



Billing Code 4333-15

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: Proposed rule; availability of supplemental information.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service or USFWS), propose to establish 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 would 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. We are seeking comments on this proposal and on our joint FWS–National Park Service environmental assessment (EA), prepared pursuant to the National Environmental Policy Act of 1969, as amended, which analyzes the potential

environmental impacts associated with the proposed reintroduction and designation of a nonessential experimental population.

DATES: We will accept comments received or postmarked on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES**), the deadline for submitting an electronic comment is 11:59 p.m. Eastern Time on this date.

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

- Electronically: Go to the Federal eRulemaking Portal:

<http://www.regulations.gov>. In the Search box, enter Docket No. FWS–R1–ES–2018–0033, which is the docket number for this rulemaking. Then, click the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the box next to Proposed Rules to locate this document. You may submit a comment by clicking on “Comment Now!”

- By hard copy: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R1–ES–2018–0033, Division of Policy, Performance, and Management Programs, U.S. Fish and Wildlife Service, MS; BPHC; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

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

Copies of documents: This proposed rule is available on <http://www.regulations.gov> under Docket No. FWS–R1–ES–2018–0033. Persons who

use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1-800-877-8339.

You may obtain copies of the EA and submit comments on that document at: <http://parkplanning.nps.gov/redwood>. Information regarding public meetings will be posted here as well. The EA is also available for public inspection at: Redwood National and State Parks, Newton B. Drury Center, 1111 2nd Street, Crescent City, CA 95531.

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, facsimile 503-231-6243). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We want any final rule resulting from this proposal to be as effective as possible. Therefore, we invite Tribal and governmental agencies, the scientific community, industry, and other interested parties to submit comments or recommendations concerning any aspect of this proposed rule. Comments should be as specific as possible.

To issue a final rule to implement this proposed action, we will take into consideration all comments and any additional information we receive. Such information may lead to a final rule that differs from this proposal. All comments, including commenters' names and addresses, if provided to us, will become part of the supporting record.

You may submit your comments and materials concerning the proposed rule by one of the methods listed in **ADDRESSES**. Comments must be submitted to <http://www.regulations.gov> before 11:59 p.m. (Eastern Time) on the date specified in **DATES**. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in **DATES**.

We will post your entire comment—including your personal identifying information—on <http://www.regulations.gov>. If you provide personal identifying information in your comment, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>. All comments and materials we receive, as well as all supporting documentation, will be available by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Pacific Regional Office (see **FOR FURTHER INFORMATION CONTACT**).

We particularly seek comments regarding:

- The proposed geographic boundary of the NEP;
- Information pertaining to the California condor as it relates to the proposed reintroduction effort;
- Effects of the proposed reintroduction on other native species and the ecosystem;
and
- The adequacy of the proposed regulations for the NEP.

Peer Review

In accordance with our Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities, which was published on July 1, 1994 (59 FR 34270), and the internal memorandum clarifying the Service's interpretation and implementation of that policy (USFWS *in litt.* 2016), we will seek the expert opinion of at least three appropriate independent specialists regarding scientific data and interpretations contained in this proposed rule. We will send copies of this proposed rule to the peer reviewers immediately following publication in the *Federal Register*. The purpose of such review is to ensure that our decisions are based on scientifically sound data, assumptions, and analysis. Accordingly, the final decision may differ from this proposal.

Background

Statutory and Regulatory Framework

The 1982 amendments to the 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 of any 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. 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).

Furthermore, 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 Proposed 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.

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.

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.

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 recently enacted 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 this proposal is finalized, and we are subsequently compelled to change the California condor's NEP status to essential, threatened, all condors will be removed from the area and the experimental population rule will be revoked, unless the parties to the memorandum of understanding 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.

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), 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 wing linings become gradually whiter (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 necessary to successfully compete at carcasses; (2) the ability to retain large amounts of food, which sustains individuals for extended periods between meals; (3) soaring and gliding flight and excellent eyesight, which help condors efficiently find food; (4) hooked bills, long necks, and largely naked heads, which allow condors to access muscle tissue deep within a carcass and to rip pieces of meat from a carcass, while minimizing the potential for feather fouling (a condition where feathers become soiled such that their performance is degraded); and (5) 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 and were infrequently encountered east of the Cascade or Sierra Nevada mountain ranges (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 2017, there were 290 California condors in the wild, divided among the four release areas: central California (90 condors); southern California (80 condors); northern Arizona and southern Utah (82 condors); and the Sierra de San Pedro Mártir release site in Baja California (38 condors) (USFWS 2018, p. 1). There were also 173 California condors in captivity (USFWS 2018, p. 1) distributed among release sites, zoos, and four captive-breeding facilities. 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 all 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). 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 active 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 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). 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). Foraging habitats generally have high landscape productivity, moderate to steep slopes, sparse vegetation, and upward air movements 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 as an exclusive food resource is that dead animals are highly dispersed and ephemeral (Ruxton and Houston 2004, p. 433). This 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 (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). 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 in 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 is 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.

