. 19–21; Meretsky et al. 2000, p. 961), and likely need to be <5 percent (Meretsky et al. 2000, p. 961; Cade 2007, p. 2129; Woods et al. 2007, p. 65; Walters et al. 2010, p. 974). Estimates of mortality rates in the first decade of the release program in California and Arizona—when individuals treated for lead poisoning were considered mortalities—were between 17–35 percent, greatly exceeding the mortality rates needed for a self-sustaining stable population (Meretsky et al. 2000, p. 963). Currently, populations in the wild are only viable as a result of augmentation through ongoing captive-breeding and release efforts, in concert with intensive monitoring and management to reduce mortality (Green et al. 2008; Finkelstein et al. 2012, p. 11452; USFWS 2013, pp. 27–30).

The primary threat to the viability of the California condor is lead poisoning from spent ammunition left in gut-piles or carcasses of animals that condors feed upon (Meretsky et al. 2000, p. 963; Church et al. 2006, p. 6148; Cade 2007, entire; Woods et al. 2007, pp. 73–75; Green et al. 2008, p. 9; Walters et al. 2010, pp. 993–994; Finkelstein et al. 2012, pp. 11452–11453; Rideout et al. 2012, pp. 108–109; Kelly et al. 2015, pp. 395–398; Bakker et al. 2017, pp. 101–103). Without intensive management of the impacts from this threat, which includes periodic trapping for health exams, monitoring blood lead levels, and treatment if necessary, the wild populations would trend toward extinction (Woods et al. 2007, p. 65; Green et al. 2008, pp. 8–9; Walters et al. 2010, pp. 993–994; Finkelstein et al. 2012, pp. 11452–11453). In the absence of this threat, California condor populations would likely grow and become self-sustaining, without the need for intensive management (Woods et al. 2007, p. 65; Green et al. 2008, p. 9; Finkelstein et al. 2012, pp. 11452–11453).

Several laws and voluntary programs to reduce the threat from lead ammunition have been enacted. The State of California instituted a restriction on the use of lead ammunition for hunting within the range of the California condor in southern and central California in July 2008 (Ridley-Tree Condor Preservation Act 2008, entire). The geographic and regulatory scope of this restriction was expanded with Assembly Bill 711 (AB711) that was signed into law in October 2013. AB711 amended section 3004.5 of the California Fish and Game Code, relating to hunting. The law, which restricts the use of lead ammunition for taking wildlife, has been phased in; the final phase, which went into effect in July 2019, enacted a State-wide ban of lead ammunition for all take of wildlife. Nevada also has a regulation mandating the use of nontoxic shot on all Nevada Wildlife Management Areas (NAC 503.183). In addition to these laws and regulations, voluntary lead-reduction programs are in place in California, Oregon, Nevada, Arizona, and Utah. While these voluntary programs vary by State, actions under these programs have included: (1) Surveys to understand attitudes toward lead reduction; (2) outreach to hunters at sportsman shows, hunter education classes, and in the field; (3) coordination with hunter constituency groups; and (4) targeted vouchers for free non-lead ammunition (Sieg et al. 2009, pp. 344–345; Chase and Rabe 2015, pp. 2–3; AGFD 2017, web page, UDWR 2017, web page, ODFW 2017, web page; *Huntingwithnonlead.org* 2017, web page; *nonleadpartnership.org*, web page).

Other threats to California condors include: Rangeland conversion, wind energy development, collision with and electrocution from powerlines, predation, disease, inadequacy of existing regulatory mechanisms, shooting, microtrash ingestion, pesticides, and habituation to humans. A full description of these threats, and efforts to abate them, are provided in our most recent status review for the California condor (USFWS 2013, entire).

Relationship of NEP to Recovery Efforts

We published a California condor recovery plan in 1974 (USFWS 1975, entire), and revised the plan in 1980 (USFWS 1980, entire), 1984 (USFWS 1984, entire), and 1996 (USFWS 1996, entire). To date, recovery efforts have focused on reintroduction and recovery in the southern portion of the species' historical range (see *Captive Breeding and Reintroduction Efforts,* above). Recovery criteria for removing the California condor from the endangered species list were not provided in the 1996 revision to the recovery plan, as its primary focus was keeping the species from going extinct. At the time the 1996 revised recovery plan was written, there were only 17 California condors in the wild (USFWS 1996, p. 9) and we could not anticipate at that time all actions that would be necessary for full recovery. We recently clarified why it remains impracticable to incorporate delisting criteria for the California condor in the recovery plan (USFWS 2019b). The overall strategy for recovery outlined in the 1996 recovery plan was to focus on: (1) Increasing reproduction in captivity to provide condors for release, (2) the release of condors to the wild, (3) minimizing condor mortality rates, (4) maintaining habitat for condor recovery, and (5) implementing condor information and education programs (USFWS 1996, p. 21). While the recovery plan did not have delisting criteria, it included as criteria for reclassifying (or downlisting) to a threatened species an objective of establishing at least two, preferably more, self-sustaining disjunct wild populations in order to reduce the risks to the overall population and to facilitate genetic and demographic management (USFWS 1996, p. 24).

The 1996 revised recovery plan does not provide specific recovery targets or actions for the Pacific Northwest, but our 1980 recovery plan recommended surveys of Oregon, Washington, and California to identify potential habitat for future releases into unoccupied portions of the historical range (USFWS 1980, p. 50). Recent habitat modeling has revealed large areas of potentially suitable nesting, roosting, and feeding habitats in the Pacific Northwest (D'Elia et al. 2015, pp. 95–96). Although criteria for full recovery were not provided in our latest recovery plan revision (USFWS 1996, entire), increasing the global population of the California condor and expanding its geographic distribution among the ecosystems it once occupied are, on first principles, consistent with efforts to recover the species.

An existing population model based on published demographic rates (Bakker et al. 2017, entire) was used to simulate statewide California condor population growth in California over the next 30 years (2018–2048), assessing scenarios with and without the allocation of some of the available captive-bred individuals to a new geographically disjunct flock (Bakker and Finkelstein 2018, entire).

Preliminary model simulations suggest that allocating captive-bred individuals to a new, geographically disjunct flock, which is expected to have lower survival and reproduction compared to the existing flocks, may reduce the population growth of condors in California. Model simulations reinforce the importance of increasing captive chick production and releases to the wild. The number of chicks produced in the captive program and released to the wild has been variable over time, but continues to drive population growth in the wild due to the high chick and juvenile survivorship attainable in a captive setting and to ongoing mortality in the free-flying population combined with the long generational gap between chick stage and breeding age (approximately 6–8 years) in California condors (Finkelstein et al. 2012, entire; Bakker et al. 2017, entire; Bakker and Finkelstein 2018, entire).

The California Condor Recovery Program is currently proposing to increase the number of captive-produced condors for release into the wild, and would continue to allocate the number of chicks to each release site necessary to maintain positive population growth at each site, to the extent practicable. Continuing to grow the wild population of California condors while reestablishing them in an unoccupied portion of their historical range is consistent with our overall strategy to recover the species.

In summary, an NEP in the Pacific Northwest would establish an additional population in the United States, beyond the minimum of two populations envisioned for downlisting to a threatened species. This population would contribute to the conservation of the species by: Further reducing the risk that any one catastrophic event would affect a large proportion of the species (increasing the population redundancy); increasing the global population of the species (increasing resiliency); and expanding the geographic distribution of the species among ecosystems (increasing representation by expanding the ecological settings in which the species occurs).

Is the experimental population essential or nonessential?

When we establish experimental populations under section 10(j) of the Act, we must determine whether such a population is essential to the continued existence of the species in the wild. Although the experimental population will contribute to the recovery of the California condor, it is not essential to the continued existence of the species in the wild. California condors are currently distributed among three disjunct and intensively managed populations in California, Arizona and Utah, and Baja California, Mexico. Management at these sites includes: Monitoring individuals with VHF or GPS/GSM transmitters; biannual trapping for health screenings; vaccination for West Nile virus; aversive conditioning to power poles prior to release; chelation therapy to treat California condors with elevated blood-lead levels; and nest observations, entries, and interventions to maximize productivity in the wild (Walters et al. 2010, pp. 972, 976, 982–984; Romo et al. 2012, pp. 28–56; Southwest Condor Review Team 2017, pp. 4–21; USFWS 2017, pp. 5–19). In addition, there are ongoing releases of captive California condors into each of the wild populations. Releases are carefully coordinated among sites to ensure a healthy age structure, sex ratio, and distribution of founder genomes (Ralls and Ballou 2004, pp. 221–225). As a result of the continued release of condors and the coordination among release programs, the populations of wild California condors continue to grow (USFWS 2018, p. 6).

In addition to the three wild populations, there is also a sizable captive population at four breeding facilities, which are distributed in California, Oregon, and Idaho (see Biological Information, above). The breeding facilities are secure facilities, not open to the public, where California condors are kept under 24-hour surveillance by condor keepers or video cameras. The captive population is given extensive care and deaths and injuries are rare, with a captive annual survival rate after the first month of life of 0.989 percent (95 percent confidence interval: 0.984–0.992) (Bakker et al. 2017, p. 97). In addition, the geographic separation of the four breeding facilities protects the captive population from the threat of extinction due to a single catastrophic event.

The captive population was formed with only 13 apparent genetic founders that comprised three genetic clans (Geyer et al. 1993, p. 573; Ralls and Ballou 2004, p. 219; Pryor and Ralls 2016, p. 3). Genetic management, which includes control of all captive matings, has been implemented to minimize the loss of remaining genetic diversity and ensure this remaining genetic diversity is well distributed among the captive-breeding facilities and reintroduction sites (Ralls et al. 2000, p. 152; Ralls and Ballou 2004, p. 226; Pryor and Ralls 2016, p. 2). California condors released within the experimental population would come from a mixture of the founder clans represented in the captive population and would not represent a unique genetic lineage of California condors. Therefore, loss of this population would not represent a substantive change in the genetic diversity or genetic viability of the worldwide population of California condors.

This reintroduction project will further the recovery of the California condor by attempting to establish another wild population in an unoccupied portion of the species' historical range. However, for the reasons stated above, California condors released into the Pacific Northwest are not essential to the survival of the species in the wild. Therefore, as required by 50 CFR 17.81(c)(2), we find that the experimental population is not essential to the continued existence of the species in the wild, and we designate the experimental population in the Pacific Northwest as a nonessential experimental population (NEP).

