

Reasonable Accommodation

The Service is committed to providing access to the public informational meeting and public hearing for all participants. Closed captioning will be available during the public informational meeting and public hearing. Further, a full audio and video recording and transcript of the public hearing will be posted online at <https://www.fws.gov/pacificislands> after the hearing. Participants will also have access to live audio during the public informational meeting and public hearing via their telephone or computer speakers. Persons with disabilities requiring reasonable accommodations to participate in the meeting and/or hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** at least 5 business days prior to the date of the meeting and hearing to help ensure availability. An accessible version of the Service's public informational meeting presentation will also be posted online at <https://www.fws.gov/pacificislands> prior to the meeting and hearing (see **DATES**, above). See <https://www.fws.gov/pacificislands> for more information about reasonable accommodation.

Authors

The primary author of this document is Ecological Services staff of the Interior-Region 9/12 Regional Office, U.S. Fish and Wildlife Service, Portland, Oregon.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Signing Authority

The Director, U.S. Fish and Wildlife Service, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the U.S. Fish and Wildlife Service. Martha Williams, Principal Deputy Director Exercising the Delegated Authority of the Director, U.S. Fish and Wildlife Service, approved this document on June 21, 2021, for publication.

Anissa Craghead,

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R1-ES-2020-0082; FF09E22000 FXES1113090000 212]

RIN 1018-BD97

Endangered and Threatened Wildlife and Plants; Reclassifying the Fender's Blue Butterfly From Endangered to Threatened With a Section 4(d) Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to reclassify the Fender's blue butterfly (*Icaricia icarioides fenderi*) from endangered to threatened (downlist) under the Endangered Species Act of 1973, as amended (Act). The Fender's blue butterfly is endemic to the Willamette Valley of Oregon. The proposed downlisting is based on our evaluation of the best available scientific and commercial information, which indicates that the species' status has improved such that it is not currently in danger of extinction throughout all or a significant portion of its range, but that it is still likely to become so in the foreseeable future. We also propose a rule under section 4(d) of the Act that provides for the conservation of the species.

DATES: We will accept comments received or postmarked on or before August 23, 2021. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by August 9, 2021.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. In the Search box, enter FWS-R1-ES-2020-0082, which is the docket number for this rulemaking. Then, click on 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 Proposed Rule box to locate this document. You may submit a comment by clicking on "Comment."

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS-R1-ES-2020-0082, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275

Leesburg Pike, Falls Church, VA 22041-3803.

We request that you send comments only by the methods described above. 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).

Document availability: This proposed rule and supporting documents, including the 5-year review, the Recovery Plan, and the species status assessment (SSA) report are available at <https://www.fws.gov/oregonfwo> and at <http://www.regulations.gov> under Docket No. FWS-R1-ES-2020-0082.

FOR FURTHER INFORMATION CONTACT: Paul Henson, State Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266; telephone 503-231-6179. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act a species may warrant reclassification from endangered to threatened if it no longer meets the definition of endangered (in danger of extinction). The Fender's blue butterfly is listed as endangered, and we are proposing to reclassify (downlist) the Fender's blue butterfly as threatened because we have determined it is not currently in danger of extinction. Downlisting a species as a threatened species can only be made by issuing a rulemaking.

What this document does. This rule proposes to downlist the Fender's blue butterfly from endangered to threatened (*i.e.*, to "downlist" the species), with a rule issued under section 4(d) of the Act, based on the species' current status, which has been improved through implementation of conservation actions.

The basis for our action. Under the Act, we may determine that a species is an endangered species or a threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We may downlist a species if the best available commercial and scientific data indicate the species no

longer meets the applicable definition in the Act. We have determined that the Fender's blue butterfly is no longer in danger of extinction and, therefore, does not meet the definition of an endangered species, but is still affected by the following current and ongoing threats to the extent that the species meets the definition of a threatened species under the Act: The loss, degradation, and fragmentation of prairie and oak savannah habitats including conversion to non-habitat land uses (e.g., urban development, agriculture); elimination of natural disturbance regimes; encroachment into prairie habitats by shrubs and trees due to fire suppression; insecticides and herbicides; and invasion by non-native plants.

We are proposing to promulgate a section 4(d) rule. We propose to prohibit all intentional take of the Fender's blue butterfly and specifically allow incidental take by landowners or their agents while conducting management for the creation, restoration, or enhancement of short-stature native upland prairie or oak savannah conditions under section 9(a)(1) of the Act as a means to provide protective mechanisms to our State and private partners so that they may continue with certain activities that will facilitate the conservation and recovery of the species.

This document consists of: (1) A summary of the status of Fender's blue butterfly and the most recent 5-year review recommendation that the species be reclassified from endangered to threatened status; (2) a proposed rule to list Fender's blue butterfly as a threatened species under the Act; and (3) a proposed rule under section 4(d) of the Act to provide for the conservation of the species (hereafter, a "4(d) rule"). Additionally, to support our species status review, we prepared a Species Status Assessment Report for the Fender's Blue Butterfly (USFWS 2020, entire) that presents a thorough review of the taxonomy, life history, ecology, and overall viability of the Fender's blue butterfly (available at <http://www.regulations.gov>, Docket No. FWS-R1-ES-2020-0082, under Supporting Documents).

Information Requested

Public Comments

We intend that any final action resulting from this proposed rule be based on the best scientific and commercial data available and be as accurate and as effective as possible.

Therefore, we request comments and information from other concerned

governmental agencies, the scientific community, industry, or any other interested parties concerning this proposed rule. In particular, we seek comments concerning:

(1) Reasons we should or should not reclassify Fender's blue butterfly from an endangered species to a threatened species.

(2) New biological or other relevant data concerning any threat (or lack thereof) to Fender's blue butterfly and any existing regulations that may be addressing these or any of the stressors to the species discussed here.

(3) New information concerning the population size or trends of Fender's blue butterfly.

(4) Current or planned activities within the geographic range of Fender's blue butterfly that may have adverse or beneficial impacts on the species.

(5) New information or data on the projected and reasonably likely impacts to Fender's blue butterfly or its habitat associated with climate change or any other factors that may affect the species in the future.

(6) Information on regulations that are necessary and advisable to provide for the conservation of Fender's blue butterfly and that the Service can consider in developing a 4(d) rule for the species.

(7) Information concerning the extent to which we should include any of the section 9 prohibitions in the 4(d) rule or whether any other forms of take should be excepted from the prohibitions in the 4(d) rule.

Please include sufficient information with your submission (such as scientific journal articles or other publications, preferably in English) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made "solely on the basis of the best scientific and commercial data available."

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the website. If your submission is

made via a hardcopy that includes personal identifying information, 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. We will post all hardcopy submissions on <http://www.regulations.gov>.

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>.

Because we will consider all comments and information we receive during the comment period, our final determinations may differ from this proposal. Based on the new information we receive (and any comments on that new information), we may conclude that the species should remain listed as endangered instead of being reclassified as threatened, or we may conclude that the species no longer warrants listing as either an endangered species or a threatened species. In addition, we may change the parameters of the prohibitions or the exceptions to those prohibitions if we conclude it is appropriate in light of comments and new information received. For example, we may expand the incidental-take prohibitions to include prohibiting additional activities if we conclude that those additional activities are not compatible with conservation of the species. Conversely, we may establish additional exceptions to the incidental-take prohibitions in the final rule if we conclude that the activities would facilitate or are compatible with the conservation and recovery of the species.

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. For the immediate future, we will provide these public hearings using webinars that will be announced on the Service's website, in addition to the **Federal Register**. The use of these virtual public hearings is consistent with our regulation at 50 CFR 424.16(c)(3).

Supporting Documents

A species status assessment (SSA) team prepared an SSA report for the

Fender's blue butterfly. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species.

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), our August 22, 2016, Director's Memo on the Peer Review Process, and the Office of Management and Budget's December 16, 2004, Final Information Quality Bulletin for Peer Review (revised June 2012), we sought the expert opinions of 12 appropriate and independent specialists with knowledge of the biology and ecology of Fender's blue butterfly or its habitat regarding the SSA report. The purpose of peer review is to ensure that our determination regarding the status of the species under the Act is based on scientifically sound data, assumptions, and analyses. We received feedback from 5 of the 12 peer reviewers contacted. In preparing this proposed rule, we incorporated the results of these reviews, as appropriate, into the final SSA report, which is the foundation for this proposed rule.

Previous Federal Actions

On January 27, 1998, we published a proposed rule (63 FR 3863) to list the Fender's blue butterfly (*Icaricia icarioides fenderi*), *Lupinus sulphureus* ssp. *kincaidii* (Kincaid's lupine), and *Erigeron decumbens* var. *decumbens* (Willamette daisy) under the Act, without critical habitat. On January 25, 2000, we published the final rule designating endangered status for the Fender's blue butterfly and Willamette daisy, and threatened status for Kincaid's lupine (65 FR 3875).

On November 2, 2005, we published a proposed rule in the **Federal Register** to designate critical habitat for the Fender's blue butterfly, Kincaid's lupine, and Willamette daisy (70 FR 66492). We published the final rule designating critical habitat for the Fender's blue butterfly, Kincaid's lupine, and Willamette daisy on October 31, 2006 (71 FR 63862). The final critical habitat designation included approximately 1,218 hectares (ha) (3,010 acres [ac]) for Fender's blue butterfly in Oregon; 237 ha (585 ac) for Kincaid's lupine in Oregon and Washington; and 291 ha (718 ac) for Willamette daisy in Oregon.

On September 22, 2008, we published the notice of availability of the draft Recovery Plan for the Prairie Species of

Western Oregon and Southwestern Washington (hereafter "recovery plan") in the **Federal Register** (73 FR 54603). The notice of availability for the final recovery plan was published in the **Federal Register** on June 29, 2010 (75 FR 37460).

On July 6, 2005, we announced the initiation of a 5-year review of the Fender's blue butterfly under section 4(c)(2)(b) of the Act (70 FR 38972). The 5-year status review for the Fender's blue butterfly was signed on March 6, 2019.

Background

Status Assessment for the Fender's Blue Butterfly

We prepared an SSA report for the Fender's Blue Butterfly (USFWS 2020, entire) that presents a thorough review of the taxonomy, life history, ecology, and overall viability of the Fender's blue butterfly. In this proposed rule we present only a summary of the key results and conclusions from the SSA report; the full report is available at <http://www.regulations.gov>, as referenced above.

Recovery Planning and Recovery Criteria

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Under section 4(f)(1)(B)(ii), recovery plans must, to the maximum extent practicable, include objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of section 4 of the Act, that the species be removed from the List.

Recovery plans provide a roadmap for us and our partners on methods of enhancing conservation and minimizing threats to listed species, as well as measurable criteria against which to evaluate progress towards recovery and assess the species' likely future condition. However, they are not regulatory documents and do not substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. A decision to revise the status of a species, or to delist a species is ultimately based on an analysis of the best scientific and commercial data available to determine whether a species is no longer an endangered species or a threatened species, regardless of whether that information differs from the recovery plan.

There are many paths to accomplishing recovery of a species, and recovery may be achieved without all of the criteria in a recovery plan being fully met. For example, one or more criteria may be exceeded while other criteria may not yet be accomplished. In that instance, we may determine that the threats are minimized sufficiently and that the species is robust enough that it no longer meets the definition of an endangered species or a threatened species. In other cases, we may discover new recovery opportunities after having finalized the recovery plan. Parties seeking to conserve the species may use these opportunities instead of methods identified in the recovery plan.

Likewise, we may learn new information about the species after we finalize the recovery plan. The new information may change the extent to which existing criteria are appropriate for identifying recovery of the species. The recovery of a species is a dynamic process requiring adaptive management that may, or may not, follow all of the guidance provided in a recovery plan.

