

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17**

[Docket No. FWS-R8-ES-2020-0151;
FF09E21000 FXES1111090000 223]

RIN 1018-BE33

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Coastal Distinct Population Segment of the Pacific Marten

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; revisions and reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are reopening the comment period on our October 25, 2021, proposed rule to designate critical habitat for the coastal distinct population segment of Pacific marten (coastal marten) (*Martes caurina*), a mammal species from coastal California and Oregon, under the Endangered Species Act of 1973, as amended (Act). This action will allow all interested parties an additional opportunity to comment on the October 25, 2021, proposed rule, as well as the opportunity to comment on the additional areas we are considering for exclusion from critical habitat designation, potential changes to Unit 1, and on new habitat modeling efforts for the coastal marten, as explained in this document. Comments previously submitted need not be resubmitted as they are already incorporated into the public record and will be fully considered in the final rule.

DATES: The comment period on the proposed rule that published October 25, 2021 (86 FR 58831) is reopened. We will accept comments received or postmarked on or before October 17, 2022.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter FWS-R8-ES-2020-0151, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate the 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-R8-ES-2020-0151, 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 <https://www.regulations.gov>. This generally means that we will post any personal information you provide us (see Public Comments, below, for more information).

Availability of supporting materials: This document and supporting materials (including the species status assessment report, comments and information received on the proposed rule, and references cited) are available at <https://www.regulations.gov> under Docket No. FWS-R8-ES-2020-0151 and at the Arcata Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Tanya Sommer, Field Supervisor, Arcata Fish and Wildlife Office, 1655 Heindon Road, Arcata, CA 95521; telephone 707-822-7201. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

On October 25, 2021, we published in the **Federal Register** (86 FR 58831) a proposed rule to designate approximately 1,413,305 acres (ac) (571,965 hectares (ha)) of critical habitat in Oregon and California for the coastal marten. In the proposed designation, we identified 76,544 ac (30,976 ha) of private land owned by Green Diamond Resource Company (Green Diamond) and 26,126 ac (10,573 ha) of Yurok Tribal land that we are considering for exclusion from the critical habitat designation under section 4(b)(2) of the Act.

During the comment period on the October 25, 2021, proposed rule, we received information from the Yurok Tribe and Green Diamond that made us aware of changes in land ownership between the two entities based on recent land transfers. Below, we provide a summary of that information and discuss changes to the areas we are now considering for exclusion under section 4(b)(2) of the Act. We also provide information related to new species occurrence modeling and information

on areas which may not contain the physical or biological features essential to the conservation of the coastal marten. We will be considering all this information during our designation process.

Although the critical habitat designation for the coastal marten was proposed when the regulatory definition of habitat (85 FR 81411; December 16, 2020) and the 4(b)(2) exclusion regulations (85 FR 82376; December 18, 2020) were in place and in effect, those two regulations have been rescinded (87 FR 37757; June 24, 2022 and 87 FR 43433; July 21, 2022) and no longer apply to any designations of critical habitat. Therefore, for the final rule designating critical habitat for the coastal marten, we will apply the regulations at 424.19 and the 2016 Joint Policy on 4(b)(2) exclusions (81 FR 7226; February 11, 2016).

Changes to Areas Identified for Exclusion and Additional Information Received

Tribal Lands and Green Diamond Resource Company Lands; Unit 5 Klamath Mountains

As identified above, our proposed critical habitat rule identified approximately 26,126 ac (10,573 ha) of Yurok Tribal lands and 76,544 ac (30,976 ha) of Green Diamond lands within the proposed designation of critical habitat for the coastal marten in Unit 5 in California. Based on additional information received from Green Diamond and the Yurok Tribe, we became aware of land ownership transfers between the two entities. As a result, approximately 27,564 ac (11,155 ha) of land identified for exclusion for Green Diamond have been transferred to the Yurok Tribe. We now identify approximately 48,980 ac (19,822 ha) of Green Diamond land for potential exclusion within the proposed designation. Based on the land transfers and additional exclusion requests, the Yurok Tribe has requested that approximately 93,898 ac (37,999 ha) of land be considered for exclusion based on Yurok Tribal interests. These Tribal areas are comprised of a mix of current land ownership and include approximately 68,898 ac (27,882 ha) of Yurok Tribal fee title and trust lands, lands held by Western Rivers Conservancy for the Tribe, and approximately 25,000 ac (10,117 ha) of ancestral Yurok Tribal lands currently owned by the U.S. Forest Service. Despite the mixed ownership, we are considering the Tribe's request for exclusion of the entire 93,898 ac (37,999 ha). The amount and ownership

information for the areas being considered for exclusion for the various entities is outlined in the table below.