Location and Boundaries of the NEP

Section 10(j) of the Act requires that an experimental population be geographically separate from wild populations of the same species. Considering a number of factors (as described in detail, below), we drew the NEP area to include a portion of northern California, northwestern Nevada, and all of Oregon. The western boundary of the NEP is the Submerged Lands Act boundary line along the Pacific coast. The southern boundary of the NEP is formed by an east-west line from California's Submerged Lands Act boundary to Hare Creek; Hare Creek from the Pacific Ocean to its junction with California State Route 1; north to the junction of State Route 1 and State Route 20; east along California State Route 20 to where it meets Interstate 80; and Interstate 80 from its intersection with California State Route 20 to U.S. Route 95 in Nevada. The eastern boundary of the NEP is U.S. Route 95 in Nevada to the State boundary of Oregon and then east and north along Oregon's southern and eastern boundaries, respectively. The northern boundary of the NEP is the northern State boundary of Oregon. All highway boundaries are inclusive of the entire highway right of way. See map below and in the Environmental Assessment (NPS et al. 2018, Figure 2, p. 5).

The last California condor specimen collected within the NEP area was in 1892 along Yager Creek in Humboldt County, California (Smith 1916, p. 205; D'Elia and Haig 2013, pp. 39–46). Although there were a few reported

California condor sightings up to 1925 in the area we are proposing to designate an NEP, since then there have been no credible sightings of condors in the wild in this area, or anywhere north of San Francisco (D'Elia and Haig 2013, pp. 58–59). Given that almost all released California condors are actively tracked with electronic transmitters, we are confident that there are no wild condors in the NEP.

The location of the primary reintroduction site is the Bald Hills of Redwood National Park, an area proximal to suitable nesting and feeding habitat. Ten potential release sites were identified by the Yurok Tribe, and the primary release site was selected following careful consideration of site suitability, logistics, threats and hazards, cultural resources, and suitability of adjacent lands (Yurok Tribe 2020, entire). The release site will be situated in grassland habitat above a redwood forest with sufficient topography to allow young California condors to more easily achieve flight. Redwood forests in the vicinity of the release site, as well as proximal mountain ranges (Oregon Coast Range, Klamath-Siskiyou Mountains, and the Northern Coast Range in California) are expected to provide ample roosting and nesting habitat. Inland valleys and mountaintop prairies, in conjunction with a proximal coastline, are expected to provide a mixture of sufficient terrestrial and marine feeding areas and food resources. Landscape-scale models indicate that the amount and characteristics of habitat in the region compare favorably to other portions of the historical range (D'Elia et al. 2015, pp. 95–96).

In defining the experimental population boundary, we attempted to encompass the area where the population is likely to become established in the foreseeable future. The term ''foreseeable future'' appears in the Act in the statutory definition of ''threatened species.'' The Act does not define the term ''foreseeable future.'' However, our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term foreseeable future extends only so far into the future as we can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. While we use the term ''foreseeable future'' here in a different context (to establish boundaries for identification of the experimental population), we apply a similar conceptual framework. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant effects of release and management of the species and to the species' likely responses in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors. For the purposes of this rule, we define the foreseeable future as approximately 20 years, the time horizon within which we can reasonably forecast California condor population expansion given the number of years of data we have on condor movements from release sites in southern and central California (25 years in southern California and 23 years central California). We expect that the contribution of the experimental population toward recovery of the California condor will be evident during this time span, although we recognize that establishing a self-sustaining population of condors in the region may take longer given the species' extremely low reproductive rates. We established the experimental population boundary large enough to account for expansion over time as the introduced population begins to breed in the wild, and to assist in identifying any individuals belonging to the NEP. When possible, we used recognizable features on the landscape, legal land descriptions, or administrative boundaries to demark this experimental population boundary. We included the entire State of Oregon to ensure that any California condors originating from the releases at Redwood National Park and flying north into Oregon are recognized as members of the NEP and are covered by the NEP regulations.

Information we considered in drawing our NEP boundary included California condor movement data from existing release sites, and the location of the closest existing condor population, as well as input from State wildlife agencies. Movement data indicate that, after 20 years of releasing California condors, most individuals remain within approximately 124 mi (200 km) of their release site—although exceptional flight distances occasionally occur and the existing populations continue to expand as flock size increases. The closest California condor release site to the Bald Hills release site is at Pinnacles National Park, approximately 350 mi (563 km) to the south. The proposed release site is approximately 124 mi (200 km) from the nearest edge of the experimental population boundary, and the southern edge of the experimental population boundary is approximately 112 mi (180 km) from the northern extent of the closest endangered population of California condors. Thus, the southern boundary of the NEP approximates a mid-point between the nearest population in central California and the proposed release site at Redwood National Park. The farthest documented nesting pair of California condors from any release site since the inception of the captive-breeding program was approximately 62 mi (100 km), while most nests are within 47 mi (75 km) of their release site of origin. Given our definition of foreseeable future and the information from existing release sites, we anticipate that California condors initially released at Redwood National Park—with the exception of occasional exceptional flights—would remain within the experimental population boundary over the first 20 years of reintroductions. If a reintroduction of California condors in northern California is successful, it is possible that some individuals from the NEP may eventually move outside of the NEP area. It is also possible that California condors from the other California release sites may enter this NEP. We expect that these movements, if they occur, would be infrequent in the foreseeable future given the size of the NEP, the NEP's distance from existing populations, and observed California condor movements at other release areas over the last two decades. Further, we find that the interaction of individuals among the NEP and existing endangered populations and the merging of these populations are even more unlikely to occur in the foreseeable future given the distance between the populations and the small number of California condors likely to occupy the NEP. Even if California condors occasionally moved into or out of the NEP, the presence of one or a few individual dispersing condors would not constitute a ''population'' and any individuals dispersing into or out of the experimental population area would be treated as if they were part of the population at the location where they are found (*See Wyoming Farm Bureau Federation* v. *Babbitt,* 199 F.3d 1224, 1234–6, FN 5 (10th Cir. 2000) (finding the Secretary reasonably exercised his management authority under section 10(j) in defining the experimental wolf population by location)). Based on definitions of ''population'' used in other experimental population rules

(*e.g.,* 59 FR 60252, November 22, 1994 (gray wolves), 71 FR 42298, July 26, 2006 (Northern aplomado falcons)), we consider a population to require a minimum of two successfully reproducing California condor pairs over multiple breeding cycles. Using this definition of a population, the best available information suggests that the population of California condors formed from releases in Redwood National Park is likely to be wholly separate from other populations of California condors for the foreseeable future.

Likelihood of Population Establishment and Survival

The best available scientific data indicate that the reintroduction of California condors into suitable habitat in Redwood National Park is biologically feasible and would promote the conservation of the species. Along with our numerous recovery partners, we have over 25 years of experience breeding and releasing California condors into the wild at several release areas across various ecosystems. Release techniques are well established, as are protocols for managing released California condors. Based on our collective knowledge gained from these efforts, we anticipate California condors will become successfully established for the following reasons:

(1) Landscape-scale modeling indicates the NEP may have some of the most extensive nesting, roosting, and feeding habitats remaining within the historical range in California, Oregon, and Washington (D'Elia et al. 2015, pp. 95–97). California condors are habitat generalists and have been successfully reintroduced to a variety of ecosystems, including the mountain foothills of southern California, coastal forests of central California, high desert and canyon lands in northeastern Arizona and mountainous areas in Baja California, Mexico. This species is flexible in its diet, eating carrion of many different species of wildlife and livestock. Therefore, we do not anticipate climate change effects on habitat will negatively impact our ability to reestablish a population of this species in the Pacific Northwest.

(2) A site-specific habitat evaluation, which considered site suitability, logistics, threats and hazards, cultural resources, and suitability of adjacent lands, found the release site to have suitability ratings similar to existing release sites (Yurok Tribe 2020, entire).

(3) The causes for California condor extirpation from the region are either no longer active or are being addressed through a mixture of regulatory and proactive voluntary conservation measures (see Addressing Causes of Extirpation, below).

(4) The extent of effects of existing and proposed actions and activities within the NEP on the reintroduced population have been evaluated in an environmental assessment and are compatible with conservation of the California condor (NPS et al. 2018, entire).

(5) The reintroduced population will receive ongoing demographic support from a managed captive population and an active field monitoring and management program (Similar population support has allowed population growth and establishment at all of the other California condor release sites).

(6) The reintroduced population will be integrated with the California Condor Recovery Program to ensure that California condors released in Redwood National Park have an appropriate sex ratio and age-structure and include representatives of the founder genomes.

(7) There is broad institutional and partner support for a California condor reintroduction in Redwood National Park and Yurok ancestral territory.

On June 14, 2016, a Memorandum of Understanding between 16 parties was finalized. The purpose of the MOU was to formalize an agreement to assess the potential to recover California condors in the Pacific Northwest and to work to seek funding to support that effort if it proved feasible. Signatories to the MOU included the U.S. Fish and Wildlife Service, National Park Service (NPS), Bureau of Land Management, Yurok Tribe, California Department of Fish and Wildlife (CDFW), California Department of Parks and Recreation (CDPR), Oregon Department of Fish and Wildlife (ODFW), Oregon Zoo, Sequoia Park Zoo, Ventana Wildlife Society, Oakland Zoo, Pacific Gas and Electric Company, Pacific Power Company, Green Diamond Resource Company, and Hells Canyon Preservation Council. In 2018, the U.S. Forest Service also signed this MOU.

Based on all of these considerations, we anticipate that reintroduced California condors are likely to become established and persist within the NEP.

Addressing Causes of Extirpation

Investigating the causes for decline and extirpation of California condors is necessary to understand whether the threats have been sufficiently curtailed such that reintroduction efforts are likely to be successful. Evaluation of various hypotheses for the extirpation of California condors in the Pacific Northwest revealed that secondary poisoning related to predator control and extermination campaigns, direct persecution, and possibly lead poisoning from spent ammunition were the primary causes (D'Elia and Haig 2013, pp. 119–122). Two of these primary drivers of regional extirpation—predator poisoning and direct persecution—are no longer the primary threats to the California condor. According to the most comprehensive assessment of California condor deaths from 1992 through 2009, of the 76 deaths where a definitive cause was determined, there were no confirmed cases of secondary poisoning related to predator control (although there was one possible case involving glycol toxicosis) and only five cases of condors directly persecuted by gunshot or arrow (Rideout et al. 2012, pp. 108, 110).