Based on the California condor's fidelity to nesting territories, their social foraging behaviors, and our monitoring of current populations, we do not expect major geographic shifts in the breeding populations. The California condor's long nesting period coupled with extended dependency of chicks on adults also precludes latitudinal migration in the breeding population (D'Elia and Haig 2013, pp. 61–75). However, 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). Seasonal changes in daylight hours and the availability of thermals for soaring mean that home ranges can be up to 5–6 times larger in the late summer and early 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 successfully every other year (Koford 1953, pp. 22–23). However, this pattern varies, 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 may nest again in the following year, but late fledging inhibits 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 foraging areas relatively close to natal nest areas, while older juveniles would forage more widely and visit additional non-natal nesting territories and it was not until age 4 or 5 that condors were capable of visiting virtually all foraging and nesting areas within a given population. However, more recent data from the reintroduced populations shows 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 are capable of covering the flock’s entire range (USFWS, unpublished data). This difference between the remnant wild population in the 1980s and the current populations 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.

Population 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 demand low mortality rates for the population to be stable or to grow (Mertz 1971, p. 448; Verner 1978, pp. 19–21; Meretsky et al. 2000, pp. 960–961). Population 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, is currently being phased in, with a full State-wide ban for all take of wildlife by 2019. In addition to these laws, voluntary lead reduction programs are in place in California, Oregon, 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 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, webpage, UDWR 2017, webpage, ODFW 2017, webpage; Huntingwithnon-lead.org 2017, webpage).

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, organochlorine 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 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. 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 factors, (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 State-wide 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). These model simulations demonstrate 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, would reduce the population growth of condors in California. Under the scenarios where the total number of chicks distributed currently remains approximately equal to current levels, this effect would increase as the ratio of releases allocated to the new flock versus the existing flock increases. 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, a 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 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 Proposed 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 these efforts, 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 widely 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 proposed 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.

The proposed 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 proposed experimental population is not essential to the continued existence of the species in the wild, and we propose to 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 proposed 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 all released California condors are actively tracked with radio or GPS/GSM transmitters, we are confident that there are no wild condors in the proposed NEP.

The location of the proposed 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 proposed release site was selected following careful consideration of site suitability, logistics, threats and hazards, cultural resources, and suitability of adjacent lands (Yurok Tribe Wildlife Program, *pers. comm.* 2016). The proposed release site would 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. For the purposes of this proposed rule, we define the foreseeable future as approximately 20 years. This time horizon was based on our ability to reasonably forecast population expansion given the number of years of data we have on California condor movements from release sites in southern and central California (22 years in southern California and 20 years central California). We expect that the relative 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 may draw our 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 use recognizable features on the landscape, legal land descriptions, or administrative boundaries to demark experimental population boundaries. We are proposing to include 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 the 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 proposed 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 proposed 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 the small number of 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 the proposed 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. Furthermore, 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 proposed 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 variety of ecosystems including the mountain foothill 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 re-establish 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 Wildlife Program, *pers. comm.* 2016).

(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, 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 (MOU) 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 will be in effect by the time of the reintroduction effort (see **Biological Information**, above). In addition, voluntary efforts to reduce lead exposure in wildlife are ongoing in Oregon (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 proposed 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 proposed 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.

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., GPS/GSM and radio 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.

An effort will be made 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 proposed 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 2017, there were 173 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 193 during this time period (USFWS 2018, pp. 1, 6). With the assistance of the captive-breeding program, the total population of California condors increased from 370 condors in 2010 to 463 condors in 2017 (USFWS 2018, p. 6).

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, coordination with landowners and land managers, public awareness, and other tasks necessary to ensure successful reintroduction

of the species. 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. If we adopt the 10(j) rule as proposed, most incidental take of California condors within the experimental population area would be allowed, provided that the take is unintentional and not due to negligent conduct. With the exception of fuels treatment activities by Federal and State agencies to reduce the risk of catastrophic wildfire, 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 active nest that result in incidental take of California condors would be prohibited. Activities such as livestock grazing and use of existing roads and trails would not be considered a significant visual or noise disturbance. For the purposes of this rule, an active 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 162–5,249 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 0.5–1.5 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 we are proposing 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 proposing this population as nonessential experimental. 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 active 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 proposing to prohibit habitat alteration or significant visual or noise disturbance within 656 ft (200 m) of active nests. However, fuels treatments by Federal and State agencies designed to reduce the risk of catastrophic wildfire would not be prohibited within 656 ft (200 m) of active nests given the anticipated long-term conservation benefits to California condor nesting habitat. Other actions within 656 ft (200 m) of an active California condor nest may be permissible if they will not result in incidental take of California condors because of mitigating factors

(e.g., topography or limited duration or extent of the action); however, we recommend that persons who intend to take an action within this distance of an active California condor nest first contact us for technical assistance.

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, and ranching operations (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, would be not be prohibited. Some activities, such as those associated with timber harvest or erecting structures, within 200 meters of an active 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 active 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, California Department of Parks and Recreation, CDFW, ODFW, Nevada Department of Wildlife (NDOW), and Yurok Wildlife Department 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.