Further, during the open comment period, we also received information regarding occurrence and habitat use by the coastal marten based on new modeling efforts (National Council for Air and Stream Improvement 2021). Although we are not now making any changes to the proposed designation based on the revised habitat modeling, we intend to review these habitat

modeling efforts and determine if changes to the proposed designation are needed based on this information. Information regarding the revised habitat modeling is available at <https://www.regulations.gov> under Docket No. FWS-R8-ES-2020-0151-0022, and we invite public comment on the habitat modeling efforts to inform our review.

In addition, the U.S. Forest Service in Oregon commented that some proposed areas in the Siuslaw National Forest may not contain the physical or

biological features and therefore are not critical habitat. We are in the process of reviewing the information provided by the Forest Service and will make adjustments to the designation if appropriate between proposed and final designation. Information regarding the U.S. Forest Service’s comments are available at <https://www.regulations.gov> under Docket No. FWS-R8-ES-2020-0151-0039.

TABLE OF AREAS CONSIDERED FOR EXCLUSION BY CRITICAL HABITAT UNIT

Unit No.	Unit name	Area meeting the definition of critical habitat (in ac (ha))	Land ownership	Areas Considered for possible exclusion (in ac (ha))	Summary of rationale for proposed exclusion
5	Klamath Mountains	1,289,627 (521,894)	Green Diamond Resource Company.	48,980 ac (19,822 ha)	Existing land management, State safe harbor agreement, memorandum of understanding (MOU), and maintaining partnership.
			Yurok Tribe; Western Rivers Conservancy; U.S. Forest Service.	93,898 ac (37,999 ha)	Existing land management, MOU, and maintaining partnership.

Based on existing conservation and management actions for natural resources by the Green Diamond Resource Company and the Yurok Tribe as outlined under Consideration of Exclusions Under Section 4(b)(2) of the Act in the October 25, 2021, proposed rule (86 FR 58844–58848), as well as in additional information received during the public comment period from both the Yurok Tribe and Green Diamond (see Docket FWS-R8-ES-2020-0151-0036 and FWS-R8-ES-2020-0151-0024), we are now considering excluding approximately 48,980 ac (19,822 ha) of Green Diamond land and 93,898 ac (37,999 ha) of Yurok Tribe identified lands from the final designation.

Public Comments

We will accept written comments and information during this reopened comment period on our proposed rule to designate critical habitat for the coastal marten. We will consider information and recommendations from all interested parties. We intend that any final action resulting from the proposal will be based on the best scientific data available. Our final determination will take into consideration all comments and any additional information we receive during the open comment period on the proposed rule.

Because we will consider all comments and information received during both comment periods, our final

determination may differ from our October 25, 2021 (86 FR 58831) proposed rule. Based on the new information we receive (and any comments on that new information), our final critical habitat designation may not include all areas proposed, may include some additional areas that meet the definition of critical habitat, and may exclude some additional areas if we find the benefits of exclusion outweigh the benefits of inclusion and not lead to the extinction of the species.

If you already submitted comments or information on the October 25, 2021, proposed rule, please do not resubmit them. Any such comments are incorporated as part of the public record of the rulemaking proceeding, and we will fully consider them in the preparation of our final determination.

Comments should be as specific as possible. Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you assert. Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, do not provide substantial information necessary to support our determination, as section 4(b)(2) of the Act directs that designations of critical habitat be made “on the basis of the best scientific data available.”

We request that you send comments and materials only by one of the methods listed in **ADDRESSES**. If you submit information via <https://www.regulations.gov>, your entire submission—including your 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 <https://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, will be available for public inspection on <https://www.regulations.gov> at Docket No. FWS-R8-ES-2020-0151.

Authors

The primary authors of this document are the staff members of the Fish and Wildlife Service’s Species Assessment Team and the Pacific Southwest Regional Office (Region 8).

Authority

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

Martha Williams,

Director, U.S. Fish and Wildlife Service.