Based on multiple lines of evidence, the primary threat to the recovery of the California condor is lead poisoning from spent ammunition (see Biological Information, above). Regulations banning lead ammunition for taking wildlife in California are in effect (see Biological Information, above). In addition, voluntary efforts to reduce lead exposure in wildlife are ongoing in Oregon and Nevada (see Biological Information, above). Finally, the reintroduction program will carefully monitor the population and conduct regular health checks to evaluate whether reintroduced California condors are being exposed to lead, the rate of exposure, and how this situation compares to other portions of the species' range. When necessary, California condors with elevated lead levels will be treated for lead poisoning. While the threat from lead ammunition is still present in the experimental population area, it is being addressed through a mixture of regulatory and proactive voluntary measures (see Biological Information, above); therefore, we will not request further regulation of lead ammunition for this experimental population. Sources of mortality will be carefully monitored, and if high mortality rates are preventing the establishment of a self-sustaining population, we will work with our conservation partners to implement additional voluntary measures to address threats, as we have at other California condor release sites. If a formal evaluation indicates the project is experiencing a 40 percent or greater mortality rate over multiple years or released California condors are not finding food on their own, serious consideration will be given to terminating the project.

Release Procedures

Release procedures at Redwood National Park are described in the environmental assessment (NPS et al. 2018, pp. 23–28) and would be similar to those at existing release sites. Procedures include: (1) The use of an onsite release pen where California condors are kept for a short period of time prior to release; (2) tracking of all released condors via telemetry (VHF and GPS/GSM); and (3) supplying condors with proffered food at the release site to allow for repeated trappings to monitor health and replace transmitters.

In general, a new cohort of captive-reared California condors will be released annually. The size of each release group will depend on the number of California condors in captivity available for release, but annual releases will likely involve up to six condors. California condors hatched in captivity will be raised by their parents or a condor look-alike hand puppet until they are approximately 6 months to 1 year old. They will then be placed with other California condors in a single large pen so they will form social bonds and undergo aversion training to power poles. The young California condors will be transported to the release site at Redwood National Park when they are approximately 1.5 to 2 years old. At the release site they will be placed in a flight pen and will remain there for an acclimation period of approximately 3 months.

Biologists will remain near the release pen, observing the young California condors' behavior and guarding against predators or other disturbance. After the initial adjustment period, California condors will be released from the flight pen. Any release candidate showing signs of physical or behavioral problems will not be released. A small area of NPS land will be closed to recreational activity to protect the California condors in or around the release facility. Carcasses will be provided at the release site, as supplemental food for newly released California condors, and as necessary, to attract condors for periodic trapping to check their health and swap-out transmitters.

All California condors released to the wild will be marked to allow identification of individuals. Current methods for doing this include placing electronic transmitters (*e.g.,* Argos, GSM (Global System for Mobile communication), and VHF transmitters) and wing markers on the wings of each California condor. The movements and behavior of each California condor will be monitored remotely using electronic transmitters and ground observations. Aerial tracking will be used to find lost individuals, and telemetry flights will be coordinated with the appropriate land management agencies. Our methods for identifying and monitoring individuals will be adaptive and may change as technology improves.

We will endeavor to maintain an even sex-ratio across a range of age-classes in the released population. Adult California condors unfit for release may be transported to the release site and kept in the pen as mentors for the acclimating cohort. Adjustments will be made in release cohort structure annually based on availability from captive-breeding facilities, genetics, sex-ratio, and age.

Donor Stock Assessment and Effects on Donor Population

The donor population for the reintroduction of California condors to Redwood National Park is the captive population of California condors. Although the captive population is located at four breeding facilities, these facilities cooperate to manage the entire wild population and captive population as a single entity, exchanging California condors and condor eggs among the facilities as necessary for population and genetic management (Ralls and Ballou 2004, p. 216).

As of December 2019, there were 181 California condors in captivity, and the size of the captive population has been relatively stable over the last 5 years, with end-of-year counts ranging from 167 to 181 during this time period (USFWS 2020, p. 5). With the assistance of the captive-breeding program, the total population of California condors increased from 370 condors in 2010 to 518 condors in 2019 (USFWS 2020, p. 5).

The donor population is carefully managed to ensure its long-term viability. Annual reviews of breeding, captive pairings, genetic health, and demographic factors are undertaken to ensure that captive-releases will not be detrimental to the stability of the captive flock. In addition, the captive-breeding program has capacity to pair additional captive California condors to increase reproductive output as they become available for breeding and to replace senescent condors. This could be done through multiple clutching, the use of non-breeding adults to serve as foster parents, and/or puppet rearing. Given the careful management of the donor population, the ability to increase its productivity, and the relatively small number of California condors that will be released at Redwood National Park annually, impacts to the donor population are expected to be negligible.

Management

The Service, NPS, and the Yurok Tribe will plan and manage the reintroduction of California condors at Redwood National Park. In addition, these agencies will carefully collaborate on releases, monitoring, condor care and behavior management, nest observations and interventions, coordination with landowners and land managers, public awareness, and other tasks necessary to ensure successful reintroduction of the species (Yurok Tribal, 2020, entire). A few specific management considerations related to the experimental population are addressed below.

(a) *Incidental Take:* Experimental population special rules contain specific prohibitions and exceptions regarding the taking of individual animals. These special rules are compatible with most routine human activities in the expected reestablishment area. Section 3(19) of the Act defines ''take'' as ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.'' ''Incidental take'' is further defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. By adopting the 10(j) rule, most incidental take of California condors within the experimental population area is allowed, provided that the take is unintentional and not due to negligent conduct. However, habitat alteration (*e.g.,* removing trees, erecting structures, altering the nest structure or perches near the nest) or significant visual or noise disturbance (*e.g.,* tree felling, chainsaws, helicopter overflights, concrete cutters, fireworks, explosives) within 656 ft (200 m) of an occupied nest are prohibited. Excluded from this prohibition are emergency fuels treatment activities by Federal, State, and local agencies and Tribes to reduce the risk of catastrophic wildfire and emergency response services. Activities such as ranching and use of existing roads and trails within the 656-ft (200 m) buffer area around an occupied nest would not be considered a significant visual or noise disturbance. For the purposes of this rule, an occupied California condor nest is defined as a nest that is: (1) Attended by a breeding pair of condors, (2) occupied by a condor egg, or (3) occupied or attended by a <1-year-old condor.

The 656-ft (200 m) buffer is meant to serve to minimize visual and auditory impacts associated with human activities near nest sites. We chose a 656-ft (200 m) buffer after considering

buffer distances used for other raptors, which varied widely from 162 to 5,249 ft (50–1,600 m) (Richardson and Miller 1997, pp. 635–636; Romin and Muck 2002; USFWS 2007, p. 13), as well as past recommendations on buffer distances for California condor nests, which ranged from 0.5 to 1.5 mi (0.8–2.4 km) (Carrier 1973, pp. 71–73). This variation is likely the result of differences in environmental setting, species-specific responses, status of the species at the time of the recommended buffer, the nature of the disturbance, and the purpose of the buffer. It is important to note that historical California condor buffer distances of 0.5 to 1.5 mi (0.8–2.4 km) were based on anecdotal observations of a small number of condor nests in a declining population, and were necessarily conservative given the context of a nearly extinct species. The nest buffer for this rule is smaller than those earlier recommendations because of new information suggesting that nesting California condors may be more tolerant of disturbance than previously believed (see below). We also accounted for the fact that we are establishing this population as a nonessential experimental population. Therefore, our buffer distance around nests may be less conservative than our recommended buffer distances from nests where California condors are listed as endangered.

While species-specific responses to disturbance have not been formally studied for the California condor, observations in the 1950s and 1960s found that once a condor nest is started, it will not be abandoned unless the egg or chick is lost or the parents killed (Sibley 1969, p. 8). In addition, recent observations have documented successful nests within 0.5 mi (0.8 km) from active oil and gas operations and within 656 ft (200 m) of busy highways, hiking trails, and forestry practices such as operating chainsaws and chippers (A. Welch, NPS, pers. comm. 2015). One nest in a giant sequoia tree was successful despite being ''right on the edge'' of a clearcut operation (which ceased only 3 weeks prior to egg laying) and only about 656 ft (200 m) from, and in direct view of, an intermittently used dirt road (Snyder et al. 1986, p. 238).

Although the best available information suggests that California condors may not be as susceptible to disturbance as we thought in the 1960s–1980s, flushing of condors from nests has been documented due to disturbance and this activity has the potential to result in the egg breaking if the adult that is flushed is incubating the egg (Sibley 1969, p. 8). It is also possible that prolonged or repeated disturbances may cause nest failure (Sibley 1969, p. 15). To minimize the chances of nest or egg destruction and to preserve the structural integrity of habitat around nests while minimizing impacts to stakeholders, we are prohibiting habitat alteration or significant visual or noise disturbance within 656 ft (200 m) of occupied nests, with the exceptions noted above.

Existing and proposed activities and land uses surrounding the park that could potentially result in incidental take include wind power, utility transmission lines, mining, commercial timber production, ranching operations, and recreational activities (NPS et al. 2018). As noted above in our evaluation of the likelihood of population establishment and survival, we determined that the extent of effects of these activities within the NEP is compatible with conservation of the California condor. We expect few restrictions on these activities because most incidental take, including take associated with lead ingestion, is not prohibited. Some activities, such as those associated with habitat alteration or significant visual or noise disturbance within 656 ft (200 m) of an occupied nest, would be prohibited, as described above. However, because (1) the number of individuals initially released would be small, (2) California condors nest only on cliffs and in large tree cavities, (3) California condors tend to nest in less accessible and remote areas, and (4) the nests would be dispersed rather than concentrated in a particular area, we expect impacts to existing and proposed activities to be minimal (NPS et al. 2018). For the reasons stated above, it is unlikely that a condor would nest within areas with ongoing timber harvest operations, as only about 0.5 percent of harvestable timber on private lands within the study area are likely to contain suitable nesting trees. (NPS 2018). Once the condor chick has fledged, activities could resume, so any prohibitions on activities would be temporary in nature.