In 2010, we finalized the Recovery Plan for the Prairie Species of Western Oregon and Southwestern Washington, which applied to a suite of endemic species including Fender's blue butterfly (USFWS 2010, entire). The objective of the recovery plan is to achieve viable populations of the listed species distributed across their historical ranges in a series of interconnected populations. This objective was to be accomplished by establishing metapopulations of restored prairie reserves across the geographic range covered by the recovery plan (USFWS 2010, p. v). The recovery plan set abundance and distribution goals for Fender's blue butterfly by delineating three recovery zones (Salem, Corvallis, and Eugene) encompassing the historical range of the species. The two downlisting criteria established for Fender's blue butterfly were as follows:

(1) Each recovery zone has one functioning network (a metapopulation with several interacting subpopulations, as defined in the recovery plan) with a minimum count of 200 butterflies, distributed among 3 subpopulations, for at least 10 years; in addition to this network, there must be a second functioning network or 2 independent populations with butterflies present each year in each recovery zone. Downlisting goals were set at a 90 percent probability of persistence for 25 years.

(2) Two functioning networks or one functioning network and two independent populations in each zone

must be protected and managed for high-quality prairie habitat. The plan described high-quality prairie as habitat consisting of a diversity of native, non-woody plant species, various nectar plants that bloom throughout the flight season of Fender’s blue butterfly, low frequency of nonnative plant species and encroaching woody species, and essential habitat elements (e.g., nest sites and food plants) for native pollinators. At least one of the larval host plant species, *Lupinus sulphureus* ssp. *kincaidii*, *L. arbustus* or *L. albicaulis*, must be present.

All three recovery zones have at least two metapopulations (Table 1). The Baskett, Wren, West Eugene, and Willow Creek metapopulations have had more than 200 butterflies each year

for at least 10 consecutive years and are therefore meeting the recovery criteria. In addition, the Gopher Valley, Oak Ridge, Butterfly Meadows, Greasy Creek, Lupine Meadows, Coburg Ridge, and Oak Basin metapopulations have had butterflies present for at least 10 years though they have not exceeded the count of 200 butterflies. Thus, the species is currently meeting population criteria for downlisting. That said, concern remains for the Corvallis recovery zone in the middle of the species’ range, with metapopulations that are generally less robust and more vulnerable to deteriorating in condition over time.

The species is currently meeting habitat management and protection downlisting criteria. In each recovery

zone, we have at least three metapopulations with greater than 75 percent of their habitat protected (Table 1). Managers of protected land either have a habitat management plan in place, or are in the process of creating plans to maintain prairie quality for Fender’s blue butterfly. Although the recovery plan has identified the number of nectar species and sufficient amount of nectar to make up high quality habitat, our metapopulations currently do not meet the strict definition as spelled out in the recovery plan. However, we believe that for the species to achieve recovery, it does not need to fulfill this part of the criteria as laid out in the recovery plan. We will discuss this in greater detail below.

TABLE 1—FENDER’S BLUE BUTTERFLY DISTRIBUTION, ABUNDANCE AND PROTECTION ACROSS RECOVERY ZONES

| Metapopulation | At least 200 butterflies for 10 years | Number consecutive years ≥200 butterflies | Time period with ≥200 butterflies | Butterflies present for past 10 years | Habitat protection (%) |
|---------------------------------|---------------------------------------|---|-----------------------------------|---------------------------------------|------------------------|
| Salem Recovery Zone: | | | | | |
| Baskett | Y | 18 | 2000–2018 | Y | 100 |
| Gopher Valley | N | 7 | 2012–2018 | Y | 100 |
| Hagg Lake | N | 8 | 2011–2018 | N | 100 |
| Moore’s Valley | N | 0 | – | N | 100 |
| Oak Ridge | N | 6 | 2013–2018 | Y | 35 |
| Turner Creek | N | 0 | – | N | 45 |
| Corvallis Recovery Zone: | | | | | |
| Butterfly Meadows | N | 6 | 2003–2009 | Y | 24 |
| Finley | N | 3 | 2016–2018 | N | 100 |
| Greasy Creek | N | 0 | – | Y | 4 |
| Lupine Meadows | N | 6 | 2003–2009 | Y | 100 |
| Wren | Y | 12 | 2006–2018 | Y | 93 |
| Eugene Recovery Zone: | | | | | |
| Coburg Ridge | N | 2 | 2006–2007 | Y | 77 |
| Oak Basin | N | 0 | – | Y | 100 |
| West Eugene | Y | 15 | 2003–2018 | Y | 100 |
| Willow Creek | Y | 25 | 1993–2018 | Y | 100 |

While Fender’s blue butterfly meets downlisting criteria, the species does not meet delisting criteria. The three delisting criteria established for Fender’s blue butterfly were as follows:

(1) Each of the three recovery zones has a combination of functioning networks and independent populations such that the probability of persistence is 95 percent over the next 100 years; Annual population surveys in each functioning network and independent population must count at least the minimum number of adult butterflies for 10 consecutive years.

(2) Sites supporting populations of Fender’s blue butterflies considered in Criterion 1 above must be protected and managed for high-quality prairie habitat as described in the recovery plan.

(3) Monitoring of populations following delisting will verify the ongoing recovery of the species, provide

a basis for determining whether the species should be again placed under the protection of the Act, and provide a means of assessing the continuing effectiveness of management actions.

Delisting may be achieved with a variety of combinations of metapopulations and independent populations in each recovery zone as detailed in the recovery plan. Currently, each recovery zone has at least four metapopulations meaning that each metapopulation would need a minimum of 400 butterflies in each of 10 consecutive years to meet delisting Criterion 1. At this time, none of the recovery zones meet this criterion. For Criterion 2, many of the sites for the Fender’s blue butterfly have protection in place. Currently, we have three HCPs, 17 SHA, and many partners agreement in place. These agreements help maintain the species habitat through

prairie habitat restoration and enhancement. Overall, there is currently management and protection for the Fender’s blue butterfly habitat. However, these sites do not possess sufficient number of butterflies to meet Criterion 1. Additionally, we also do not have post-delisting monitoring plans or agreements in place to assure habitat management will continue for this conservation-reliant species as per delisting Criterion 3. Therefore, although there are management plans in place for the species habitat, because we do not have sufficient number of butterflies within the metapopulations and we also do not have long term agreements for continual habitat management, this species does not meet the threshold for delisting.

The extinction thresholds underlying downlisting and delisting criteria were derived from a census-based population

viability analysis (PVA) conducted shortly after listing the Fender's blue butterfly (USFWS 2010, pp. IV–29–IV–31 and IV–34). However, for the reasons described below, we are conducting a new PVA using an individual-based population model and reevaluating the delisting recovery criteria in light of the best scientific data that are now available. As described in the SSA report, the PVA used to develop the initial recovery criteria relied upon several assumptions that, based on our improved understanding of the ecology of the butterfly, we now know are outdated and require modification. We also have an additional decade of monitoring data and increased confidence in the accuracy of a standardized monitoring protocol implemented in 2012 (USFWS 2020, pp. 47–52). Furthermore, the recovery plan set specific targets for the abundance and diversity of nectar species required to be of high habitat quality to support Fender's blue butterfly, as well as a minimum density of lupine leaves (the host plant for the species' larval life stage). For various reasons detailed in the SSA report, including a limited dataset and conflicting results regarding the correlation between these resources and densities of Fender's blue butterfly, these targets are also now in question (USFWS 2020, pp. 65–67).

Because we are in the process of reevaluating the current recovery criteria for Fender's blue butterfly as presented in the recovery plan for the species (USFWS 2010, pp. IV–29–IV–31 and IV–34), we did not assess the status of Fender's blue butterfly relative to all of the existing habitat targets. However, in our SSA, we did consider the status of the species relative to the overarching goals of protecting existing populations, securing the habitat, and managing for high-quality prairie habitats; all of these were downlisting and delisting considerations described in the recovery plan (USFWS 2010, p. IV–9). In addition, our evaluation under the SSA framework (USFWS 2016) reflects the fundamental concepts captured in the recovery plan strategy of achieving multiple populations with connectivity between them distributed across the historical range of the species. For example, we find that the minimum number threshold from the recovery plan remains valid because population size targets based on minimum population size eliminate confounding variation from stochastic events that may not reflect demographic changes. In other words, averages may be artificially high or low if you have one unusual weather year.

Additionally, we partially rely upon the habitat targets for nectar species for evaluating the status of the species. We acknowledge that the species needs a variety of different species as nectar sources. The recovery plan identifies the quantity of nectar needed per area and the number of native nectar species. However, we do not find that the quantity defined in these habitat targets of the recovery plan is needed for the recovery of the species as we have seen sites maintain viability despite not meeting the target (*i.e.*, there are sites that are able to maintain viability with lower quantity of nectar and nonnative nectar species). We also explicitly considered not only the quality of the prairie habitat, using the recommended guidelines for prairie quality and nectar availability in the recovery plan, but also the management and protection status of butterfly occurrences (see, *e.g.*, USFWS 2010, p. IV–13, pp. IV–29–IV–31).

In sum, for the purpose of this status review, we evaluated the status of Fender's blue butterfly in terms of the relative viability of the species over time and the conservation biology principles of resiliency, redundancy, and representation of its constituent populations (Shaffer and Stein 2000, pp. 307–310; Wolf *et al.* 2015, entire; Smith *et al.* 2018, entire). Extinction risk is generally reduced as a function of increased population abundance (resiliency), numbers of populations (redundancy), and distribution or geographic or genetic diversity (representation). We combined our assessment of the resiliency, redundancy, and representation of Fender's blue butterfly populations with our evaluation of the ongoing and future threats to the species, as defined under section 4(a)(1) of the Act, to assess the overall status of the species in terms of its current viability and relative viability over a range of plausible futures (Smith *et al.* 2018, p. 306; USFWS 2020, entire).

Taxonomy and Historical Distribution

The Fender's blue butterfly was first described in 1931 as *Plebejus maricopa fenderi* based on specimens collected near McMinnville, Oregon, in Yamhill County (Macy 1931, pp. 1–2). The Fender's blue butterfly was classified in the Lycaenidae family within the subfamily Polyommattinae as a subspecies of Boisduval's blue butterfly based on adult characters and geographic distribution. The species *maricopa* was considered a synonym of the species *icarioides* and was later determined to be a member of the genus *Icaricia*, rather than the genus *Plebejus*. The worldwide taxonomic arrangement

of the subtribe Polyommattina (which contains blue butterflies) was fluctuating between *Plebejus* and *Icaricia* until it was revised in 2013 as *Icaricia*. The current scientific name, *Icaricia icarioides fenderi*, was validated by the Integrated Taxonomic Information System (ITIS) and experts at the McGuire Center for Lepidoptera and Biodiversity, a division of the Florida Museum of Natural History at the University of Florida (see USFWS 2020, p. 15, for all citations).

We do not know the precise historical distribution of Fender's blue butterfly due to the limited information collected on this subspecies prior to its description in 1931. Only a limited number of collections were made between the time of the subspecies' discovery and its presumed last observation on May 23, 1937, in Benton County, Oregon, leading the scientific community to assume the species was extinct (Hammond and Wilson 1993, p. 3). Fender's blue butterfly was rediscovered in 1989 at the McDonald State Forest, Benton County, Oregon, on the uncommon plant, Kincaid's lupine. Surveys since its rediscovery indicate that the distribution of Fender's blue butterfly is restricted to the Willamette Valley in Benton, Lane, Linn, Polk, Yamhill, and Washington Counties in Oregon.

Population Terminology

In some instances, populations that are spatially separated interact, at least on occasion, as individual members move from one population to another. In the case of Fender's blue butterfly, the clear delineation of discrete populations and subpopulations is challenging because of the uncertainty regarding the extent to which individuals at known sites interact with each other or with other individuals on the landscape of adjacent private lands that are inaccessible to researchers and remain unsurveyed. Thus, in the SSA report and in this document, we use the term “metapopulation” as a rough analog to the more familiar term “population”. We use the term metapopulation to describe groups of sites occupied by Fender's blue butterflies that are within 2 kilometers (km) (1.2 miles [mi]) of one another and not separated by barriers. We chose this distance because it is the estimated dispersal distance of Fender's blue butterfly (Schultz 1998, p. 290). We assume that butterflies within a metapopulation are capable of at least occasional interchange of individuals. We do not anticipate that metapopulations across the range of the species will interact with one another given the distance and structural

barriers between them. The definition of metapopulation used here and in the SSA report is not the same as the “functioning network” defined in the recovery plan because the latter does not allow for circumstances when populations do not meet the recovery plan definition of either an independent population or a functioning network. It also included a requirement for a minimum patch size of 18 ha (44 ac) for each network, which we now know is not necessary, as the butterfly can thrive in much smaller patch sizes. Further information regarding these definitions is detailed in the SSA report (USFWS 2020, pp. 41–42).