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 648**

[Docket No. 220922–0195]

RIN 0648–BJ04

**Magnuson-Stevens Act Provisions;
Fisheries of the Northeastern United States;
Omega Electronic Mesh
Measurement Gauge Method for
Measuring Net Mesh Size**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This rulemaking proposes to add the Omega net mesh measurement gauge as a permissible device for net mesh measurement and correct regulatory references to gear restrictions. This action is required to allow the use of the Omega gauge as another method for measuring and enforcing net mesh size. Adoption of the Omega gauge, a handheld electronic device, is intended to improve the efficiency, safety, and cost-effectiveness of enforcement boardings at-sea.

DATES: Written comments must be received on or before October 31, 2022.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2021–0081, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <http://www.regulations.gov> and enter “NOAA–NMFS–2021–0081” in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

Instructions: All comments that are timely and properly submitted are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted

voluntarily by the sender will be publicly accessible. We will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by us.

FOR FURTHER INFORMATION CONTACT:

Spencer Talmage, Fishery Management Specialist, phone: (978) 281–9232; email: Spencer.Talmage@noaa.gov.

SUPPLEMENTARY INFORMATION:**Background**

Under section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act, the Secretary of Commerce is authorized to implement regulations that are necessary to carry out any fishery management plan or amendment. We have preliminarily determined that the adoption of the Omega electronic net mesh measurement gauge (Omega gauge) as an enforcement tool to measure net mesh for trawl gear will improve the safety, efficiency, and cost-effectiveness of enforcement boardings at-sea. The Omega gauge will assist in the enforcement of gear requirements for all Fishery Management Plans (FMPs) administered by the Greater Atlantic Regional Fisheries Office, but is otherwise administrative and will not result in any changes to fishing behavior or obligations to the fishing industry. We are proposing to amend the regulations in §§ 648.51(a)(2)(ii), 648.51(b)(4)(v), 648.80(f)(2), and 648.108(a)(2) to add the Omega gauge.

The Omega gauge is an automated, handheld electronic device for measuring net mesh size. To take a measurement, two metal prongs at the end of the device are inserted into a net mesh, at which point the prongs slowly separate with a standardized, pre-set force. Once the prongs can no longer separate, they stop, and produce the measurement. The Omega gauge has a measuring range of 0.4–11.81 inches (1–30 cm), and exerts a pressure of 125 Newtons (N) (12.75 kg) when used to measure mesh greater than or equal to 2.17 inches (5.51 cm) and a pressure of 50 N (5.10 kg) when used to measure mesh less than 2.17 inches (5.51 cm). The Omega gauge shows the results of completed measurements to the user via an electronic display, but also has the capability to record and store measurements internally. These records can be exported to an electronic file for later use. The mesh size produced by this device would be based on the same process as currently specified; it would

be equal to the average of the measurements of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes.

The current methodology for measuring trawl net mesh size uses a wedge-shaped gauge with a taper of 0.79 inches (2 cm) in 3.15 inches (8 cm) and a thickness of 0.09 inches (2.3 mm). To measure net mesh size of less than 4.72 inches (120 mm), the wedge gauge is attached to a 5-kg weight. For nets 4.72 inches (120 mm) or larger, the gauge is attached to an 8-kg weight. The wedge is inserted into the mesh being measured under the pressure or pull of its attached weight, and the mesh size is equal to the average of the measurements of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes.

Between 2016 and 2018, the United States Coast Guard (USCG) conducted shore-side and operational comparison studies between the wedge and Omega gauges.

At a meeting of the New England Fishery Management Council’s Joint Enforcement Committee and Advisory Panel in 2018, USCG representatives presented the results of their studies and demonstrated the operation of the Omega gauge. These studies showed that the Omega gauge accurately and consistently measured the net meshes. In addition, the USCG stated that the Omega gauge is faster, easier to use, and more precise than the traditional wedge gauge.

Following the recommendation of the Joint Enforcement Committee and Advisory Panel, the New England Council recommended to us that the Omega gauge be adopted for net mesh size measurement. Subsequently, the NOAA Office of Law Enforcement and Office of General Counsel reviewed the study results, operations manual, and other information and determined the Omega gauge is suitable for net mesh measurements.

On December 13, 2021, NMFS presented information to the Mid-Atlantic Fishery Management Council regarding the Omega gauge and the ongoing development of rulemaking to adopt the Omega gauge. The Mid-Atlantic Council had not been properly informed of the development of this rulemaking, and so the December presentation corrected that error. The Mid-Atlantic Council subsequently passed a motion by consensus to support the development of rulemaking to adopt the Omega gauge.