(b) *Interagency Consultation:* For purposes of section 7 of the Act, section 10(j) of the Act and our regulations (50 CFR 17.83) provide that nonessential experimental populations are treated as species proposed for listing under the Act except on National Park System and National Wildlife Refuge System lands, where they are treated as threatened species for the purposes of section 7 of the Act.

(c) *Special Handling:* USFWS, NPS, CDPR, CDFW, ODFW, Nevada Department of Wildlife (NDOW), and Yurok Tribe Natural Resource Division employees, and authorized agents acting on their behalf, may handle California condors for scientific purposes; to relocate or haze California condors to avoid conflict with human activities; for recovery purposes; to aid sick or injured California condors; and to salvage dead California condors. However, non-Service or other non-authorized personnel will need to acquire permits from the Service and the appropriate State or Tribal agency for these activities. Protocols for management and monitoring have been developed based on decades of experience from releasing condors in other areas (Yurok Tribe 2020, entire). Management and monitoring practices covered by these protocols include holding and releasing condors, monitoring, condor care and behavior management, nest observations and interventions, and other tasks necessary to ensure successful reintroduction of the species (Yurok Tribe 2020, entire). These protocols are designed to be adaptive and will be updated periodically as new information is acquired. Management and monitoring activities (see Yurok Tribe 2020) by any employee or agent of the Service, National Park Service, Yurok Tribe Natural Resource Division, CDPR, CDFW, NDOW, or ODFW who is designated and trained for such purposes, when acting in the course of official duties, will be exempt from take prohibitions.

(d) *Public Awareness and Cooperation:* During January 2017, in cooperation with the Yurok Tribe and Redwood National Park, we conducted five NEPA scoping meetings on the proposed action of reintroducing California condors to the Pacific Northwest, with the possibility of designating the reintroduced population as an NEP. We notified a comprehensive list of stakeholders of the meetings including affected Federal and State agencies, Native American Tribes, local governments, landowners, nonprofit organizations, and other interested parties. The comments we received were included in the formulation of alternatives considered in the NEPA process, and were considered in formulating proposed experimental population regulations for California condors within the NEP. We opened a 60-day comment period on our proposed regulations and EA, with another round of notifications to our comprehensive list of stakeholders. We also held public meetings in Portland, OR, Medford, OR, Klamath, CA, and Arcata, CA during the public comment period.

Monitoring and Evaluation

In cooperation with conservation partners, we will monitor movements, habitat use, and survival of all released California condors (NPS et al. 2018, pp. 23–28). Monitoring individual movements will allow field staff to identify potential problem-behaviors and to capture, relocate, or haze individual California condors for their safety. It will also allow us to detect any California condors that move outside of the experimental population area. Trapping will occur at the release site to allow for hands-on physical exams of individuals, replacement of faulty or aging transmitters, marking growing feathers, sampling feathers marked previously for lead history construction, and drawing blood for immediate testing of circulating blood lead levels and laboratory analysis for other contaminants of interest including, but not limited to, organophosphates and anticoagulant rodenticides. We will also attempt to determine the cause-of-death for all condor mortalities so we can look for emergent patterns and evaluate whether additional management interventions are necessary.

Annual reports that summarize monitoring and management activities will be collaboratively developed by the Yurok Tribe, NPS, and USFWS. We will evaluate the reintroduction program to determine whether to continue or terminate reintroductions every 5 years as part of our 5-year status review for the species.

Summary of Comments and Recommendations

In the proposed rule published on April 5, 2019 (84 FR 13587), we requested that all interested parties submit written comments on the proposal by June 4, 2019. In addition, in accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270) and updated guidance issued on August 22, 2016 (USFWS 2016, entire), we solicited peer review of our proposed rule from three knowledgeable individuals with scientific expertise in California condor ecology and management. We received responses from two of the peer reviewers. We also contacted appropriate Federal and State agencies, Tribes, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. In addition, on May 7–9, 2019, we held public meetings on the proposal in Portland, OR; Medford, OR; Arcata, CA; and, Klamath, CA.

We reviewed all comments received from the public, States, Tribes, and peer reviewers for substantive issues and new information regarding the establishment of an experimental population of California condors in the Pacific Northwest. Substantive comments are addressed in the following summary and have been incorporated into the final rule as appropriate. Any substantive changes incorporated into the final rule are summarized in the Summary of Changes from the Proposed Rule section, below.

Peer Review Comments

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from three knowledgeable individuals with scientific expertise in the species' biology, habitat, and raptor reintroductions in general. We received responses from two of the peer reviewers.

Both peer reviewers expressed support for the reintroduction with an associated 10(j) rule and agreed the action is likely to contribute to the conservation of the species. We incorporated specific updated information, comments, and suggestions from peer reviewers into the final rule as described in our responses, below.

Comment: One peer reviewer pointed out that, in our proposed rule, we stated that predator-poisoning was no longer a primary threat to condors. The reviewer notes that another form of poisoning, from anticoagulant rodenticides, remains a serious concern for wildlife in northern California and may pose a greater threat than in central and southern California condor populations.

Response: Predator-poisoning campaigns targeting large predators, like gray wolves and grizzly bears, are fundamentally different from the use of anticoagulant rodenticides that are primarily targeting small rodents. Nevertheless, we acknowledge that condors released in northern California may be exposed to rodenticides. We do not yet know the rate of exposure or whether this exposure will have a significant effect on condor demographic rates. It is currently unclear whether exposure rates will be higher, lower, or the same as observed in other parts of the condor's range, or whether their exposure rates will be comparable to exposure rates in other surrogate avian scavengers. As stated in the final rule, we will be conducting regular physical exams of condors and will attempt to determine cause-of-death for all condors that die and whose bodies are available for necropsy. If exposure to anticoagulant rodenticides is a significant factor affecting population growth, we will adapt our management accordingly.

Comment: One peer reviewer noted that, in our proposed rule, we mention the lead ammunition ban in California and the efforts being taken in Oregon to get hunters to voluntarily switch to non-lead alternatives. They asked whether Nevada, part of which is included in the NEP boundary, would be undertaking any outreach for voluntary effort to curb lead ammunition use.

Response: NDOW has implemented some voluntary measures to encourage hunters to switch to non-lead ammunition. In 2015, NDOW collaborated with the North American Non-lead Partnership to train hunter education instructors about non-lead ammunition. Non-lead ammunition outreach is now included in all hunter education training in Nevada. In addition, Nevada also has a regulation mandating the use of nontoxic shot on all Nevada Wildlife Management Areas (NAC 503.183).

Comment: One peer reviewer noted that the nest buffer of 200 m is somewhat less conservative that what has previously been recommended, but, given the evidence presented and the fact that this is being designated as an NEP, they thought that the buffer size was a reasonable starting point. This reviewer suggested providing a mechanism for expanding the buffer, under certain circumstances. The other peer reviewer stated that the 200 m buffer around nests seemed risky. They suggested starting with a larger buffer, with the option of making it smaller in certain circumstances.

Response: The 656 ft (200 m) buffer distance around occupied nests is intended to provide some protection to condor eggs and nestlings. We recognize that, in certain situations, noise or habitat disturbance outside of this buffer may cause harassment, or even harm, to an individual condor. We expect these instances to be extremely rare given the small number of anticipated breeding condors in the foreseeable future and the vastness of the landscape they will occupy. For the reasons articulated in this final rule (see Management, above), we find that a 656 ft. (200 m) buffer distance provides a reasonable balance between protection of condors and limiting the impact of this reintroduction effort on landowners.

Comment: One peer reviewer asked about the timing of our program review and how that relates to the timing of the Service's 5-year status review of the species. As the last California condor 5-year review was completed in 2013, they were concerned that our review periods would not be aligned.

Response: We will informally review the status of the reintroduction program on an annual basis. We intend to release key information from this informal annual review (*e.g.,* population size, number of releases, number of deaths) to the public. Our formal status review of the reintroduction program, where we will assess whether we should continue or discontinue the reintroduction program in the Pacific Northwest, will likely occur within the first 5 years of the program. The review cycles will be aligned from that point forward. Based on our experiences releasing California condors in other areas, we caution that evaluating whether or not the program is successful—and therefore, whether it should continue—will take at least two decades (*i.e.,* several 5-year review cycles).

Comment: One peer reviewer suggested that we should provide mechanisms for cancelling the program if a sufficient number of condors are killed or lost for reasons that cannot be alleviated due to the experimental NEP status.

Response: As stated in the proposed rule, and in this final rule, if a formal evaluation indicates the project is experiencing a 40 percent or greater mortality rate over multiple years or released California condors are not finding food on their own, we would evaluate options, including discontinuing releases, capturing and removing condors from the NEP area, and whether to remove the NEP designation and regulations. If we proposed removal of the regulations, we would provide an opportunity for public review and comment.

Comment: One peer reviewer expressed concern over whether establishing a new population would impact the viability of existing populations. They also asked us to describe how the captive facilities will increase production and questioned whether funding and support would be available to accomplish that work.

Response: In our proposed rule, and in this final rule, we provide information on a preliminary demographic analysis that shows existing populations are likely to continue to grow even when breeding facilities are producing California condor chicks at less than existing capacity. The condor program has a long history of cooperation among partner institutions, and we have broad support among these institutions for establishment of a new release site in the Pacific Northwest. Likewise, the condor program is funded by a wide variety of partners and sources which are expected to continue to be able to support the existing breeding facilities capacity. Decisions on allocation of condor chicks are made in collaboration with these partner institutions and geneticists. Given the available information on condor demography and the strength and longevity of our partnerships, we are confident that captive-breeding facilities will continue to produce sufficient numbers of California condors to ensure the viability of existing populations and the success of a new reintroduction program in the Pacific Northwest.

Comment: One peer reviewer stated success of the reintroduction program was not defined. They requested that we included an explicit definition of success or remove the term from the final rule.

Response: The ultimate goal of any conservation reintroduction is to establish a self-sustaining wild population. We will evaluate, every 5 years, whether the program is progressing toward achieving that goal. Based on our experience, estimates of mortality rates in the first decade of the release programs at existing sites in California and Arizona were between 17–35 percent. Since we expect it will take many years to achieve our ultimate goal of a self-sustaining wild population, we will consider success to be the continued progress toward achieving that goal. As stated in the final rule, if we observe a 40 percent or greater mortality rate over multiple years, or released California condors are not finding food on their own, serious consideration will be given to terminating the project.