Locations containing Fender’s blue butterfly occur across multiple land ownerships and have varying degrees of habitat protection, and are managed in different ways. We use the term “site” to identify a management unit or land ownership designation; multiple sites may therefore comprise a single metapopulation. An “independent group” of Fender’s blue butterfly refers to occupied sites that are more than 2 km (1.2 mi) from another occupied site and/or are separated by barriers from other occupied sites such that butterflies are unable to interact.

Summary of the Biology and Life History of the Species

The Fender’s blue butterfly is found only in the prairie and oak savannah habitats of the Willamette Valley of Oregon. Adult Fender’s blue butterflies are quite small, having a wingspan of approximately 25 millimeters (mm) (1 inch [in]). The upper wings of males are brilliant blue in color with black borders and basal areas, whereas the upper wings of females are brown.

The Fender’s blue butterfly relies primarily upon a relatively uncommon lupine plant, the Kincaid’s lupine, also endemic to the Willamette Valley and listed as a threatened species under the Act (65 FR 3875; January 25, 2000), as the host plant for the larval (caterpillar) life stage (Hammond and Wilson 1993, p. 2). The only other host plants known for Fender’s blue butterflies are *Lupinus arbustus* (longspur lupine) and *Lupinus albicaulis* (sickle-keeled lupine) (Schultz *et al.* 2003, pp. 64–67). Females lay single eggs on the underside of the leaves of one of these three lupine species, up to approximately 350 eggs in total. Eggs hatch from mid-May to mid-July, and the larvae feed on the lupine until the plants senesce and the larvae go into diapause for the fall and winter. The larvae break diapause in early spring, feed exclusively on the host lupine, and metamorphose into adults, emerging as butterflies between mid-

April and the end of June. Adult Fender’s blue butterflies only live 7 to 14 days, and feed exclusively on nectar from flowering plants (Schultz 1995, p. 36; Schultz *et al.* 2003, pp. 64–65).

Given its short adult lifespan, the Fender’s blue butterfly has limited dispersal ability. Butterflies are estimated to disperse approximately 0.75 km (0.5 mi) if they remain in their natal lupine patch, and approximately 2 km (1.2 mi) if they disperse between lupine patches (Schultz 1998, p. 290).

Habitat

Both Fender’s blue butterfly and its primary larval host plant, the Kincaid’s lupine, are restricted to the upland prairies and oak savannahs of the Willamette Valley in western Oregon. Although wet prairies are occasionally occupied by the butterfly, most sites are found on upland prairie as that is where Kincaid’s lupine tends to be found. The Willamette Valley is approximately 200 km (130 mi) long and 30 to 50 km (20 to 40 mi) wide, characterized by a broad alluvial floodplain (Franklin and Dyrness 1988, p. 16). The alluvial soils of the Willamette Valley host a mosaic of grassland, woodland, and forest communities. Most grasslands in this region are early seral and require natural or human-induced disturbance for maintenance (Franklin and Dyrness 1988, p. 122). Historically, frequent burning reduced the abundance of shrubs and trees, favoring open prairies or savannahs with a rich variety of native plants and animals. As settlers arrived in the valley, they converted native habitats to agricultural landscapes, annual burning ceased, and both woody species and nonnative weeds encroached on the remaining prairie habitats. Native upland prairies now cover less than one percent of their former area, making them among the rarest of North American ecosystems (USFWS 2020, p. 27).

The upland prairies used by Fender’s blue butterfly are dominated by short-stature vegetation and slopes containing microtopography (small-scale surface features of the earth) of a variable nature. Most importantly, these prairies support at least one of the three larval host plants—Kincaid’s lupine, longspur lupine, or sickle-keeled lupine—required by Fender’s blue butterfly. The leaves of these lupine species grow to approximately 61 cm (24 in) tall, with flowers extending up to 90 cm (35 in); the plant requires sunny open areas without dense canopy cover (USFWS 2020, p. 32). These three lupines are an obligate food source for the larvae or caterpillars, but an abundance of wildflowers is essential for the adult life

form. Nectar from wildflowers is the sole food source for adult butterflies, making a diversity of wildflowers a required component of prairie habitat for Fender’s blue butterfly.

The upland prairie habitats used by Fender’s blue butterfly often contain scattered *Quercus garryana* (Oregon white oak) and the following native grass species: *Danthonia californica* (California oatgrass), *Festuca idahoensis roemerii* (Roemer’s fescue), and *Elymus glaucus* (blue wild rye). Two nonnative grass species are also frequently present, *Arrhenatherum elatius* (tall oatgrass) and *Festuca arundinacea* (tall fescue). Tall grasses, including oatgrass and fescue, inhibit the growth of the lupine host plants and native nectar sources by crowding or shading them out; they can also overtop the lupines, and preclude access by females for oviposition. When tall grasses or other tall vegetation become dominant, they can prevent Fender’s blue butterfly from using the native plant species necessary for the butterfly’s survival and reproduction (USFWS 2020, p. 28). Invasive exotics that form thick stands of cover, such as *Cytisus scoparius* (Scotch broom) or *Rubus armeniacus* (Himalayan blackberry), also contribute to this problem.

Historical and Current Abundance and Distribution

While we do not know the precise historical abundance or distribution of Fender’s blue butterfly, at the time the subspecies was listed as endangered in 2000, we knew of approximately 3,391 individuals on 32 sites (USFWS 2020, p. 35). By retroactively applying the criteria for our refined population terminology, we calculate there would have been 12 metapopulations of Fender’s blue butterfly distributed across approximately 165 ha (408 ac) of occupied prairie in 4 counties at the time of listing (Table 2). Those numbers have now grown across all 3 recovery zones identified for Fender’s blue butterfly (see *Recovery Planning and Recovery Criteria*) as a result of population expansion, population discovery, and population creation; currently, 15 Fender’s blue butterfly metapopulations and 6 independent groups are distributed throughout the Willamette Valley in Benton, Lane, Linn, Polk, Washington, and Yamhill Counties (6 total Counties). There are 137 total sites, containing more than 13,700 individuals of the Fender’s blue butterfly, throughout an area totaling approximately 344 ha (825 ac) of occupied prairie habitat with a broad range of land ownerships and varying degrees of land protection and

management (USFWS 2020, pp. 52–53). In 2016, the estimated number of Fender’s blue butterflies hit a presumed all-time high of nearly 29,000

individuals (USFWS 2020, p. 71). Maps showing the historical and current distribution of Fender’s blue butterfly throughout its range are available in the

SSA report (USFWS 2020, pp. 51, 54–56).

TABLE 2—COMPARISON OF FENDER’S BLUE BUTTERFLY ABUNDANCE AND DISTRIBUTION BETWEEN TIME OF LISTING IN 2000 AND SURVEY RESULTS FROM 2018
[USFWS 2020, Table 3.4]

| | Listed as endangered (2000) | Survey results as of 2018 * |
|---|--------------------------------------|--|
| Number of metapopulations | 12 | 15. |
| Number of independent groups | 0 | 6. |
| Total abundance (# of individuals) | 3,391 | 13,700. |
| Number of sites | 32 | 137. |
| Area of prairie habitat known to be occupied, in hectares (acres) | 165 (408) | 344 (825). |
| Counties known to be occupied | 4 (Benton, Lane, Polk, and Yamhill). | 6 (Benton, Lane, Linn, Polk, Washington, and Yamhill). |

* Note this is not a total count, as not all sites can be surveyed every year; thus, the number of individuals reported in 2018 is an underestimate of the rangewide abundance.

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an “endangered species” or a “threatened species.” The Act defines an endangered species as a species that is “in danger of extinction throughout all or a significant portion of its range,” and a threatened species as a species that is “likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” The Act requires that we determine whether any species is an “endangered species” or a “threatened species” because of any of the following factors:

- (A) The present or threatened destruction, modification or curtailment of its habitat or range;
- (B) Overutilization for commercial, recreational, scientific, or educational purposes;
- (C) Disease or predation;
- (D) The inadequacy of existing regulatory mechanisms; or
- (E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species’ continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects. We consider these same five factors in downlisting a species from endangered to threatened (50 CFR 424.11(c)–(e)).

We use the term “threat” to refer in general to actions or conditions that are

known to or are reasonably likely to negatively affect individuals of a species. The term “threat” includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term “threat” may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an “endangered species” or a “threatened species.” In determining whether a species meets either definition, we must evaluate all identified threats by considering the species’ expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an “endangered species” or a “threatened species” only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

Determining whether the status of a species has improved to the point that it can be reclassified from endangered to threatened (“downlisted”) or removed from the Federal Lists of Endangered

and Threatened Wildlife and Plants (“delisted”) requires consideration of whether the species is endangered or threatened because of the same five categories of threats specified in section 4(a)(1) of the Act. For species that are already listed as endangered or threatened, this analysis of threats is an evaluation of both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following the delisting or downlisting and the removal of the Act’s protections.

The Act does not define the term “foreseeable future,” which appears in the statutory definition of “threatened species.” Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term foreseeable future extends only so far into the future as we can reasonably determine that both the future threats and the species’ responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. “Reliable” does not mean “certain”; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species’ likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species’ biological response include species-specific factors such as lifespan,

reproductive rates or productivity, certain behaviors, and other demographic factors. We used 25 to 35 years as our foreseeable future for this species, which encompasses 35 generations of Fender’s blue butterfly, is a long enough timeframe for to us to observe species responses in response to threats acting on the species, and reflects time frames associated with current conservation agreements for the species.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent a decision by the Service on whether the species should be reclassified as a threatened species under the Act. It does, however, provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies. The following is a summary of the key results and conclusions from the full SSA report, which may be found at Docket No. FWS–RX–ES–2020–0082 on <http://www.regulations.gov>.

To assess Fender’s blue butterfly viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate changes). In general, the more resilient and redundant a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species’ ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species’ viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual species’ life-history needs. The next stage involved an assessment of the historical and current condition of the

species’ demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species’ responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

Summary of Biological Status and Factors Affecting the Fender’s Blue Butterfly

In this section, we review the biological condition of the species and its resource needs, and the threats that influence the species’ current and future condition, in order to assess the species’ overall viability and the risks to that viability.

Key Resource Needs for Species Viability

Table 3 summarizes the key ecological resources required by individual Fender’s blue butterflies at various life stages, as presented in the SSA report (from USFWS 2020, Table 2.4).

TABLE 3—RESOURCE NEEDS OF FENDER’S BLUE BUTTERFLY AT THE LEVEL OF THE INDIVIDUAL BY LIFE STAGE

| Life stage | Timeline | Resource needs |
|----------------------------------|---|--|
| Egg | Mid-April through June | <ul style="list-style-type: none"> • Kincaid’s lupine, longspur lupine, or sickle-keeled lupine • Kincaid’s lupine, longspur lupine, or sickle-keeled lupine |
| Larva (including diapause) | Mid-May through early April (including diapause). | |
| Pupa | April through May | <ul style="list-style-type: none"> • Kincaid’s lupine, longspur lupine, or sickle-keeled lupine |
| Adult butterfly | Mid-April through June | <ul style="list-style-type: none"> • Early seral upland prairie, wet prairie, or oak savannah habitat with a mosaic of low-growing grasses and forbs, an open canopy, and a disturbance regime maintaining the habitat • Kincaid’s lupine, longspur lupine, or sickle-keeled lupine • Variety of nectar flowers |

Based on our evaluation as detailed in the SSA report, we determined that to be resilient, Fender’s blue butterfly metapopulations need an abundance of lupine host plants and nectar plants within prairie patches at least 6 ha (14.8 ac) in size, with habitat heterogeneity and minimal amounts of invasive plants and woody vegetation. Healthy metapopulations would also contain a minimum of 200 butterflies (resiliency) distributed across multiple groups (redundancy) in lupine patches that are

within 0.5 to 1.0 km (0.31 to 0.62 mi) of one another. Ideally, at the species level, resilient metapopulations would be distributed across the historical range of the species (redundancy and representation) and have multiple “stepping stone”¹ habitats for connectivity across the landscape (redundancy and representation) (USFWS 2020, p. 33). The key resources and circumstances required to support resiliency in Fender’s blue butterfly metapopulations, and redundancy and

representation at the species level, are identified in Table 4 (from USFWS 2020, Table 2.5). Based on the biology of the species and the information presented in the recovery plan, as synthesized in the SSA report, these are the characteristics of Fender’s blue butterfly metapopulations that we conclude would facilitate viability in the wild over time (USFWS 2020, pp. 31–34).