(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 this proposed action in northern California and Oregon. 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 this proposed regulation to designate the reintroduced California condors as an NEP.

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.

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.

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 proposed 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.

Executive Order 13771

Under E.O. 13771 (“Reducing Regulation and Controlling Regulatory Costs”) (82 FR 9339, February 3, 2017), this rule is not a regulatory action because this rule is not significant under E.O. 12866.

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 active 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. Furthermore, 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. We believe the presence of the California condor will not significantly affect the use of lands for these purposes because—with a minor exception around active 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 proposed 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 proposed 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 proposed 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 for habitat alteration and significant visual or noise disturbance within 656 ft (200 m) of active condor nests.

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 use of private property.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, we have considered whether this proposed 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 proposed 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 proposed 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 proposed rule. Therefore, this proposed 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 require 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 12/31/2020).

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 proposed rule. Based on this analysis and any new information resulting from public comment on the proposed action, we will determine if there are any significant impacts or effects caused by this rule. In cooperation with the NPS and the Yurok Tribe, we have prepared an environmental assessment on this proposed action and have made it available for public inspection: (1) in person at Redwood National and State Parks, Newton B. Drury Center, 1111 2nd Street, Crescent City, CA 95531; and (2) online at <http://www.regulations.gov> or <https://parkplanning.nps.gov/condor>. All appropriate NEPA documents will be finalized before this rule is finalized.

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 proposed

release site throughout the development of this rule. In collaboration with the NPS, we have extended an invitation for government-to-government consultation to all federally recognized Tribes in the proposed NEP area, have formally met with tribes that have requested government-to-government consultation, stand ready to meet with other tribes that request government-to-government consultation, and will fully consider information and comments received through the consultation process. We will also consider 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.

Clarity of This Regulation (E.O. 12866)

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments

should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

References Cited

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

Author

The primary author of this proposed 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.

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

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

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

2. 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	<i>Gymnogyps californianus</i>	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	<i>Gymnogyps californianus</i>	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	<i>Gymnogyps californianus</i>	U.S.A. (Oregon, and specific portions of northern California and northwest Nevada)	XN	[Federal Register citation of the final rule]; 50 CFR 17.84(i) ^{10j} .
* * * * *				

3. Amend § 17.84 by adding a 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)?* (i) The NEP area

for the California condor is within the species' historical range in northern California, northwestern Nevada, and 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 State boundary between Oregon and Washington. All highway boundaries are inclusive of the entire highway right of way.

(ii) 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.

(iii) 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.

(iv) 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 revoked, 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.

(v) 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 and incidental to a lawful activity, such as hunting, ranching, driving, or recreational activities, and you report the take as soon as possible as provided under paragraph (i)(2)(iii) of this section.

(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 Wildlife Department, 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 paragraph (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?* (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) With the exception of fuels treatment activities by Federal and State agencies to reduce the risk of catastrophic wildfire, 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 active nest that result in incidental take of California condors would be prohibited. Activities such as livestock grazing and use of existing roads and trails would not be considered a significant visual or noise disturbance. For the purposes of this rule, an active 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. If you intend to take an action within 656 ft (200 m) of an active California condor nest and believe that your action will not result in incidental take of California condors because of mitigating factors (e.g., topography or limited duration or extent of the action), we recommend you first contact us for technical assistance.

(iii) 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.

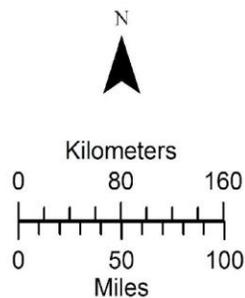
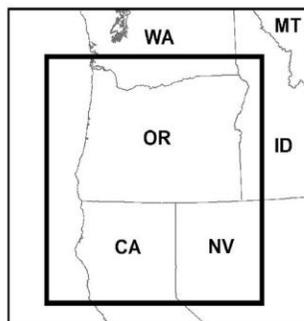
(iv) It is unlawful for you to attempt to commit, solicit another to commit, or cause to be committed, any take of the California condor, except as expressly allowed in paragraph (i)(2) of this section.

(4) *How will the effectiveness of this reintroduction be monitored?* (i) 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. 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. If a formal evaluation indicates the project is experiencing a 40 percent or greater mortality rate or released California condors are not finding food on their own, serious consideration will be given to terminating the project.

(5) Map of the NEP areas for the California condor in the Pacific Northwest:

Nonessential Experimental Population for the California Condor in the Pacific Northwest



-  NEP
-  Reintroduction site
-  City
-  Highway
-  State
-  County

* * * * *

Dated: ___ March 20, 2019 _____

__Margaret E Everson_____

Margaret E. Everson
Principal Deputy Director
Exercising the Authority of the Director
for the U.S. Fish and Wildlife Service

Billing Code 4333-15

[FR Doc. 2019-06293 Filed: 4/4/2019 8:45 am; Publication Date: 4/5/2019]