Comment: One peer reviewer asked whether there might be threats unique to northern California or Oregon, that are not threats in the current range of the California condor.

Response: We are not aware of any threats to the California condor that are unique to the Pacific Northwest. We will closely monitor the health of released condors and address any novel threats, should they emerge.

Comment: One peer reviewer stated that he thought the scientific and biological components of the proposed rule were excellent and clearly described. He also provided several technical corrections and edits related to condor biology and management.

Response: We thank the reviewer for his comments and, as appropriate, have incorporated corrections.

Public Comments

Comment: Condors should be removed from the field if designation of a nonessential population changes recreational activities that were legal at the time of the designation, specifically hunting and recreational shooting. Other activities that should be protected in this manner include ranching, timber harvest activities, mining, environmental remediation and restoration, power operations, transportation for both inter- and intra-state commerce, currently in-place endangered species recovery plans, and housing development in cities. Commenters suggested that removing condors from the field should also be included if a sufficient number of individuals are lost during the program.

Response: This rule exempts almost all incidental take of California condors. Significant noise or visual disturbance or habitat alteration within 656 ft (200 m) of occupied nests are prohibited. Excluded from this prohibition are emergency fuels treatment activities by Federal, State, and local agencies and Tribes to reduce the risk of catastrophic wildfire and emergency response services. Activities such as ranching and use of existing roads and trails within the 656 ft (200 m) buffer area around an occupied nest would not be considered a significant visual or noise disturbance. Thus, this rule provides substantial assurances that there will be minimal (if any) impacts to the activities the commenter mentions. As stated in the proposed rule, and in this final rule, if a formal evaluation indicates the project is experiencing a 40 percent or greater mortality rate over multiple years or released California condors are not finding food on their own, serious consideration will be given to terminating the project.

Comment: Commenters asked for clarification on how the 10(j) rule would address condors that leave the NEP area. One commenter suggested that the rule should require condors that leave the designated NEP boundary to be recaptured and returned, which would address the requirement that this population be geographically disjunct from other populations and result in better survival of birds that leave the NEP area.

Response: California condors that fly outside of the NEP area will be evaluated on a case-by-case basis. We do not require the relocation of condors that leave the NEP area. We will consider recapture if a condor moves outside of the NEP and is observed—by an individual trained in condor biology and behavior—exhibiting signs of illness, obvious distress, or exhibits behavior indicating it is at increased risk of harm. While this population is likely to be wholly separate from other condor populations for the foreseeable future, we do not intend to actively

preclude the eventual connectivity of condor populations.

Comment: Commenters stated that the 10(j) designation should eliminate the proposed exemptions for electric utilities and wind farms because these companies could use other resources/structures (*e.g.,* geofencing) to meet the 10(j) requirements. Commenters also stated that the voluntary actions undertaken by the utility owners may not be adequate to protect the NEP.

Response: The primary reason to designate a population as experimental is to engender support for reintroducing an endangered species by more surgically applying the necessary protections of the ESA. Based on known mortalities in other portions of the condor's range, deaths from electric utilities and wind turbines are not the primary threats to condor demographic rates. We will work with electric utilities and wind farm developers and operators to minimize and avoid impacts to condors. As noted in the proposed rule, PG&E has developed and is implementing a plan to minimize take of condors throughout the range of the species. The Service is working with wind energy companies in other parts of the species' range to minimize risk of condor collision with turbines.

Comment: Commenters stated that the 10(j) rule should increase the level and enforcement of penalties.

Response: Section 11 of the ESA addresses civil and criminal fines and penalties associated with violations of the provisions of the ESA and permits issued under the ESA. Any enforcement actions under the ESA will be subject to the maximum fines and penalties outlined in this statute, as those amounts have been adjusted pursuant to Federal law. The current penalty amounts are in 50 CFR 11.33, as adjusted this year (85 FR 10310, February 24, 2020). Enforcement actions and any ensuing penalties for violations of the ESA are based on the facts of each case.

Comment: The California condor should not be established as an NEP without assurances that hunting and recreational shooting would continue. Commenters indicated that a ''special rule'' should be in place to ensure that hunting and/or recreational shooting are not affected.

Response: Incidental take of California condors associated with legal and non-negligent hunting and recreational shooting is not prohibited within the NEP, provided such take is unintentional and non-negligent. Habitat alteration and significant visual and noise disturbance within 656 ft (200 m) of an occupied nest is prohibited. Excluded from this prohibition are emergency fuels treatment activities by Federal, State, and local agencies and Tribes to reduce the risk of catastrophic wildfire and emergency response services.

Comment: The 10(j) rule as written is too permissive and should be revised to start with full protection and note where protections do not apply.

Response: ESA section 10(j) rules are intended to promote recovery of threatened and endangered species, while reducing the impact of reintroductions on stakeholders. For the reasons articulated in the preamble (see Management, above), we find that the special regulations will provide the appropriate balance of species protection and reduced impact to stakeholders.

Comment: Commenters expressed concern that reducing protections for the California condor would establish a new baseline for policymaking in the future.

Response: We evaluate the need for an experimental population designation and associated 10(j) rules on a case-by-case basis. After carefully reviewing the best available information and coordinating with our State and Tribal partners, Federal land managers, local landowners, and other conservation partners, we have determined that a California condor reintroduction in this area would not have the necessary support without an experimental population designation. This is not the first nonessential experimental population of the California condor and, therefore, is not precedent-setting. Furthermore, nothing in this rule establishes a new baseline for future policy decisions on achieving condor recovery as this rule applies only to this population.

Comment: Several commenters were concerned about potential impacts on land use and socioeconomics in Nevada. One commenter suggested that take of condors should not be deemed negligent where there have been infrequent or inconsistent occurrences of the species in a given project area or where a given instance of take is the first occurrence.

Response: Although the northwestern corner of Nevada is included in the NEP boundary, the best available information on habitat suitability and landscape connectivity suggests that this area is unlikely to become occupied by condors in the foreseeable future. We included northwestern Nevada within the NEP to provide assurances to Nevada that in the unlikely event California condors travel to this area, they would be treated as nonessential experimental animals under the Act. While we do not expect condors to occupy northwestern Nevada within the foreseeable future, we are exempting incidental take from otherwise lawful activities within the NEP, including this area, as long as such take is unintentional and non-negligent. We decline to exempt negligent take, even if the species is infrequently observed in an area. California condors are easily identified and should not be mistaken for any animal that can be legally harvested, killed, captured, wounded, or harassed. Habitat alteration or significant visual or noise disturbance within 656 ft (200 m) of an occupied nest are prohibited. Excluded from this prohibition are emergency fuels treatment activities by Federal, State, and local agencies and Tribes to reduce the risk of catastrophic wildfire and emergency response services. These exemptions and regulations are expected to minimize impacts on land use and socioeconomics in the remote event condors occupy northwestern Nevada.

Comment: One commenter requested clarification on the proposed timeline of the stipulations in the rule, specifically asking about the 20-year timeframe noted in the rule.

Response: This rule will remain in place unless it is rescinded through formal rulemaking. The 20-year timeframe in this rule refers to the time horizon over which we can reasonably forecast California condor population expansion to define the boundary of the experimental population. It also provides a time horizon over which we analyzed the likelihood the population will become established and survive in the NEP. We chose 20 years based on the number of years of data we have on condor movements from release sites in southern and central California. We expect that the contribution of the experimental population toward recovery of the California condor will be evident during this time span, although we recognize that establishing a self-sustaining population of condors in the region may take longer given the species' extremely low reproductive rate.

Comment: One commenter asked for further clarification on how a decision would be made to remove condors from the field in the event that the FWS was compelled by a court order to change the protection status of the population, asking if it would be based on votes of participating parties or would MOU signatories have any type of veto power.

Response: While FWS would ultimately be responsible for determining how to proceed and ensuring any changes in the legal status and/or removal of this population of

California condors are made in compliance with any applicable Federal rulemaking and other procedures, we would carefully consider input from partners. The MOU signatories include a range of agencies, conservation partners, and stakeholders with interests that represent a wide variety of interests associated with land management activities. FWS would meet with all of the 17 partners to the MOU to discuss the options on how to proceed, including the option of attempting to capture and relocate all the condors in the wild. We would discuss the consequences of each option with the MOU partners and would make a fact-specific assessment of how to proceed based on the information at that time, including whether there was general agreement from the MOU partners that the condors should remain in the wild. FWS does not intend to hold a formal vote, and none of the MOU signatories would hold veto power.

Comment: Commenters requested that additional activities exempt from take prohibitions be specifically stated in the rule, including existing authorized uses of private and public lands; administrative and emergency functions carried out by local, State, or Federal government; and normal agricultural practices.

Response: We have clarified that the activities provided by the commenters are also exempt from incidental take prohibitions, provided the take is unintentional and the activities are lawful. Please see the Management section above for these changes.

Comment: Commenters requested that our 10(j) rule include more specific language stating that the construction, operation, and maintenance of wind energy and electric transmission facilities would not constitute take. To address this concern, they suggested paragraph (i)(2) be amended to remove the term ''non-negligent'' and to specifically add electric transmission and distribution and wind generation facilities.

Response: Construction, operation, and maintenance of wind energy and electric transmission facilities may result in take of California condors. However, by issuing this rule, we are exempting such incidental take (provided it is lawful and non-negligent) from the prohibitions of the ESA. We decline to remove the term ''non-negligent'' as we do not intend to exempt negligent take from the prohibitions of the ESA.

Comment: One commenter asked that the phrase ''unavoidably and unintentionally'' used in the 10(j) rule be further clarified. The following clarification was proposed: ''[t]ake that occurs unavoidably and unintentionally is that which occurs despite reasonable care and is not done on purpose.''

Response: The commenter's interpretation of ''unavoidably and unintentionally'' is consistent with how we intend its use in this rule. We have updated the final rule to include this clarification.