¹ A “stepping stone” habitat is a prairie patch that provides both lupine and nectar plants, and occurs in an area with barrier-free movement for

butterflies; such areas are likely too small to support a subpopulation or metapopulation of butterflies over the long term, but provide sufficient

resources to support multi-generational movement of individuals between larger areas of habitat.

TABLE 4—RESOURCES AND CIRCUMSTANCES NEEDED TO SUPPORT RESILIENCY IN FENDER’S BLUE BUTTERFLY METAPOPULATIONS AND REDUNDANCY AND REPRESENTATION AT THE SPECIES LEVEL, BASED ON THE CONDITIONS REQUIRED FOR THE SPECIES AS DESCRIBED IN THE RECOVERY PLAN

[USFWS 2020, Table 2.5]

| Metapopulation Needs | | |
|---|---|---|
| Habitat Quantity/Quality | Abundance | Distribution |
| Abundant density of lupine host plants | Minimum of 200 adult butterflies per metapopulation for 10 years. | 0.5–1.0 km (0.3–0.6 mi) between lupine patches within a metapopulation |
| A diversity of nectar plant species throughout the flight season | Consists of multiple sites with butterflies. | Occur across the historical range |
| Prairie relatively free of invasive plants and woody vegetation, especially those that prevent access to lupine or nectar (e.g., tall grasses). | n/a | Stepping stone prairie patches with lupine and/or nectar to facilitate connectivity within a metapopulation |
| Patch sizes of at least 6 ha (14.8 ac) per metapopulation | n/a | n/a |
| Heterogeneity of habitat, including varying slopes and varying microtopography. | n/a | n/a |

Factors Affecting the Viability of the Species

At the time we listed the Fender’s blue butterfly as endangered (65 FR 3875; January 25, 2000), we considered the loss, degradation, and fragmentation of native prairie habitat in the Willamette Valley to pose the greatest threat to the species’ survival. Forces contributing to the loss of the little remaining native prairie included urban development (named as the largest single factor threatening the species at the time); agricultural, forestry, and roadside maintenance activities, including the use of herbicides and insecticides; and heavy levels of grazing. In addition, habitat loss through vegetative succession from prairie to shrubland or forest as a result of the absence of natural disturbance processes, such as fire, was identified as a long-term threat, and the invasion of prairies by nonnative plants was identified as a significant contributor to habitat degradation. Although predation is a natural condition for the species, the listing rule considered that predation may significantly impact remaining populations of Fender’s blue butterfly because they had been reduced to such low numbers. Small population size was also identified as posing a threat of extinction due to the increased risk of loss through random genetic or demographic factors, especially in fragmented or localized populations. The possibility that the rarity of Fender’s blue butterfly could render it vulnerable to overcollection by butterfly enthusiasts was cited as a potential threat. Finally, the listing rule pointed to the inadequacies of existing regulatory mechanisms to protect the Fender’s blue butterfly or its habitat, especially on lands under private

ownership. Threats not recognized or considered at the time of listing, but now known to us, include the potential impacts resulting from climate change (Factor E).

Habitat Loss, Degradation, and Fragmentation

As discussed in the SSA report, habitat loss from land conversion for agriculture and urbanization, and from heavy grazing, has decreased since the time of listing due to land protection efforts and management agreements; these activities are still occurring at some level, especially in Lane and Polk Counties but not at the scope and magnitude seen previously (Factor A) (USFWS 2020, pp. 57–59; see also *Conservation Measures*, below). Habitat degradation due to invasion of prairies by nonnative invasive plants and by woody species (Factors A and E) has decreased in many metapopulations due to active management using herbicides, mowing, and prescribed fire to maintain or restore prairie habitats, as well as augmentation of Kincaid’s lupine and nectar species (USFWS 2020, Appendix C; see also *Conservation Measures*, below). Some nonnative plants, such as the tall oatgrass, can be difficult to effectively manage, thereby requiring development of new methods to combat these invasive plants. While threats have been reduced across the species range, ongoing habitat management is required to maintain these improvements over time and will be critical to the viability of Fender’s blue butterfly. In addition, habitat degradation due to invasion of prairies by nonnative invasive plants and by woody species, which may potentially be exacerbated in the future by the effects of climate change, remains a

significant and ongoing threat at sites that are not managed for prairie conditions.

The overall number of sites supporting Fender’s blue butterfly has increased across all land ownership categories since listing, as has the percentage of sites with habitat management. Although the percentage of sites that are protected has remained roughly the same (just over 70 percent) relative to the time of listing, we now have a far greater number of sites that are protected (101 out of 137 sites protected, compared to 23 of 32 sites at the time of listing). More importantly, there is a significant increase in the proportion of sites that are actively managed to maintain or restore prairie habitat. At listing, only 31 percent of known sites (10 of 32) and only 44 percent of protected sites (10 of 23) were managed for prairie habitat to any degree. At present, 74 percent of current sites (101 of 137) and 100 percent of protected sites (101 of 101) are managed for prairie habitat. This significant increase in the number of sites protected and managed to benefit the Fender’s blue butterfly and its habitat represents substantial progress since listing in addressing the threat of habitat loss and degradation, and demonstrates the effectiveness of existing conservation actions and regulatory mechanisms. Impacts from habitat conversion, woody succession, and invasive plant species are decreasing in areas with existing metapopulations of Fender’s blue butterflies due to active habitat management and protection; these impacts are more likely to stay the same or increase in areas of remaining prairie that are not currently protected or managed (USFWS 2020, p. 59). With continued protection and proper habitat

management, greater range expansion is possible, as explored in detail under Future Scenario 3 (*Future Species Condition*, below), potentially increasing representation and redundancy of the Fender's blue butterfly.

Pesticides

Insecticides and herbicides can directly kill eggs, larvae, and adult butterflies during application of the chemicals to vegetation or from drift of the chemicals from nearby applications in agricultural and urban areas. For instance, *Bacillus thuringiensis* var. *kurstaki*, a bacterium that is lethal to all butterfly and moth larvae, is frequently used to control unwanted insects and has been shown to drift at toxic concentrations over 3 km (2 mi) from the point of application (Barry *et al.* 1993, p. 1977). Sublethal effects may indirectly kill all life stages by reducing lupine host plant vigor, decreasing fecundity, reducing survival, or affecting development time. Both insecticides and herbicides are used in agricultural practices, while herbicides are also used for timber reforestation and roadside maintenance and to control invasive species and woody vegetation encroachment. The threat to Fender's blue butterflies that may occur in roadside populations has been reduced through the development of several HCPs that specifically address pesticide application practices in these areas (*e.g.*, Oregon Department of Transportation HCP; see *Conservation Measures*, below). The potential for exposure of Fender's blue butterfly to herbicides or insecticides remains throughout the species' range, especially in agricultural areas. However, we do not have any record of documented exposure or other data to inform our evaluation of the magnitude of any possible exposure, or the degree to which herbicides or insecticides may be potentially affecting the viability of the species (USFWS 2020, pp. 60–61). That said, while we cannot quantify the magnitude of possible exposure, agricultural land is widely distributed throughout the Willamette Valley, more lands are being converted to agriculture, and pesticide use is generally occurring more now than at any other time in history (Forister *et al.* 2019, p. 4). Because pesticides are used on most agricultural crops to increase crop yield and prevent disease spread, pesticide use in the Willamette Valley is likely to affect multiple metapopulations.

Disease and Predation

Although the listing rule stated that predation may have a significant

negative impact on Fender's blue butterfly due to the reduced size of their populations, the best available information does not indicate that predation is a limiting factor for the species. Small population size was also identified as posing a threat of extinction due to the increased risk of loss through random genetic or demographic factors, especially in fragmented or localized populations (Factor E). Some very small, isolated populations of Fender's blue butterfly known at the time of listing do appear to have become extirpated (USFWS 2020, pp. 51–52), and existing small metapopulations or independent groups remain especially vulnerable to extirpation. Overall, however, the threat of small population size has decreased since listing due to the discovery of new metapopulations, the expansion of existing metapopulations, and the creation of new metapopulations of Fender's blue butterflies. Most, but not all, metapopulations of Fender's blue butterfly have increased in abundance relative to the time of listing, and the total population size has increased from just over 3,000 individuals in 12 metapopulations distributed across 4 counties, to well over 13,000 individuals in 15 metapopulations distributed across 6 counties (USFWS 2020, pp. 52–53).

Overcollection

The best available information does not indicate that Fender's blue butterfly has been subject to overcollection. This threat does not appear to have manifested as anticipated in the listing rule.

Climate Change

The severity of threat posed to Fender's blue butterfly from the impacts of climate change is difficult to predict. The Willamette Valley, and prairies specifically, may fare better than other regions; however, various changes in average annual temperatures and precipitation are predicted and may affect Fender's blue butterfly or its habitat (Bachelet *et al.* 2011, p. 424; USFWS 2017, p. B–10; USFWS 2020, pp. 61–62). Such potential changes include higher water levels in wet prairies during winter and spring, increased spring flooding events, and prolonged summer droughts. Two models have conducted climate change vulnerability assessments for butterfly species within the Willamette Valley using the Special Report on Emissions Scenarios (SRES) created by the Intergovernmental Panel on Climate Change. Under the SRES B1 scenario (comparable to the RCP 4.5 scenario),

both models ranked Fender's blue butterfly as stable. Under the SRES A1B scenario (RCP 6.0), both models ranked Fender's blue butterfly as moderately vulnerable. Under the SRES A2 scenario (RCP 8.5), however, Fender's blue butterfly was ranked as extremely vulnerable under one model and highly vulnerable under the other model due to its limited range and loss of both nectar and host plants. While the models do not agree on the degree of vulnerability, both models did show an increase in vulnerability as climate change scenarios worsened due to the species' limited range and the potential for loss of both nectar and host plants, as well as a possible increase in invasive nonnative plants (Steel *et al.* 2011, p. 5; Kaye *et al.* 2013, pp. 23–24).

In our analysis of the future condition of the Fender's blue butterfly, we considered climate change to be an exacerbating factor in the decrease in nectar plants, lupine plants, and open prairie or oak savannah habitat. Scenario 2 of our assessment of *Future Species Condition* specifically considered the potential for severe consequences of climate change (an RCP 8.5 scenario) for Fender's blue butterfly. If climate change impacts result in less effective habitat management, more invasive species, and disruptions to plant phenology, then we anticipate the potential loss or deterioration of more than half of the existing metapopulations. Although the results indicated an extensive loss of resiliency and redundancy, with seven metapopulations subject to potential extirpation under such conditions, we also projected that all recovery zones would still maintain at least one metapopulation in high condition. We therefore estimate that Fender's blue butterfly would likely sustain populations under such conditions, but its relative viability in terms of resiliency, redundancy, and representation would be diminished. While Scenario 2 looked at a high emissions scenario, Scenario 1 and Scenario 3 considered climate change to continue under RCP 4.5 in which we project that Fender's blue butterfly would remain stable based on the aforementioned models. Therefore, we estimated resiliency, redundancy, and representation would be unlikely to change substantially from climate change.

Conservation Measures

Because of extensive loss of native prairie habitats in the Willamette Valley and the resulting Federal listing of multiple endemic plant and animal species, the region has been the focus of

intensive conservation efforts. Numerous entities, including Federal, State, and county agencies, nongovernmental organizations (NGO) such as land trusts, and private landowners have all become engaged in efforts to restore native Willamette Valley prairie and oak savannah habitats and the associated endemic animal communities. Collectively, the agencies and organizations that manage lands have acquired conservation easements and conducted management actions to benefit prairie and oak savannah habitats; in many cases, conservation efforts have been designed specifically to benefit the Fender's blue butterfly. Various types of agreements have been established with private landowners to perform voluntary conservation actions on their land, while agencies are working collaboratively on habitat restoration and active prairie management under interagency agreements.