Comment: Commenters noted concern with how take is defined in the 10(j) rule and felt that how it is defined would open various parties to charges of non-permitted incidental take. They noted that logging companies, NPS, and others could be exposed to liability under the current definition because the rule is not clear on the complex interactions of terrain as part of the current regulatory overlay of different species and habitat conservation plans.

Response: By adopting the 10(j) rule, most incidental take of California condors within the experimental population area is allowed, provided that the activity is otherwise lawful and the take is unintentional and not due to negligent conduct. Habitat alterations and significant visual or noise disturbance within 656 ft (200 m) of an occupied nest are prohibited. Excluded from this prohibition are emergency fuels treatment activities by Federal, State, and local agencies and Tribes to reduce the risk of catastrophic wildfire and emergency response services. Activities such as ranching and use of existing roads and trails within the 656 ft (200 m) buffer area around an occupied nest would not be considered a significant visual or noise disturbance.

Comment: Some commenters suggested that the proposed 10(j) boundary is too large and that it should be reduced to the Klamath Siskiyou bioregion. They noted that because of the time it would take birds to leave the currently proposed region, they should have the full protection of the ESA once they leave.

Response: Experimental population boundaries are generally drawn to encompass the likely movements of the reintroduced population within the foreseeable future. However, they do not need to tightly circumscribe that area, and boundaries may be drawn larger to provide assurances to concerned stakeholders that individuals from a reintroduced experimental population will not be treated as a fully ESA-listed species. Given long-distance movements observed at other release sites, it is unlikely that condors reintroduced to Redwood National Park will limit their movements to the Klamath-Siskiyou bioregion in the foreseeable future.

Comment: Commenters requested that the application of the 10(j) stipulation in the Sheldon National Wildlife Refuge be clarified.

Response: Although the northwestern corner of Nevada (where Sheldon National Wildlife Refuge is located) is included in the NEP boundary, the best available information on habitat suitability and landscape connectivity suggests that this area is unlikely to become occupied by condors in the foreseeable future. We included northwestern Nevada within the NEP to provide assurances to Nevada that in the unlikely event California condors travel to this area, they would be treated as nonessential experimental animals under the Act. The 10(j) rule would apply on National Wildlife Refuges, including Sheldon National Wildlife Refuge. However, experimental populations in National Wildlife Refuges and National Parks are treated as a threatened species for the purposes of section 7 of the ESA (but not under section 9 of the ESA) and consultation requirements of section 7(a)(2) of the ESA would apply.

Comment: Commenters suggested the exception for fuels management be limited to emergency fire response or fuel treatment. They noted that there is no need to risk disturbance to active condor nests in a non-emergency situation.

Response: We agree and have updated the rule accordingly.

Comment: Commenters asked if the existing program has the funding and capacity in terms of number of available birds to add a release site at the park.

Response: The Condor Recovery Program is based on a broad long-term partnership between FWS and many other partners. Funding for this program does not rely entirely on FWS funds, as many partners have other sources of funding to help run the program. In fact, a majority of the funding for the program comes from outside partners. In 2017, FWS started to work with our partners to increase the capacity at the existing breeding facilities in order to provide more captive-reared birds for release to the wild. Based on these efforts, we expect to have additional birds available for release at Redwood National Park, without impacting our releases at the other release sites.

Comment: Commenters stated that the condor recovery program could be mismanaged and suggested that condors may have a better chance of surviving if released at an existing site, rather than a new site.

Response: Along with our partners, we have over a quarter century of experience in raising condors in

captivity and releasing them into the wild. Individuals managing the proposed release site have experience at existing release sites and will be assisted by the recovery program as needed. We intend to monitor and manage the population consistent with monitoring and management efforts at existing release sites. While we acknowledge that survival rates may increase with the length of time a release site has been active (Bakker et al. 2017), we also must weigh this information against the opportunity to reintroduce condors to this portion of its historic range, which would have long-term benefits to the overall conservation goals of this species. We have determined that establishing a new population—the first in the northern half of the species' historical range—is worth the possibility of slightly lower survival rates in the early years of the new reintroduction site.

Comment: Commenters noted that landowners should be advised when monitored birds have fledged so that they can comply with the proposed standards for buffers around occupied nest sites.

Response: As part of the condor reintroduction program, monitoring will occur through various methods, as described in the Monitoring and Evaluation section of this rule. Field crews will, to the best of their ability, notify adjacent landowners when occupied nest sites are identified. NPS, FWS, and the Yurok Tribe have coordinated with many surrounding landowners and land managers throughout the planning process and remain committed to working with our partners and neighbors during project implementation.

Comment: Commenters asked during which year of the program we would review reintroduction efforts.

Response: We will informally review the status of the reintroduction program on an annual basis. We intend to release key information from this informal annual review (*e.g.,* population size, number of releases, number of deaths) to the public. Our formal status review of the reintroduction program, where we will assess whether we should continue or discontinue the reintroduction program in the Pacific Northwest, will likely occur within the first 5 years of the program. The review cycles will be aligned from that point forward. Based on our experiences releasing California condors in other areas, we caution that evaluating whether or not the program is successful—and, therefore, whether it should continue—could take at least two decades (*i.e.,* several 5-year review cycles).

Comment: Commenters suggested that the proposed rule include language that allows buffers to expand if needed.

Response: The 656-ft (200-m) buffer distance around occupied nests is intended to provide some protection to condor eggs and nestlings. We recognize that, in certain situations, noise or habitat disturbance outside of this buffer may cause harassment, or even harm, to an individual condor. We expect these instances to be extremely rare, given the small number of anticipated breeding condors in the foreseeable future and the vastness of the landscape they will occupy. For the reasons articulated in this final rule (see Management, above), we find that a 656-ft (200-m) buffer distance provides a reasonable balance between protection of condors and limiting the impact of this reintroduction effort on landowners.

Comment: Commenters suggested further research regarding preventing condor mortality from power lines.

Response: Over the last 28 years, there have been 18 incidents of condor electrocutions. FWS has worked with two major utility companies in California to minimize risk of future incidents. PG&E has recently completed a California Condor Conservation Strategy to reduce risk of electrocution and collisions of condors throughout its service area in California. In addition, PG&E has been working with partners in the condor recovery program to train chicks bred in captivity to avoid landing on power poles once they are released. These efforts continue to reduce the risk of electrocutions in the wild population.

Comment: Commenters stated that the statistics of condor survival in the wild are skewed because some carcasses are returned from the field in such a way that it makes it difficult to determine the cause of mortality.

Response: It is not possible to determine the cause of death for every condor that dies in the wild, as some carcasses are not located, and some have decayed to the point that the cause of death is indeterminable. The information the FWS provides to the public acknowledges that the data is limited to birds that we have been able to retrieve and determine the cause of death. However, given the large sample of condors for which cause of death has been determined (n = 185), it is likely that our data on mortality sources are representative of the mortality sources in the population.

Comment: Commenters questioned statements that describe the historical range of the California condor and note the causes of California condor decline. They note that the condor's preferred nesting habitats were not in areas that settlers would have normally used and, if direct persecution occurred, it was most likely related to condors feeding on livestock. They also noted that when game is shot, the carcass is usually retrieved, making lead poisoning from ammunition unlikely.

Response: The probable causes for condor declines being related to direct persecution, indirect poisoning, and lead poisoning are well documented (D'Elia and Haig 2013). Condors can travel great distances from their nesting areas to feed and were documented on numerous occasions by early explorers and settlers. Condors are obligate scavengers and are not livestock predators; however, it is true that some settlers killed condors under the mistaken belief that condors might harm their livestock. In addition, there is ample historical evidence of numerous condors being shot for no purpose at all. While hunters usually retrieve game, misplaced shots may wound animals, and these individuals may carry lead fragments in their tissues until they die and the lead becomes available to scavengers. Further, many hunters field-dress game, leaving nonedible gut piles that can contain lead fragments. Finally, varmint hunters, typically targeting nongame animals such as ground squirrels and coyotes, shoot animals and leave carcasses in the field.

Comment: Commenters made suggestions for adding tribal governments to the list of entities able to take condors during the course of recovery activities, modifying the fuels management exception to just emergency response activities, and clarifying that the Yurok Tribe Natural Resource Division is the responsible agency.

Response: We thank the commenters for the suggestions and have updated the rule accordingly.

Comment: Commenters questioned if non-lead outreach efforts and efforts for the voluntary switch to non-lead ammunition would occur in Nevada.

Response: NDOW has implemented some voluntary measures to encourage hunters to switch to non-lead ammunition. In 2015, NDOW collaborated with the North American Non-lead Partnership to train hunter education instructors about non-lead ammunition. Non-lead ammunition outreach is now included in all hunter education training in Nevada. In addition, Nevada also has a regulation mandating the use of nontoxic shot on all Nevada Wildlife Management Areas (NAC 503.183).

Comment: Commenters stated that past studies show that the lead ammunition ban would not be effective

in reducing the rates of lead in California condors because there are other sources of lead in the environment. They requested that the NEP include a special rule protecting all aspects of hunting, including use of all types of ammunition.

Response: There is consensus, based on decades of scientific research, that lead ammunition is the primary source of lead toxicosis in California condors. While other sources of lead (*e.g.,* lead paint) exist in the environment, instances of these sources poisoning California condors are extremely rare compared to poisoning from lead ammunition. This rule does not restrict lawful hunting and does not mandate the use any specific type of ammunition.

Comment: Commenters stated that condors can be exposed to many contaminants. Contaminants of concern included mercury, anticoagulant rodenticides, DDT, and heavy metals from mining activities. Commenters stated there should be further study of the threats of emerging chemicals on condors and suggested that current statistics may underestimate the mortality resulting from these sources because the cause of death for many birds is undetermined. They also suggested that exposure to these chemicals may be considered ''take'' under the proposed rule.

Response: While we cannot determine the cause of death for every individual condor, our mortality data indicate that, of the known causes of death, contaminants (not including lead), make up a very small proportion of deaths (USFWS 2020, p. 3). Nevertheless, we intend to monitor the health of released condors and assess contaminant loads in condors during health screenings and when we retrieve deceased condors in the field. We welcome additional research into exposure rates and impacts of contaminants on condor demography. In this rule, we are exempting incidental take associated with lawful activities that is non-negligent and unintentional. Habitat alteration and significant visual and noise disturbance within 656 ft (200 m) of an occupied nest are prohibited. Use of pesticides in compliance with EPA labels would not be prohibited within the NEP, whereas, use of pesticides out of compliance with EPA labels that results in take would be a violation of the ESA.

Comment: Comments expressed specific concerns about the use of rodenticides in illegal marijuana growing sites. They requested that the 10(j) designation include a plan for rapid response if contamination related to mortalities occur.

Response: As at existing release sites, field crews will closely monitor released condors and perform regular heath checks. If we detect toxicants are making condors sick or causing mortality, we will attempt to address the source(s) of contamination as rapidly as possible.

Comment: Commenters expressed concern regarding the establishment of a new wind project near Cape Mendocino and the potential impact that project could have on the reintroduced population of condors.

Response: To date, after more than 20 years of releasing California condors in areas with extensive wind energy development, we have not observed a single condor mortality from collisions with wind turbines. In addition, the amount of wind energy development (existing and proposed) is far less than the existing wind energy development in occupied condor habitat in southern and central California. Nevertheless, we recognize that poorly sited wind energy infrastructure can pose a threat to condors. Project proponents for wind projects in northern California have publicly expressed a willingness to work with the condor program and implement technology that can shut down turbines if a monitored condor flies close to a facility. We will seek to cooperate with energy producers for all existing and proposed energy projects in the region.

Summary of Changes From Proposed Rule

In the final rule we have:

- Clarified that fuels treatments that are considered an emergency are exempt from the prohibited actions within 656 ft (200 m) of occupied nests.
- Added Tribal and local governments to the list of entities that are exempt from the prohibitions within 656 ft (200 m) of occupied nests when conducting emergency fuels treatments to reduce the risk of catastrophic wildfire.
- Added an exemption to the prohibitions within 656 ft (200 m) of occupied nests for responses to wildfire or other emergencies.
- Clarified that activities such as ranching and use of existing roads and trails would not be considered a significant visual or noise disturbance occurring within 656 ft (200 m) of an occupied nest.
- Clarified that we use the phrase ''unavoidably and unintentionally'' to mean take that is not done on purpose and that occurs despite exerting reasonable care to avoid take.
- Provided, in response to comments, additional examples of otherwise lawful activities that are exempt from incidental take prohibitions.
- Provided, in response to comments, additional examples of specific activities that would be prohibited around occupied nests.
- Changed, at the request of the Yurok Tribe, the entity that may take condors to aid in their recovery from the Yurok Wildlife Department to the Yurok Tribe Natural Resource Division.

Findings

Based on the best scientific and commercial data available (in accordance with 50 CFR 17.81), we find that releasing the California condors into Redwood National Park with the regulatory provisions in this final rulemaking will further the conservation of the species. The nonessential experimental population status is appropriate for the reintroduced population because we have determined that it is not essential to the continued existence of the species in the wild.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 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.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order 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. 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.

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

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 60 *et seq.*), whenever a Federal 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 effect 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 an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We certify that this rule would not have a significant economic effect on a substantial number of small entities. The following discussion explains our rationale.

The areas that would be affected under this rule include the release site at Redwood National Park and areas where individual California condors are likely to disperse. Because of the regulatory flexibility for Federal agency actions provided by the NEP designation and the exemption for incidental take in the rule (with a minor exception around occupied nests), we do not expect this rule to have significant effects on any activities within Federal, State, or private lands within the NEP. In regard to section 7(a)(2) of the Act, the population would be treated as proposed for listing, and Federal action agencies are not required to consult on their activities, except on National Wildlife Refuges and National Park System lands, where the NEP is treated as a threatened species for the purposes of section 7 of the Act.

Section 7(a)(4) of the Act requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a species proposed for listing. However, because the NEP is, by definition, not essential to the survival of the species, conferring will likely never be required for the California condor population within the NEP area. Further, the results of a conference are advisory in nature and do not restrict agencies from carrying out, funding, or authorizing activities. Section 7(a)(1) of the Act requires Federal agencies to use their authorities to carry out programs to further the conservation of listed species, which would apply on any lands within the NEP areas. On National Wildlife Refuges and National Park System lands within the NEP, the California condor would be treated as a threatened species for the purposes of section 7 of the Act. As a result, and in accordance with our regulations, some modifications to proposed Federal actions within National Wildlife Refuges and National Park System lands may occur to benefit the California condor, but we do not expect projects to be substantially modified because these lands are already administered in a manner that is compatible with California condor conservation.

This rule broadly authorizes incidental take of the California condor within the NEP area. The regulations implementing the Act define ''incidental take'' as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity, such as agricultural activities and other rural development, camping, hiking, hunting, vehicle use of roads and highways, and other activities in the NEP areas that are in accordance with Federal, Tribal, State, and local laws and regulations. Intentional take for purposes other than authorized data collection or recovery purposes would not be authorized. Intentional take for research or recovery purposes would require a section 10(a)(1)(A) recovery permit under the Act.

The principal activities on private property near the proposed release site are recreation, timber production, agriculture, and activities associated with private residences. The presence of the California condor will not significantly affect the use of lands for these purposes because—with a minor exception around occupied condor nests—there will be no new or additional economic or regulatory restrictions imposed upon States, non-Federal entities, or private landowners due to the presence of the California condor (NPS, 2018). Therefore, this rulemaking is not expected to have any significant adverse impacts to activities on private lands within the NEP area.

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.*):

(1) This rule would not ''significantly or uniquely'' affect small governments. We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that, if adopted, this rulemaking would not impose a cost of $100 million or more in any given year on local or State governments or private entities. A Small Government Agency Plan is not required. Small governments would not be affected because the NEP designation would not place additional requirements on any city, county, or other local municipalities.

(2) This rule would not produce a Federal mandate of $100 million or greater in any year (*i.e.,* it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act). This NEP designation for the California condor would not impose any additional management or protection requirements on the States or other entities.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. When reintroduced populations of federally listed species are designated as nonessential experimental populations, the Act's regulatory requirements regarding the reintroduced population are significantly reduced. This rule would allow for the taking of reintroduced California condors when such take is incidental to an otherwise legal activity, with a minor exception that incidental take resulting from habitat alteration and significant visual or noise disturbance within 656 ft (200 m) of occupied condor nests is prohibited.

A takings implication assessment is not required because this rule: (1) Would not effectively compel a property owner to suffer a physical invasion of property, and (2) would not deny all economically beneficial or productive use of the land or aquatic resources. This rule would substantially advance a legitimate government interest (conservation and recovery of a listed species) and would not present a barrier to all reasonable and expected beneficial uses of private property.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, we have considered whether this rule has significant Federalism effects and have determined that a Federalism assessment is not required. This rule would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. In keeping with Department of the Interior policy, we requested information from and coordinated development of this rule with the affected resource agencies in California, Nevada, and Oregon. Achieving the recovery goals for this species will contribute to its eventual delisting and return to State management. No intrusion on State policy or administration is expected, roles or responsibilities of Federal or

State governments would not change, and fiscal capacity would not be substantially directly affected. The rule operates to maintain the existing relationship between the State and the Federal Government and is being undertaken in coordination with the States of California, Nevada, and Oregon. We have cooperated with CDFW, the NDOW, and ODFW in the preparation of this final rule. Therefore, this rule does not have significant Federalism effects or implications to warrant the preparation of a Federalism assessment pursuant to the provisions of Executive Order 13132.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988 (February 7, 1996, 61 FR 4729), the Office of the Solicitor has determined that this rule would not unduly burden the judicial system and would meet the requirements of sections (3)(a) and (3)(b)(2) of the Order.

Paperwork Reduction Act

This rule does not contain any new collection of information that requires approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). OMB has previously approved the information collection requirements associated with permitting and reporting requirements associated with native endangered and threatened species, and experimental populations, and assigned the following OMB Control Numbers:

- 1018–0094, ''Federal Fish and Wildlife Permit Applications and Reports—Native Endangered and Threatened Species; 50 CFR 10, 13, and 17'' (expires 03/31/2021), and
- 1018–0095, ''Endangered and Threatened Wildlife, Experimental Populations, 50 CFR 17.84'' (expires 9/30/2023).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

In compliance with all provisions of the National Environmental Policy Act of 1969 (NEPA), we have analyzed the impact of this final rule. In cooperation with the NPS and the Yurok Tribe, we have prepared an environmental assessment on this action and have made it available for public inspection (see **ADDRESSES**).

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 229511), Executive Order 13175, and the Department of the Interior Manual Chapter 512 DM 2, we have coordinated closely with the Tribal governments near the release site throughout the development of this rule. In collaboration with the NPS, we extended an invitation for government-to-government consultation to all federally recognized Tribes in the NEP area, have formally met with tribes that have requested government-to-government consultation, and have fully considered information and comments received through the consultation process. We have also considered all comments received from Tribes and tribal members during the public comment period.

Energy Supply, Distribution, or Use (E.O. 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited in this final rule is available online at *http://www.regulations.gov* in Docket No. FWS–R1–ES–2018–0033 or upon request from the Pacific Region Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary author of this final rule is Jesse D'Elia of the Pacific Regional Office (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR 17

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

Regulation Promulgation

Accordingly, we are amending 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. Amend § 17.11(h) by revising the entry for ''Condor, California'' under BIRDS in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
BIRDS				
*	*	*	*	*
Condor, California	*Gymnogyps californianus*	U.S.A. only, except where listed as an experimental population.	E	32 FR 4001, 3/11/1967; 61 FR 54045, 10/16/1996; 50 CFR 17.95(b)[CH].
Condor, California	*Gymnogyps californianus*	U.S.A. (specific portions of Arizona, Nevada, and Utah)—see § 17.84(j).	XN	61 FR 54045, 10/16/1996; 50 CFR 17.84(j) [10j].
Condor, California	*Gymnogyps californianus*	U.S.A. (Oregon, and specific portions of northern California and northwest Nevada)—see § 17.84(i).	XN	86 FR [Insert **Federal Register** page where the document begins], 3/24/2021; 50 CFR 17.84(i) [10j].
*	*	*	*	*

■ 3. Amend § 17.84 by adding paragraph (i) to read as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(i) California condor (*Gymnogyps californianus*).

(1) *Where is the California condor designated as a nonessential experimental population (NEP)?* The NEP area for the California condor is within the species' historical range in northern California, northwestern Nevada, and Oregon.