Our SSA report summarizes the conservation measures implemented across the range of the Fender's blue butterfly since the species was listed in 2000 (USFWS 2020, pp. 62–65). These measures include native prairie habitat restoration and management on public lands or lands that are managed by a conservation organization, including Baskett Slough National Wildlife Refuge and surrounding areas, William L. Finley National Wildlife Refuge, Fern Ridge Reservoir, West Eugene Wetlands, Willow Creek Preserve, Yamhill Oaks Preserve, Coburg Ridge, Lupine Meadows, Hagg Lake, a small portion of the McDonald State Forest, and some Benton County public lands. The long-term viability of Fender's blue butterfly is dependent on an ongoing, consistent commitment to active management to remove woody vegetation and invasive plants, thereby maintaining the native plant community and open prairie conditions required by this species.

The contributions of private landowners have also made a significant impact on the conservation of Fender's blue butterfly. Approximately 96 percent of the Willamette Valley ecoregion is in private ownership (Oregon Department of Fish and Wildlife 2006), and the majority (66 percent) of designated critical habitat for Fender's blue butterfly is on private lands (71 FR 63862; October 31, 2006). Thus, the conservation and recovery of Fender's blue butterfly, Kincaid's lupine, and the suite of native species associated with them relies in large part on the voluntary actions of willing non-Federal landowners to conserve, enhance, restore, reconnect and actively manage the native prairie habitats that

support these species. Many Fender's blue butterfly sites on private or other non-Federal lands across the range of the species now have Partners for Fish and Wildlife (PFW) agreements, Safe Harbor Agreements (SHAs), or Habitat Conservation Plans (HCPs) in place with the Service.

Through many PFW agreements in place with private landowners in the Willamette Valley, we provide technical assistance to the landowners for the enhancement and restoration of native habitats on their lands; these conservation actions benefit multiple native species, including the Fender's blue butterfly. We administer and implements a programmatic SHA for the benefit of Fender's blue butterfly. This program encourages non-Federal landowners to undertake proactive conservation and restoration actions to benefit native prairie, as well as Fender's blue butterfly and Kincaid's lupine, in Benton, Lane, Linn, Marion, Polk, Washington, and Yamhill Counties of Oregon (USFWS 2016, entire). Currently, 17 properties covering approximately 595 ha (1,471 ac) are enrolled under the programmatic SHA as of November 2020; another 12 agreements that will cover an additional 417 ha (1,031 ac) are in development. In addition, three HCPs in place are designed to minimize and mitigate effects to the Fender's blue butterfly: the Benton County HCP (2011; 50-year term), Yamhill County Road Right-of-Ways HCP (2014; 30-year term), and the Oregon Department of Transportation HCP (2017; 25-year term). These agreements include various provisions ensuring the implementation of best management practices and offsetting any potential negative impacts of activities through augmenting or enhancing populations of Fender's blue butterfly or prairie habitats.

Finally, NGOs have actively pursued conservation easements and acquisition of properties throughout the Willamette Valley to benefit native prairies and the Fender's blue butterfly. Specific examples include the 2005 acquisition and establishment of the Lupine Meadow Preserve by the Greenbelt Land Trust, and the 2008 acquisition and establishment of the Yamhill Oaks Preserve by The Nature Conservancy.

Overall, there are 137 total sites containing Fender's blue butterfly that occur over a broad range of land ownerships with varying degrees of land protection and management. Forty-four sites are on tracts of public land owned by the USACE; BLM; Bureau of Reclamation (BOR); OSU; or the Service, all of which are being managed for prairie habitat to varying degrees given

funding and personnel. Fourteen sites are in public ROWs managed by ODOT or County Public Works and all are being managed for prairie. Thirty sites are on private land without any form of protection or active management for Fender's blue butterfly or its habitat. Another 43 sites are on private land with some level of protection via a conservation easement (20 sites) or under a cooperative agreement (23 sites) and are being managed for prairie habitat. More information on conservation measures performed by NGOs specific to each metapopulation of Fender's blue butterfly are listed in the SSA report in the section *Metapopulation Descriptions under Current Conditions* (USFWS 2020, Appendix C).

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the species. To assess the current and future condition of the species, we undertake an iterative analysis that encompasses and incorporates the threats individually and then accumulates and evaluates the effects of all the factors that may be influencing the species including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Current Species Condition

After assessing the biology of Fender's blue butterfly and the information presented in its recovery plan, we determined that the resiliency of a metapopulation of the species relies on an abundant supply of lupine host plants and nectar plants within prairie patches at least 6 ha (14.8 ac) in size, habitat heterogeneity, and minimal amounts of invasive plants and woody vegetation. Healthy metapopulations would also contain a minimum of 200 butterflies (resiliency) distributed across multiple groups within a metapopulation (redundancy) in lupine patches that are within 0.5 to 1.0 km (0.31 to 0.62 mi) of one another. At the species level, resilient metapopulations would ideally be distributed across the historical range of the species (representation and redundancy across

metapopulations) and have numerous habitat “stepping stones” for connectivity across the landscape (redundancy and representation).

In our evaluation, we used the best scientific data available to evaluate the current condition of each Fender’s blue butterfly metapopulation in terms of resiliency. We developed criteria to assess specific habitat and demographic factors contributing to the overall resilience of metapopulations, and to rank each metapopulation as to whether it is in high, moderate, or low condition; these categories reflected our estimate of the probability of persistence over a period of 25 to 35 years (explained below; see *Future Species Condition*), as detailed in the SSA report (USFWS 2020, pp. 71–73). Criteria used to score metapopulation condition included the number of sites contributing to the metapopulation, butterfly abundance, connectivity, habitat patch size, lupine density, presence of nectar species, and measures of prairie quality and habitat heterogeneity (USFWS 2020, Table 6.2, p. 73).

Five of the existing 15 Fender’s blue butterfly metapopulations are ranked as having a high current condition, while 3 are ranked as moderate, 6 are ranked low, and one may be extirpated (Table 5). Overall, the majority of metapopulations, 8 out of 15, are ranked as either in high or moderate condition, indicating a degree of resiliency across the range of the species. Fender’s blue butterfly currently demonstrates a good degree of metapopulation redundancy, with multiple metapopulations occurring both within and across the three recovery zones spanning the historical range of the species. Although no direct measures of genetic or ecological diversity are available, we consider the species to have a good degree of representation, as there are multiple metapopulations and groups of Fender’s blue butterfly distributed relatively evenly across the geographic range of the species (six in the Salem recovery zone, five in the Corvallis recovery zone, and four in the Eugene recovery zone), in all known habitat types (both prairie and oak savannah) and elevations.

TABLE 5—CURRENT CONDITION OF FENDER’S BLUE BUTTERFLY METAPOPOPULATIONS

| Metapopulation | Current condition |
|----------------------------|-------------------|
| Salem Recovery Zone | |
| Baskett | High. |
| Gopher Valley | Moderate. |
| Hagg Lake | High. |

TABLE 5—CURRENT CONDITION OF FENDER’S BLUE BUTTERFLY METAPOPOPULATIONS—Continued

| Metapopulation | Current condition |
|--------------------------------|-----------------------|
| Moores Valley | Possible extirpation. |
| Oak Ridge | Moderate. |
| Turner Creek | Low. |
| Corvallis Recovery Zone | |
| Butterfly Meadows | Low. |
| Finley | Moderate. |
| Greasy Creek | Low. |
| Lupine Meadows | Low. |
| Wren | High. |
| Eugene Recovery Zone | |
| Coburg Ridge | Low. |
| Oak Basin | Low. |
| West Eugene | High. |
| Willow Creek | High. |

The discovery of Fender’s blue butterflies in additional counties since the listing of the species, as well as the expansion of existing metapopulations, increases both the geographic range of the species and connectivity throughout the landscape. An increased number of metapopulations, composed of a greater number of individuals and with expanded distribution and connectivity across the range of Fender’s blue butterfly (see Table 3), means the species has a greater chance of withstanding stochastic events (resiliency), surviving potentially catastrophic events (redundancy), and adapting to changing environmental conditions (representation) over time.

Future Species Condition

To understand the potential future condition of Fender’s blue butterfly with respect to resiliency, redundancy and representation, we considered a range of potential scenarios that incorporate important influences on the status of the species, and that are reasonably likely to occur. We additionally forecast the relative likelihood of each scenario occurring, based on our experience with the species and best professional judgment (see USFWS 2020, p. 77). Through these future scenarios, we forecast the viability of Fender’s blue butterfly over the next 25 to 35 years. We chose this timeframe because it represents up to 35 generations of the Fender’s blue butterfly, and therefore provides adequate time to collect and assess population trend data. The recovery plan also used this general timeframe for the determination of downlisting criteria and this timeframe can reveal the immediate effects of management strategies given that our current interim

protections (e.g., HCPs, SHAs) have a lifespan ranging from 10–50 years. We bracketed our timeframe to a shorter period based on our knowledge of the species and our ability to project current and future threats and conservation efforts. We scored the projected future condition of each metapopulation based on a ruleset incorporating abundance and trend data, quality of prairie habitat, level of habitat protection, and type of habitat management (see USFWS 2020, pp. 77–83). In addition to the high, moderate, and low condition categories, we added a fourth category in our future scenarios accounting for possible extirpation. The purpose of evaluating the status of Fender’s blue butterfly under a range of plausible future scenarios is to create a risk profile for the species into the future, allowing for an evaluation of its viability over time.

Scenario 1 assumes “continuing efforts”—Fender’s blue butterfly will continue on its current trajectory and influences on viability, habitat management, and conservation measures will all continue at their present levels. Due to our analysis of current management actions, protections, and threats, we consider this scenario as highly likely to play out over the next 25 to 35 years. Scenario 2 is based on an increased level of impact from negative influences on viability, particularly alterations in environmental conditions as a result of climate change. We consider this scenario moderately likely to occur over the next 25 to 35 years due to greater uncertainty in assessing the degree of climate change and the impact it may have on the species. Scenario 3 is based on increased conservation effort, including the potential for improved habitat conditions at currently occupied sites; metapopulation expansion by restoring currently unoccupied prairie sites; and augmentation, translocation, and/or introduction of butterflies. In this scenario, we evaluated the potential for expansion at currently protected sites and protected areas identified as possible introduction sites (USFWS 2020, pp. 81–104). Due to questions regarding potential funding, personnel, and other conservation agreements needed to provide additional protections, we consider this scenario as also moderately likely to occur over the next 25 to 35 years. The results from these three scenarios describe a range of possible conditions in terms of viability of the Fender’s blue butterfly (USFWS 2020, pp. 104–106; Table 6). We used two different methodologies for assessing future conditions. Under scenario 1 and 2, we analyzed trends in

population number and habitat quality and projected that out into the future. Meanwhile, in scenario 3, we mapped out and identified potential areas for conservation and worked with partners

on the feasibility of conservation actions there. We then used these responses to project habitat enhancement in these areas and the impact that enhancement will have on the species' population

trends. While these two methods differ, both apply our knowledge of the species and current and planned or potential management actions in order to project what its condition will be in the future.

TABLE 6—CONDITION SCORES FOR METAPOPOPULATION RESILIENCY, COMPARING CURRENT CONDITION TO THREE PLAUSIBLE FUTURE SCENARIOS AS DESCRIBED IN THE TEXT. RELATIVE LIKELIHOODS OF EACH SCENARIO AT 25 TO 35 YEARS ARE ALSO PROVIDED; SEE USFWS 2020, P. 77, FOR AN EXPLANATION OF CONFIDENCE TERMINOLOGIES USED TO ESTIMATE THE LIKELIHOOD OF SCENARIO OCCURRENCE

| Condition score | Number of metapopulations | | | |
|----------------------------|---------------------------|--|--|--|
| | Current condition | Scenario 1— continuing efforts (highly likely) | Scenario 2— considerable impacts (moderately likely) | Scenario 3— conservation efforts (moderately likely) |
| High | 5 | 7 | 3 | 7 |
| Moderate | 3 | 1 | 5 | 5 |
| Low | 6 | 5 | 0 | 2 |
| Possible Extirpation | 1 | 2 | 7 | 1 |

Because the natural processes that historically maintained this ecosystem and Fender's blue butterfly's early seral habitat are now largely absent from the Willamette Valley, the species is reliant upon ongoing management that sets back succession and controls invasive tall grasses and woody plant species. Therefore, an important consideration in our evaluation of the viability of the species is whether or not management actions will continue that restoration and maintenance of prairie systems, including actions that maintain populations of the lupine host plants and nectar resources in the Willamette Valley.

Scenario 1 results in improved condition for several metapopulations currently ranked as moderate, as conservation efforts continue. On the other hand, metapopulations that are currently in low condition or already at risk of extirpation would likely either remain in that state or (in one case) degrade in condition from low to possible extirpation. Overall, we expect that the viability of Fender's blue butterfly under this scenario would improve relative to its current condition, characterized by increases in resiliency of existing metapopulations. Seven metapopulations would be in high condition, one in moderate condition, five in low, and two at risk of possible extirpation. There would be at least two metapopulations in high condition in each of the three recovery zones; the Salem recovery zone would be in the best condition, with three metapopulations in high condition. The resiliency of metapopulations would be lowest in the Corvallis recovery zone, with three of five metapopulations ranked either low or at risk of

extirpation. Thus, there is a possibility for some loss of redundancy, with the Corvallis recovery zone at greatest risk. We anticipate that most, but not all, of the current metapopulations would maintain viability under this scenario.

Scenario 2 would be expected to result in decreases in resiliency and redundancy, with seven metapopulations subject to possible extirpation. While some metapopulations would likely retain their resiliency, more than half of the current metapopulations would be at risk of extinction within the next 25 to 35 years under this scenario. We anticipate that, under these conditions Fender's blue butterfly would persist, but its long-term viability in terms of resiliency, redundancy, and representation would be greatly diminished even with continued management for the conservation of the species.

Under Scenario 3, we expect resiliency to increase as several metapopulations remain at or move into high condition, with others transitioning from low to moderate condition; seven metapopulations would be in high condition, five in moderate condition, two in low condition, and one at risk of extirpation. Redundancy and representation would be maintained in all recovery zones; all recovery zones would have a minimum of two metapopulations in high condition. We anticipate that all of the currently extant metapopulations would maintain viability under this scenario, with the exception of one that is small and at risk of extirpation under all scenarios considered.

For the reasons described above under *Future Species Condition*, we forecast

the future condition of Fender's blue butterfly out for a period of 25 to 35 years. Although information exists regarding potential impacts from climate change beyond this timeframe, the projections depend on an increasing number of assumptions as they move forward in time, and thus become more uncertain with increasingly long timeframes. For our purposes, as detailed above, we concluded that a foreseeable future of 25 to 35 years was the most reasonable period of time over which we could reasonably rely upon predictions of the future conservation status of Fender's blue butterfly.

Determination of Fender's Blue Butterfly Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an "endangered species" or "threatened species." The Act defines an endangered species as a species that is "in danger of extinction throughout all or a significant portion of its range," and a threatened species as a species that is "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." The Act requires that we determine whether a species meets the definition of endangered species or threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or

manmade factors affecting its continued existence.

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we found that Fender's blue butterfly has experienced a marked increase in resiliency, redundancy, and representation across its historical range, contributing to an overall increase in viability. We listed the Fender's blue butterfly as endangered in 2000, upon a determination at that time that the species was presently in danger of extinction throughout all or a significant portion of its range (65 FR 3875; January 25, 2000, p. 3886). Since then, our evaluation of the best scientific and commercial data available indicates that the abundance and distribution of Fender's blue butterfly has improved as a result of metapopulation expansion, metapopulation discovery, and metapopulation creation, as well as a marked increase in habitat protection and management across the range of the species. The presence of Fender's blue butterflies in new counties, the expansion of existing metapopulations, and the creation of new metapopulations increases both the geographic range of the species and potential connectivity throughout the landscape. In addition, active recovery efforts occurring since Fender's blue butterfly was listed have led to the amelioration of threats to the species, as detailed above in the section *Conservation Measures*. As described in the Summary of Biological Status and Factors Affecting Fender's Blue Butterfly, there has been a marked reduction in threats to the species posed by Factors A and E, helped in large part by effective conservation actions and existing regulatory mechanisms in place (Factor D). Furthermore, threats identified at the time of listing under Factors B and C have not materialized as originally anticipated. Our assessment of the present condition of the species demonstrates that Fender's blue butterfly is currently found in metapopulations primarily ranked as in high to moderate condition throughout all three recovery zones established for the species within its historical range, exhibiting an appreciable degree of resiliency, redundancy, and representation.

Thus, after assessing the best available information, we conclude that the Fender's blue butterfly no longer meets the Act's definition of an endangered species.

We next consider whether the Fender's blue butterfly meets the Act's definition of a threatened species. Although threats to the species have been reduced relative to the time of listing, the species remains vulnerable. Six out of fifteen metapopulations are currently ranked in low condition, and all future scenarios include the possible extirpation of some existing metapopulations (USFWS 2020, p. 104). Some of these metapopulations (e.g., Lupine Meadows) are in decline for unknown reasons, despite their apparently relatively high-quality habitat (USFWS 2020, p. 71). Eleven of the fifteen metapopulations do not meet the minimum criteria of 200 butterflies each year, and connectivity both within and between metapopulations remains limited due to the reduction and fragmentation of native prairie habitats, as well as the relative rarity and patchy distribution of the primary host plant, Kincaid's lupine. In particular, concern remains for the Corvallis recovery zone in the middle of the species' range, with metapopulations that are generally less robust and more vulnerable to deteriorating in condition over time (under current conditions only one metapopulation in this zone is considered highly resilient, compared to two or more in the other zones).

While it is true that many metapopulations in the Corvallis recovery zone have low current condition, the two remaining metapopulations, Finley and Wren, are heavily managed by local counties. The Finley metapopulation is on a National Wildlife Refuge, was recently introduced, and is continually increasing. Additionally, these two metapopulations occur at opposite ends of these recovery zone, ensuring that no gaps in the species' range will develop even if the "low" metapopulation becomes extirpated. Furthermore, all three of our future scenarios project that the Finley and Wren metapopulations will maintain viability. Therefore, while there remains lingering concern about the condition of the Corvallis recovery zone, this recovery zone possesses sufficient resiliency and redundancy to allow it to maintain viability into the foreseeable future.

With regard to influences on viability, the potential for exposure to pesticides (herbicides, insecticides) is an ongoing threat to the species throughout its range, due to the close proximity of Fender's blue butterfly occurrence sites to agricultural lands as well as areas subject to spraying to control gypsy moths or mosquitoes. In addition, we have yet to develop an effective method for eradicating tall oatgrass, a nonnative

invasive plant that is rapidly expanding into prime prairie habitats and posing a growing management concern. The low availability of lupine host plants, and inadequate supply of appropriate lupine seed for restoration efforts, is also a limiting factor for Fender's blue butterfly. Finally, we consider Fender's blue butterfly to be a "conservation reliant" species (*sensu* Scott *et al.* 2010, p. 92), and it remains highly vulnerable to loss of its prairie habitat should active management cease. Because it relies on consistent disturbance to maintain its early seral prairie habitat, the future viability of Fender's blue butterfly is dependent upon ongoing management to set back succession and control the invasion of tall grasses and woody plant species since the natural processes that once historically maintained this ecosystem are now largely absent from the Willamette Valley. The viability of the Fender's blue butterfly over the long term will therefore require addressing influences on viability including ongoing habitat conversion, loss of habitat disturbance resulting in habitat succession, invasion by nonnative plants, and exposure to insecticides and herbicides, as well as continued conservation and management efforts.

Thus, after assessing the best available information, including but not limited to the current status of the species, ongoing threats to the species, and predicted status of Fender's blue butterfly under various future scenarios, including the consequences of climate change, we conclude that Fender's blue butterfly is not currently in danger of extinction but is likely to become in danger of extinction within the foreseeable future throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. The court in *Center for Biological Diversity v. Everson*, 2020 WL 437289 (D.D.C. Jan. 28, 2020) (*Center for Biological Diversity*), vacated the aspect of the Final Policy on Interpretation of the Phrase "Significant Portion of Its Range" in the Endangered Species Act's Definitions of "Endangered Species" and "Threatened Species" (79 FR 37578; July 1, 2014) that provided that the Services do not undertake an analysis of significant portions of a species' range if the species warrants listing as threatened throughout all of its range. Therefore,

we proceed to evaluating whether the species is endangered in a significant portion of its range—that is, whether there is any portion of the species' range for which both (1) the portion is significant; and (2) the species is in danger of extinction in that portion. Depending on the case, it might be more efficient for us to address the “significance” question or the “status” question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

Following the court's holding in *Center for Biological Diversity*, we now consider whether there are any significant portions of the species' range where the species is in danger of extinction now (*i.e.*, endangered). In undertaking this analysis for Fender's blue butterfly, we choose to address the status question first—we considered information pertaining to the geographic distribution of both the species and the threats that the species faces to identify any portions of the range where the species is endangered.

For Fender's blue butterfly, we considered whether the threats are geographically concentrated in any portion of the species' range at a biologically meaningful scale. We examined the following threats: Habitat loss from land conversion for agriculture and urbanization; habitat degradation due to invasion of prairies by nonnative invasive plants and by succession to woody species; insecticides and herbicides; effects of climate change; small population size; and the cumulative effects of these threats. The threats occur in both prairie and oak savannah habitat types throughout the Willamette Valley such that they are affecting all Fender's blue butterfly metapopulations. We found no concentration of threats in any portion of the range of Fender's blue butterfly at a biologically meaningful scale. Thus, there are no portions of the species' range where the species has a different status from its rangewide status. Therefore, no portion of the species' range provides a basis for determining that the species is in danger of extinction in a significant portion of its range, and we determine that the species is likely to become in danger of extinction within the foreseeable future throughout all of its range. This is consistent with the courts' holdings in *Desert Survivors v. Department of the Interior*, No. 16–cv–01165–JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018), and *Center for Biological Diversity v.*

Jewell, 248 F. Supp. 3d, 946, 959 (D. Ariz. 2017).

Determination of Status

Our review of the best available scientific and commercial information indicates that the Fender's blue butterfly meets the definition of a threatened species. Therefore, we propose to downlist the Fender's blue butterfly as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of the species proposed for listing. Because we are proposing to list this species as a threatened species, the prohibitions in section 9 would not apply directly. We are therefore proposing below a set of regulations to provide for the conservation of the species in accordance with section 4(d), which also authorizes us to apply any of the prohibitions in section 9 to a threatened species. The proposal, which includes a description of the kinds of activities that would or would not constitute a violation, complies with this policy.