(i) The western boundary of the NEP is the Submerged Lands Act boundary line along the Pacific coast. The southern boundary of the NEP is formed by: An east-west line from California's Submerged Lands Act boundary to Hare Creek; Hare Creek from the Pacific Ocean to its junction with California State Route 1; north to the junction of State Route 1 and State Route 20; east along California State Route 20 to where it meets Interstate 80; and Interstate 80 from its intersection with California State Route 20 to U.S. Route 95 in Nevada. The eastern boundary of the NEP is U.S. Route 95 in Nevada to the State boundary of Oregon and then east and north along Oregon's southern and eastern boundaries, respectively. The northern boundary of the NEP is the State boundary between Oregon and Washington. All highway boundaries are inclusive of the entire highway right of way.

(ii) Map follows:

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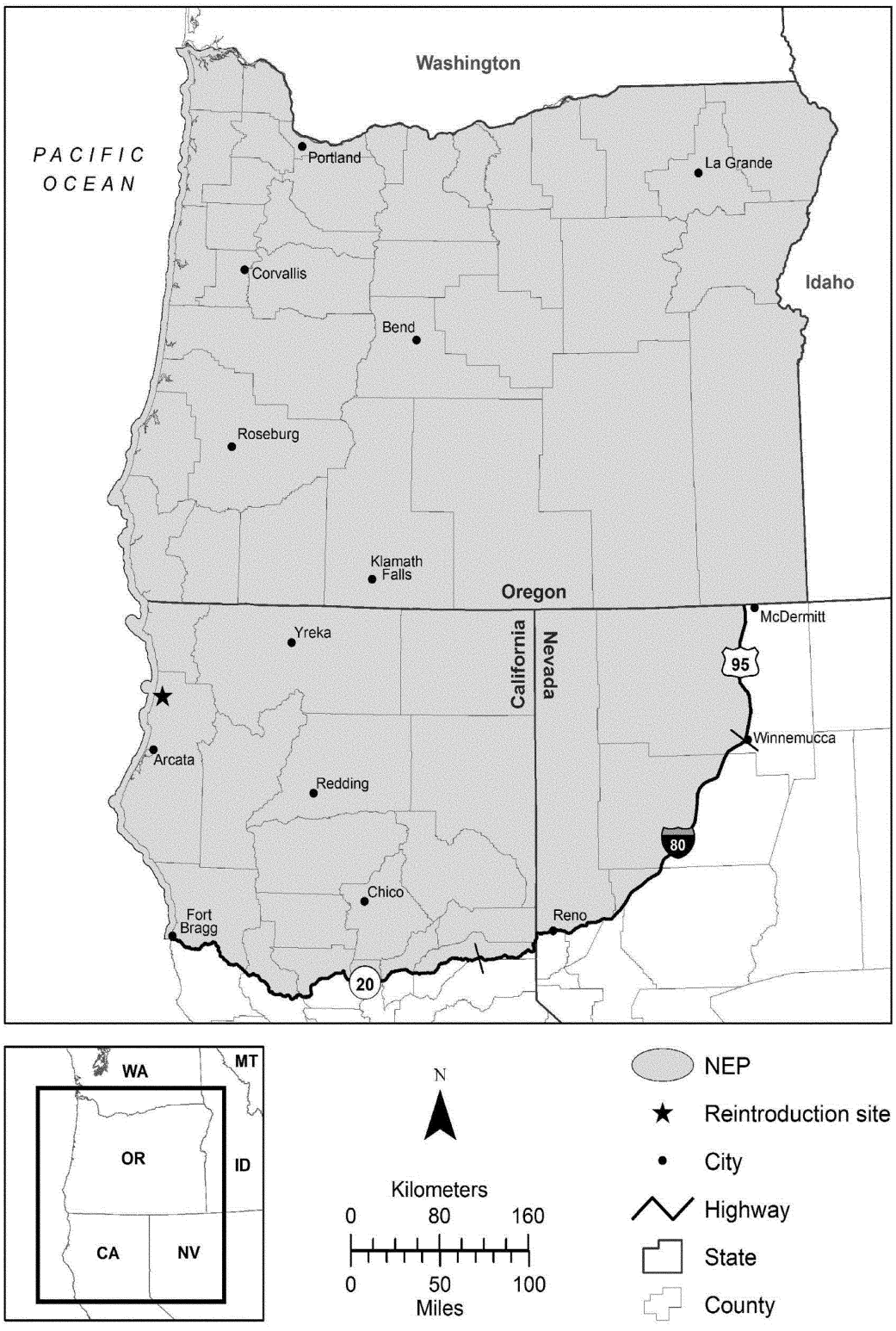
Nonessential Experimental Population for the California Condor in the Pacific Northwest



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(iii) We are designating the experimental population area to accommodate the potential future movements of a wild population of California condors. The released population is expected to remain in the experimental area for the foreseeable future (approximately 20 years) due to the geographic extent of the designation.

(iv) We do not intend to change the status of this nonessential population unless:

(A) The California condor is recovered and subsequently removed from the list

in § 17.11(h) in accordance with the Act; or

(B) The reintroduction is not successful and the regulations in this paragraph (i) are revoked.

(v) Legal actions or other circumstances may compel a change in this nonessential experimental population's legal status to essential, threatened, or endangered, or compel the Service to designate critical habitat for the California condors within the experimental population area defined in this rule. If this happens, all California condors will be removed from the area and this experimental population rule will be withdrawn, unless the participating parties in the reintroduction effort agree that the condors should remain in the wild. Changes in the legal status and/or removal of this population of California condors will be made in compliance with any applicable Federal rulemaking and other procedures.

(vi) We will not designate critical habitat for this NEP, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) *What take of the California condor is allowed in the NEP area?* (i) Throughout the California condor NEP, you will not be in violation of the Act if you unavoidably and unintentionally take a California condor (except as noted in paragraph (i)(3)(ii) of this section), provided such take is non-negligent, incidental to a lawful activity (*i.e.,* not done on purpose), and you report the take as soon as possible as provided under paragraph (i)(2)(iii) of this section. The phrase ''unavoidably and unintentionally'' means take that occurs despite the exertion of reasonable care to avoid take. Examples of activities that will not violate the take prohibitions of this section include, but are not limited to: Legal hunting of species other than condors; recreational shooting; ranching; farming; existing authorized uses of private and public lands; driving; recreational activities; and administrative and emergency functions carried out by local, State, or Federal government agencies.

(ii) Any person with a valid permit issued by the Service under § 17.32 may take California condors in the wild in the experimental population area, pursuant to the terms of the permit. Additionally, any employee or agent of the Service, National Park Service, Yurok Tribe Natural Resource Division, California Department of Parks and Recreation, California Department of Fish and Wildlife, Nevada Department of Wildlife, or Oregon Department of Fish and Wildlife who is designated and trained for such purposes, when acting in the course of official duties, may take a California condor within the NEP area if such action is necessary:

(A) For scientific purposes;

(B) To relocate or haze California condors within the experimental population area to improve California condor survival or recovery;

(C) To relocate California condors that have moved outside the experimental population area;

(D) To transport California condors to and from veterinary facilities or captive-breeding facilities;

(E) To address conflicts with ongoing or proposed activities in an attempt to improve California condor survival;

(F) To aid a sick, injured, or orphaned California condor;

(G) To salvage a dead specimen that may be useful for scientific study;

(H) To dispose of a dead specimen; or

(I) To aid in law enforcement investigations involving the California condor.

(iii) Any take pursuant to paragraphs (i)(2)(i), (i)(2)(ii)(F), (i)(2)(ii)(G), or (i)(2)(ii)(H) of this section must be reported as soon as possible to the California Condor Field Coordinator, California Condor Recovery Office, 2493 Portola Road, Suite A, Ventura, California 93003, (805/644–5185), who will determine the disposition of any live or dead specimens.

(3) *What take of the California condor is not allowed in the NEP area?* For the purposes of this rule, an occupied California condor nest is defined as a nest that is attended by a breeding pair of condors, occupied by a condor egg, or occupied or attended by a condor less than 1 year of age.

(i) Except as expressly allowed in paragraph (i)(2) of this section, all of the provisions of § 17.31(a) and (b) apply to the California condor in areas identified in paragraph (i)(1) of this section, and any manner of take not described under paragraph (i)(2) of this section is prohibited in the NEP.

(ii) Habitat alteration (*e.g.,* removing trees, erecting structures, altering the nest structure or perches near the nest) within 656 ft (200 m) of an occupied nest is prohibited, except for emergency fuels treatment activities by Federal, State, Tribal, or local government agencies to reduce the risk of catastrophic wildfire or during responses to wildfire or other emergencies.

(iii) Significant visual or noise disturbance (*e.g.,* tree felling, chainsaws, helicopter overflights, concrete cutters, fireworks, explosives) within 656 ft (200 m) of an occupied nest is prohibited, except for emergency fuels treatment activities by Federal, State, Tribal, or local government agencies to reduce the risk of catastrophic wildfire or during responses to wildfire or other emergencies. Activities such as ranching and use of existing roads and trails would not be considered a significant visual or noise disturbance.

(iv) You must not possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any California condor or part thereof from the experimental population taken in violation of this paragraph (i) or in violation of applicable tribal or State laws or regulations or the Act.

(v) It is unlawful for you to attempt to commit, solicit another to commit, or cause to be committed, any take of the California condor, except as expressly allowed in paragraph (i)(2) of this section.

(4) *How will the effectiveness of this reintroduction be monitored?* The status of the reintroduction project will receive an informal review on an annual basis, and we will evaluate the reintroduction program to determine whether to continue or terminate reintroductions every 5 years as part of our 5-year status review for the species.

(i) This evaluation will include, but will not be limited to: A review of management issues; California condor movements and post-release behavior; assessment of food resources and dependence of California condors on supplemental food; fecundity of the population; causes and rates of mortality; project costs; public acceptance; and progress toward establishing a self-sustaining population.

(ii) If a formal evaluation indicates the project is experiencing a 40 percent or greater mortality rate over multiple years or released California condors are not finding food on their own, serious consideration will be given to terminating the project.

* * * * *

Martha Williams,

Principal Deputy Director, Exercising the Delegated Authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2021–05646 Filed 3–23–21; 8:45 am]

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