Proposed Rule Issued Under Section 4(d) of the Act

Background

Section 4(d) of the Act contains two sentences. The first sentence states that the “Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation” of species listed as threatened. The U.S. Supreme Court has noted that statutory language like “necessary and advisable” demonstrates a large degree of deference to the agency (see *Webster v. Doe*, 486 U.S. 592 (1988)). Conservation is defined in the Act to mean “the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to [the Act] are no longer necessary.” Additionally, the second sentence of section 4(d) of the Act states that the Secretary “may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants.” Thus, the combination of the two sentences of section 4(d) provides the Secretary with wide latitude of

discretion to select and promulgate appropriate regulations tailored to the specific conservation needs of the threatened species. The second sentence grants particularly broad discretion to the Service when adopting the prohibitions under section 9.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have upheld rules developed under section 4(d) as a valid exercise of agency authority where they prohibited take of threatened wildlife, or include a limited taking prohibition (see *Alesea Valley Alliance v. Lautenbacher*, 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council v. National Marine Fisheries Service*, 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all of the threats a species faces (see *State of Louisiana v. Verity*, 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, “once an animal is on the threatened list, the Secretary has an almost infinite number of options available to him with regard to the permitted activities for those species. He may, for example, permit taking, but not importation of such species, or he may choose to forbid both taking and importation but allow the transportation of such species” (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

Exercising this authority under section 4(d), we have developed a proposed rule that is designed to address the specific threats and conservation needs of Fender's blue butterfly. Although the statute does not require us to make a “necessary and advisable” finding with respect to the adoption of specific prohibitions under section 9, we find that this rule as a whole satisfies the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of the Fender's blue butterfly. As discussed above in the Summary of Biological Status and Factors Affecting the Fender's Blue Butterfly, we have concluded that the Fender's blue butterfly is likely to become in danger of extinction within the foreseeable future primarily due to loss and degradation of habitat, including impacts from habitat conversion, woody succession, and invasive plant species (Factors A and E); and the potential exposure of Fender's blue butterfly to herbicides or insecticides (Factor E). Although the condition of Fender's blue butterfly has

improved, the species remains vulnerable to these threats due to the small size of many of its metapopulations, limited connectivity between metapopulations as a consequence of fragmentation and the reduced extent of native prairie habitats, and the relative rarity of its lupine host plants on the landscape. The provisions of this proposed 4(d) rule will promote conservation of Fender's blue butterfly and expansion of their range by increasing flexibility in certain management activities for our State and private landowners. The provisions of this rule are one of many tools that we would use to promote the conservation of the Fender's blue butterfly. This proposed 4(d) rule would apply only if and when we make final the reclassification of Fender's blue butterfly as a threatened species.

Provisions of the Proposed 4(d) Rule

This proposed 4(d) rule would provide for the conservation of the Fender's blue butterfly by specifically prohibiting the following actions that can affect Fender's blue butterfly, except as otherwise authorized or permitted: Import or export; take; possess and engage in other acts with unlawfully taken specimens; deliver, receive, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce. These prohibitions will result in regulating a range of human activities that have the potential to affect Fender's blue butterfly, including agricultural or urban development; certain agricultural practices (e.g., pesticide use); heavy levels of grazing; mowing; some practices associated with forestry (e.g., road construction); roadside maintenance activities; control of nonnative, invasive plant species; and direct capture, injury, or killing of Fender's blue butterfly.

We have included the prohibition of import, export, interstate and foreign commerce, and sale or offering for sale in such commerce, because while the number of metapopulations and abundance within most metapopulations has increased since the time of listing, the Fender's blue butterfly is not thriving to the degree that the species is considered to be capable of sustaining trade. Rare butterflies such as the Fender's blue are easily subject to overcollection, and the potential for population declines as a result of increased collection was one of the factors considered in the original listing of Fender's blue butterfly as an endangered species. Fortunately, the potential threat of overcollection has not

thus far been realized, but any increased incentive for capture of Fender's blue butterfly from the wild would be highly likely to result in negative impacts to the long-term viability of the species.

The Fender's blue butterfly remains likely to become an endangered species within the foreseeable future throughout all of its range; although the status of the species has improved relative to when it was first listed as an endangered species, the species has not recovered to the point that it is capable of sustaining unrestricted capture or collection from the wild without the likelihood of negative impacts to the long-term viability of the species. Because capture and collection of Fender's blue butterfly remains prohibited as discussed below, maintaining the complementary prohibition on possession and other acts with illegally taken Fender's blue butterfly will further discourage such illegal take. Thus, the possession, sale, delivery, carrying, transporting, or shipping of illegally taken Fender's blue butterflies should continue to be prohibited in order to continue progress toward the conservation and recovery of the species.

Under the Act, "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Some of these provisions have been further defined in regulation at 50 CFR 17.3. Take can result knowingly or otherwise, by direct and indirect impacts, intentionally or incidentally. Regulating incidental and intentional take would help preserve the remaining metapopulations of the Fender's blue butterfly.

Although the number of metapopulations, and abundance within most metapopulations, has increased since the time of listing, Fender's blue butterfly remains a vulnerable species and has not yet attained full recovery. We do not consider the Fender's blue butterfly capable of withstanding unregulated take, either intentional or incidental to otherwise lawful activities, without likely negative impacts to the long-term viability of the species. There are a few circumstances in which allowing incidental take may ultimately benefit the Fender's blue butterfly as a species and further its recovery. We have outlined such circumstances below as exceptions to the prohibitions of take. By allowing take under specified circumstances, the rule will provide needed protection to the species while allowing management flexibility to benefit the species' long-term conservation. Anyone taking, attempting to take, or otherwise possessing a Fender's blue butterfly, or parts thereof,

in violation of section 9 of the Act will still be subject to a penalty under section 11 of the Act, except for the actions that are specifically excepted under the 4(d) rule.

Incidental take by landowners or their agents is allowed while conducting management for the creation, restoration, or enhancement of short-stature native upland prairie or oak savannah conditions within areas occupied by Fender's blue butterfly, subject to the restrictions described herein and as long as reasonable care is practiced. An important aspect of prairie management is the timing and location of treatment. Lupine is patchy and distributed in small clumps low to the ground whereas invasive tall grasses are more uniform. This means the person doing the herbicide spray or other removal work needs to be able to recognize the plants to be sure they are treating the correct areas, the correct species, and know when to treat the area before the seed has set. To help avoid potential issues, we are proposing to have a qualified biologist involved in the planning even if the landowners does the treatment themselves. The biologist does not need to be present on-site on the day of the treatment but does need to be consulted and involved beforehand. Reasonable care may include, but is not limited to: (1) Procuring and/or implementing technical assistance from a qualified biologist on timing and location of habitat management activities prior to implementation; and (2) using best efforts to avoid trampling or damaging Fender's blue butterflies (eggs, larvae, pupae, adults) and their host and nectar plants during all activities.

Fender's blue butterfly is a conservation-reliant species. Active management for prairie conditions within the historical range of the Fender's blue butterfly is essential for long-term viability, and is one of the key recovery actions identified for the species. Allowing certain forms of active management for the purpose of creating, restoring, or enhancing native upland prairie or oak savannah conditions is necessary to facilitate and encourage the implementation of conservation measures that will address one of the primary threats to Fender's blue butterfly, the loss or degradation of native short-stature prairie or oak savannah habitat within the Willamette Valley. Restoration actions may include manual, mechanical, and herbicidal treatments for invasive and nonnative plant control that does not result in ground disturbance including mowing; and planting by hand of native vegetation, especially native food

resources for Fender's blue butterfly larvae (Kincaid's, longspur, or sickle-keeled lupine) or adults (native nectar species). Prescribed burning is a complex endeavor and there is potential for impacts to Fender's blue butterfly beyond that which local metapopulations or subpopulations may be capable of withstanding should the burn exceed its intended geographic limits; therefore, we do not provide an exception for take as a result of prescribed burning here. Take coverage for prescribed burning can be obtained through section 7 consultation, a 10(a)(1)(A) permit, or through the Programmatic Restoration Opinion for Joint Ecosystem Conservation by the Services (PROJECTS) program.

Providing landowners management flexibility facilitates the creation, restoration, and enhancement of native upland prairie and oak savannah habitats. Habitat is considered occupied by Fender's blue butterfly if it is within the historical range of the species and supports or may support lupine, unless a qualified biologist using direct observation has conducted surveys for adult Fender's blue butterfly during the April 15 to June 30 flight period and documented no adult butterflies. Occupied habitat also includes all nectar habitat within 0.5 km (0.3 miles) of habitat containing at least one of the three host lupine species and occupied by Fender's blue butterfly. This proposed 4(d) rule would authorize landowners to plant native vegetation by hand; conduct manual and mechanical treatments to control woody and invasive nonnative plants; perform tractor and hand mowing; and apply herbicides within occupied Fender's blue butterfly habitat. To prevent possible negative effects on the Fender's blue butterfly or its host lupine, the following time restrictions apply to the exceptions to take by landowners in areas occupied by Fender's blue butterfly:

(1) Manual and mechanical treatments for control of woody and invasive and nonnative plant species that do not result in ground disturbance are authorized within occupied habitat outside of the butterfly flight period (April 15 to June 30) to avoid impacts to adult butterflies.

(2) To prevent invasive plant species establishment, tractor mowing is authorized throughout sites with Fender's blue butterflies before February 15 (when lupine emerges) and after August 15 (when lupine undergoes senescence). Mowing with handheld mowers is authorized throughout the year; however, a buffer of at least 8 m (25 ft) must be maintained between the

mower and any individual lupine plant during the Fender's blue butterfly flight season (April 15 to June 30).

(3) Hand wiping, wicking, and spot-spray applications of herbicides for either the removal of nonnative invasive plant species, or to prevent resprouting of woody species subsequent to cutting are authorized year-round. Weed wiping and broadcast application of herbicides are authorized outside of the flight period of April 15 to June 30; however, additional timing and use restrictions are required based on the chemicals used. Contact the Oregon Fish and Wildlife Office prior to herbicide implementation for a list of currently acceptable herbicides, their application methods, their appropriate timing of use, and best management practices associated with herbicide use.

We expect that the actions and activities that are allowed under this proposed 4(d) rule, while they may cause some minimal level of harm or disturbance to individual Fender's blue butterflies, will not on balance adversely affect efforts to conserve and recover the species, and in fact, should facilitate these efforts because they will make it easier for our State and private partners to implement recovery actions and restore the habitats required by Fender's blue butterfly. The loss or degradation of early seral prairie habitats is one of the primary threats to Fender's blue butterfly, and disturbance (such as that described under the take exemptions provided here) is required to restore or maintain the habitat characteristics that are essential to the survival of this conservation-reliant species.

We may issue permits to carry out otherwise prohibited activities, including those described above, involving threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. With regard to threatened wildlife, a permit may be issued for the following purposes: Scientific purposes, to enhance propagation or survival, for economic hardship, for zoological exhibition, for educational purposes, for incidental taking, or for special purposes consistent with the purposes of the Act. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

We recognize the special and unique relationship with our State natural resource agency partners in contributing to conservation of listed species. State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and

plants. State agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist us in implementing all aspects of the Act. In this regard, section 6 of the Act provides that we shall cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a State conservation agency that is a party to a cooperative agreement with us in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, would be able to conduct activities designed to conserve Fender's blue butterfly that may result in otherwise prohibited take without additional authorization.

Nothing in this proposed 4(d) rule would change in any way the recovery planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or our ability to enter into partnerships for the management and protection of the Fender's blue butterfly. However, interagency cooperation may be further streamlined through planned programmatic consultations for the species between us and other Federal agencies, such as the existing programmatic consultation on habitat restoration actions in the existing PROJECTS Biological Opinion (USFWS 2015, entire), which includes provisions for management actions that benefit Fender's blue butterfly. We ask the public, particularly State agencies and other interested stakeholders that may be affected by the proposed 4(d) rule, to provide comments and suggestions regarding additional guidance and methods that we could provide or use, respectively, to streamline the implementation of this proposed 4(d) rule (see Information Requested, above).

Required Determinations

Clarity of the Rule

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:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;
- (4) Be divided into short sections and sentences; and
- (5) 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.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.), need not be prepared in connection with determining a species' listing status under the Endangered Species Act. In an October 25, 1983, notice in the **Federal Register** (48 FR 49244), we outlined our reasons for this determination, which included a compelling recommendation from the Council on Environmental Quality that we cease preparing environmental assessments or environmental impact statements for listing decisions.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations

with Native American Tribal Governments (59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have determined that no Tribes would be affected by this rule because there are no Tribal lands or interests within or adjacent to Fender's blue butterfly habitat.

References Cited

A complete list of references cited in this rulemaking is available on the internet at <http://www.regulations.gov> under Docket No. FWS-R1-ES-2020-0082 or upon request from the Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

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), the List of Endangered and Threatened Wildlife, by revising the entry for “Butterfly, Fender's blue” under Insects, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *
(h) * * *

| Common name | Scientific name | Where listed | Status | Listing citations and applicable rules |
|--------------------------------|--|----------------------|---------|--|
| * | * | * | * | * |
| Insects | | | | |
| Butterfly, Fender's blue | <i>Icaricia icarioides fenderi</i> | Wherever found | T | 65 FR 3875, 1/25/2000; [Federal Register citation of the final rule]; 50 CFR 17.47(f). ^{4d} |
| * | * | * | * | * |

■ 3. Amend § 17.47 by adding paragraph (f) to read as follows:

§ 17.47 Special rules—insects.

* * * * *

(f) Fender's blue butterfly (*Icaricia icarioides fenderi*).

(1) *Definitions*. As used in this paragraph (f), the following terms have these meanings:

(i) *Occupied habitat*. Habitat within the historical range of Fender's blue butterfly in the Willamette Valley of Oregon that supports or may support lupine, unless a qualified biologist using

direct observation has conducted surveys for adult Fender's blue butterfly during the April 15 to June 30 flight period and documented no adult butterflies. Occupied habitat also includes all nectar habitat within 0.5 kilometers (km) (0.3 miles (mi)) of habitat containing at least one of the three host lupine species and occupied by Fender's blue butterfly. Unsurveyed areas within 2 km (1.25 mi) of a known Fender's blue butterfly population shall be assumed occupied if no surveys are conducted.

(ii) *Qualified biologist*. An individual with a combination of academic training in the area of wildlife biology or related discipline and demonstrated field experience in the identification and life history of Fender's blue butterfly, or in habitat restoration methods to benefit Fender's blue butterfly. If capture of individuals is required for accurate identification, the individual must hold a valid permit under section 10(a)(1)(A) of the Act.

(iii) *Lupine*. Any one of the three species of lupines known to be required as host plants for the larvae of the

Fender's blue butterfly: Kincaid's lupine (*Lupinus sulphureus* ssp. *kincaidii*), longspur lupine (*L. arbustus*), and sickle-keeled lupine (*L. albicaulis*).

(2) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to Fender's blue butterfly. Except as provided under paragraph (f)(3) of this section and §§ 17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

- (i) Import or export, as set forth at § 17.21(b) for endangered wildlife.
- (ii) Take, as set forth at § 17.21(c)(1) for endangered wildlife.
- (iii) Possession and other acts with unlawfully taken specimens, as set forth at § 17.21(d)(1) for endangered wildlife.
- (iv) Interstate or foreign commerce in the course of commercial activity, as set forth at § 17.21(e) for endangered wildlife.
- (v) Sale or offer for sale, as set forth at § 17.21(f) for endangered wildlife.

(3) *Exceptions from prohibitions.* In regard to this species, you may:

- (i) Conduct activities as authorized by a permit under § 17.32.
- (ii) Possess and engage in other acts with unlawfully taken wildlife, as set forth at § 17.21(d)(2) for endangered wildlife.
- (iii) Take, as set forth at § 17.21(c)(2) through (4) for endangered wildlife.
- (iv) Take, as set forth at § 17.31(b).
- (v) Take incidental to an otherwise lawful activity caused by:

(A) *Manual and mechanical removal of invasive and/or nonnative plant species.* Manual and mechanical treatments for invasive and nonnative plant control (including encroaching native woody species) that do not result in ground disturbance is authorized within occupied habitat outside the butterfly's flight period of April 15 to June 30, provided:

(1) Landowners or their agents conducting invasive or nonnative plant removal must use reasonable care, which includes, but is not limited to, procuring and/or implementing technical assistance from a qualified biologist on timing and location of habitat management activities and avoidance of ground disturbance to avoid impacts to larvae or pupae. Best management practices for felling of trees, removal of vegetation off-site, and temporary piling of cut vegetation on-

site are available from the Oregon Fish and Wildlife Office.

(2) Reasonable care during all activities includes best efforts to avoid trampling or damaging Fender's blue butterflies (eggs, pupae, larvae, and adults) and their host and nectar plants. Foot traffic shall be minimized in occupied habitat, and especially in the area of any lupine plants.

(B) *Mowing.* Tractor mowing for invasive and nonnative plant control (including encroaching native woody species) and the maintenance of early seral conditions is authorized throughout occupied Fender's blue butterfly habitat before February 15 when lupine emerges and after August 15 when lupine undergoes senescence.

(1) Mowing with handheld mowers is authorized throughout the year; however, a buffer of at least 8 meters (25 feet) must be maintained between the mower and any individual lupine plant during the Fender's blue butterfly flight season (April 15 to June 30).

(2) During mowing, landowners or their agents must use reasonable care, which includes, but is not limited to, procuring and implementing technical assistance from a qualified biologist on timing and location of habitat management activities; avoidance of ground disturbance to avoid impacts to larvae or pupae; and using best efforts during all activities to avoid trampling or damaging Fender's blue butterflies (eggs, pupae, larvae, and adults) and their host and nectar plants. Foot traffic shall be minimized in occupied habitat, and especially in the area of any lupine plants.

(C) *Herbicide application for removal of invasive and/or nonnative plant species.* Hand wiping, wicking, and spot-spray applications of herbicides for either the removal of nonnative invasive plant species, or to prevent resprouting of woody species subsequent to cutting are authorized year-round. Weed wiping and broadcast application of herbicides are authorized outside of the flight period of April 15 to June 30; however, additional timing and use restrictions are required based on the chemicals used. Contact the Oregon Fish and Wildlife Office prior to herbicide implementation for a list of currently acceptable herbicides, their application methods, their appropriate timing of use, and best management practices associated with herbicide use.

(1) During herbicide application, landowners or their agents must use reasonable care, which includes, but is

not limited to, procuring and implementing technical assistance from a qualified biologist on habitat management activities; complying with all State and Federal regulations and guidelines for application of herbicides; and avoiding broadcast spraying in areas adjacent to occupied habitat if wind conditions are such that drift into the occupied area is possible.

(2) Landowners or their agents conducting herbicide application must use best efforts to avoid trampling or damaging Fender's blue butterflies (eggs, pupae, larvae, and adults) and their host and nectar plants. Foot traffic shall be minimized in occupied habitat, and especially in the area of any lupine plants.

(D) *Ground disturbance for the purpose of planting native vegetation.* Limited ground disturbance (digging and placement by hand) is authorized for the purpose of planting native vegetation as part of habitat restoration efforts, especially native food resources used by larvae and adults, in areas occupied by Fender's blue butterfly.

(1) Larvae of the Fender's blue butterfly require lupine. For adults, preferred native nectar sources include, but are not limited to, the following flower species: tapertip onion (*Allium acuminatum*), narrowleaf onion (*Allium amplexans*), Tolmie's mariposa lily (*Calochortus tolmiei*), small camas (*Camassia quamash*), Clearwater cryptantha (*Cryptantha intermedia*), Oregon sunshine (*Eriophyllum lanatum*), Oregon geranium (*Geranium oregonum*), Oregon iris (*Iris tenax*), meadow checkermallow (*Sidalcea campestris*), rose checkermallow (*Sidalcea virgata*), and purple vetch (*Vicia americana*).

(2) While planting native vegetation, landowners or their agents must use reasonable care, which includes, but is not limited to, procuring and implementing technical assistance from a qualified biologist on timing and location of habitat management activities and using best efforts during all activities to avoid trampling or damaging Fender's blue butterflies (eggs, pupae, larvae, and adults) and their host and nectar plants. Foot traffic shall be minimized in occupied habitat, and especially in the area of any lupine plants.

(E) *Summary of authorized methods and timing of habitat restoration activities for the Fender's blue butterfly.*

| Management activity | Dates authorized for use in occupied habitat |
|----------------------------------|--|
| Manual and mechanical treatments | Outside of the flight period of April 15 to June 30. |

| Management activity | Dates authorized for use in occupied habitat |
|----------------------------------|---|
| Mowing—tractors | Before February 15 and after August 15. |
| Mowing—handheld | Year-round, with a buffer of 8 m (25 ft) between the mower and any individual lupine plant during the flight period of April 15 to June 30. |
| Herbicides—hand wiping | Year-round. |
| Herbicides—wicking | Year-round. |
| Herbicides—spot-spray | Year-round. |
| Herbicides—broadcast spray | Outside of the flight period of April 15 to June 30*. |
| Herbicides—weed wiping | Outside of the flight period of April 15 to June 30*. |
| Planting native vegetation | Year-round. |

* Additional timing restrictions will apply based on the chemicals used. Contact the Oregon Fish and Wildlife Office for additional information.

(F) *Reporting and disposal requirements.* Any injury or mortality of Fender’s blue butterfly associated with the actions excepted under paragraphs (f)(3)(v)(A) through (D) of this section must be reported to the Service and authorized State wildlife officials within 5 calendar days, and specimens may be disposed of only in accordance with directions from the Service. Reports should be made to the Service’s Office of Law Enforcement (contact information is at § 10.22) or the Service’s Oregon Fish and Wildlife Office and to the State of Oregon Department of Parks and Recreation, Stewardship Section, which has jurisdiction over invertebrate species. The Service may allow additional reasonable time for reporting if access to these offices is limited due to closure.

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

[FR Doc. 2021–12576 Filed 6–22–21; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 91

[Docket No. FWS–HQ–MB–2021–0048; FXMB1233090000//212//FF09M13000]

RIN 1018–BF62

Revision of Federal Migratory Bird Hunting and Conservation Stamp (Duck Stamp) Contest Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to revise the regulations governing the annual Migratory Bird Hunting and Conservation Stamp Contest (also known as the Federal Duck Stamp Contest (Contest)). Our proposed amendments would remove the

previously specified permanent theme and the mandatory inclusion of an appropriate hunting element within all Contest entries and revise the qualifications of the judging panel to reflect this change. This change would be scheduled to begin with the 2022 Contest.

DATES: We will accept comments that we receive on or before July 23, 2021. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES**, below), the deadline for submitting an electronic comment is 11:59 p.m. Eastern Time on the closing date.

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

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS–HQ–MB–2021–0048.

- *U.S. Mail:* Public Comments Processing, Attn: FWS–HQ–MB–2021–0048, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: JAO/3W, Falls Church, VA 22041–3803.

We will not accept hand-delivered, emailed, or faxed comments. We will post all comments on <https://www.regulations.gov>. This generally means that your entire submission—including any personal identifying information—will be posted on the website. See Public Comments Procedures and Public Availability of Comments, below, for more information.

FOR FURTHER INFORMATION CONTACT:

Jerome Ford, U.S. Fish and Wildlife Service, Department of the Interior, (202) 208–1050.

SUPPLEMENTARY INFORMATION:

Background

History of the Federal Migratory Bird Hunting and Conservation Stamp (Duck Stamp) Program

On March 16, 1934, Congress passed and President Franklin D. Roosevelt signed the Migratory Bird Hunting Stamp Act, which was later amended to become the Migratory Bird Hunting and Conservation Stamp Act (16 U.S.C. 718–

718j, 48 Stat. 452). Popularly known as the Duck Stamp Act, the law requires all waterfowl hunters who have attained the age of 16 to buy an annual stamp. Funds generated from Duck Stamp sales are used to protect waterfowl and wetland habitat that is incorporated into the National Wildlife Refuge System from willing sellers and those interested in obtaining conservation easements.

Over 1.5 million stamps are sold each year, and, as of 2021, Federal Duck Stamps have generated more than \$1.1 billion for the conservation of more than 6 million acres of waterfowl habitat in the United States. In addition to waterfowl, numerous other birds, mammals, fish, reptiles, and amphibians benefit from habitat protected by the Duck Stamp revenues, including an estimated one-third of the nation’s endangered and threatened species. The healthy wetlands protected by Duck Stamp funding sequester carbon and contribute to addressing the impacts of climate change, including absorbing flood waters and storm surge. These wetlands purify water supplies and provide economic support to local communities as they attract outdoor recreationists from many different backgrounds.

History of the Duck Stamp Contest

The first Federal Duck Stamp was designed at President Roosevelt’s request by Jay N. “Ding” Darling, a nationally known political cartoonist for the *Des Moines Register* and a hunter and wildlife conservationist. In subsequent years, noted wildlife artists were asked to submit designs for the stamp. The first Contest was opened in 1949 to any U.S. artist who wished to enter. Since then, the Contest has attracted large numbers of entrants, and it remains the only art competition of its kind sponsored by the U.S. Government. The Secretary of the Interior appoints a panel of judges who have expertise in the area of art, waterfowl, or philately to select each year’s winning design. Winners receive no compensation for the work, except a pane of Duck Stamps, based on their winning design, signed