



December 15, 2021

***Submitted via Federal eRulemaking Portal***

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Public Commenting Processing  
U.S. Fish and Wildlife Service  
MS: PRB/3W  
5275 Leesburg Pike  
Falls Church, VA 22041-3803

**RE: Docket ID No. FWS-R8-ES-2021-0060 – Comments of California Farm Bureau on Proposed Rule to Designate Critical Habitat for the Southern Sierra Nevada Distinct Population Segment of Fisher**

To Whom It May Concern:

The California Farm Bureau appreciates the opportunity to provide comments in opposition to the U.S. Fish and Wildlife Service (Service) Proposed rule that seeks to designate critical habitat for the federally endangered Southern Sierra Nevada distinct population segment (DPS) of fisher under the Endangered Species Act of 1973, as amended (Act).

I. About California Farm Bureau

California Farm Bureau is California's largest farm organization, comprised of 53 county Farm Bureaus currently representing approximately 32,000 agricultural, associate, and collegiate members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers, ranchers and foresters engaged in production agriculture to provide a reliable, safe, and affordable supply of food and fiber through responsible stewardship of our natural resources.

II. Background

The Service is proposing to designate 554,454 acres across six units in California as critical habitat for the federally endangered Southern Sierra Nevada DPS of fisher. All acres are occupied by the species. Approximately 90 percent of the proposed designation acreage is federally owned (500,933 acres) with most of the federal lands managed by the U.S. Forest Service (391,758 acres). These USFS lands consist of portions of the Inyo, Sequoia, Sierra, and Stanislaus National Forests. Additionally, approximately 15,001 acres of proposed critical habitat would overlap the Domeland, South Sierra, and Golden Trout Wilderness Areas. The remaining federal land is managed by the National Park Service (108,725 acres). About six percent of the total proposed designation lies on private lands (33,426 acres), and less than



one percent is state-owned. Approximately three percent of the total proposed critical habitat area (16,246 acres) is part of the Tule River Indian Tribe of the Tule River Reservation.

The Service is considering excluding the Tule River Reservation lands from the final critical habitat designation due to ongoing beneficial management for the species and partnership considerations. The Service is also considering excluding 10,254 acres of private lands owned by Southern California Edison (SCE) from the final critical habitat designation due to their current implementation of ongoing beneficial forest management practices that reduce threats to the species, and which are being memorialized in a fisher management plan.

### III. General Comments

#### ***The Proposed Critical Habitat Designation is Not Prudent and Determinable***

Under the Act, when the Service determines that any species is an endangered or threatened species, the Service is required to designate critical habitat, to the maximum extent prudent and determinable.

Section 3(5)(A) of the Act defines critical habitat as:

- i. The specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features essential to the conservation of the species, and which may require special management considerations or protections; and
- ii. Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. Section 4(b)(2) of the Act states that the Secretary must make the designation on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impacts of specifying any particular area as critical habitat. The Secretary may exclude an area from the critical habitat designation if it is determined that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless it is determined, based on the best scientific data available, that the failure to designate such area will result in the extinction of the species.

Based on the definition above, we do not believe that the proposed critical habitat designation is prudent and determinable based on the best scientific data available. Recently, the Southern Sierra Nevada DPS of fisher has experienced substantial loss of habitat and increase in habitat fragmentation following the 2012-2015 drought. Additionally, all the areas included in the proposed designation as critical habitat are within the current known range



of the species and are considered occupied at the time of listing (May 15, 2020) and are still currently occupied.

Additionally, since the time of the listing determination, the Service did not have the most recent Fisher research publication, *Fisher Use of Postfire Landscapes: Implications for Habitat Connectivity and Restoration* (July 6, 2021) by Craig Thompson et al., to inform its proposal of six critical habitat units. This publication found that fisher colonization rates reflected avoidance of areas dominated by higher-severity fire, and fishers had a higher probability of being found in areas with larger and more contiguous patches of low-severity fire.

Since the Service's listing determination and the Service's determination for proposed critical habitat, there have been seven fires across the six critical habitat units resulting in over 870,000 acres burned with a substantial amount of these acres experiencing high severity burn conditions.

Additionally, the 2021 on-the-ground presence/absence surveys conducted by the Pacific Southwest Region of the Forest Service (Region 5) are expected to be ready for submittal to the Service in January/February 2022 with genetic results expected to follow a few months later. We believe that these 2021 surveys will help to identify which parts of burned landscapes fishers are utilizing. Without this 2021 data, we believe that designation of critical habitat may not be prudent or determinable at this time.

#### ***Critical Habitat Unit 6 Should Be Amended***

Critical habitat Unit 6 should be amended to exclude the area from Crane Flat to the Tuolumne River because they are unoccupied. To date, there are insufficient detections to conclude that this area of Critical Habitat Unit 6 is occupied. Because the data is not sufficient to perform required analyses to find the extension to the Tuolumne River is not determinable, this area should be excluded from Critical Habitat Unit 6.

#### ***Burn Conditions Should Be Taken into Consideration***

Given reoccurring catastrophic wildfire in California, there is an immense backlog with the amount of dead material that needs to be removed from Federal forests as well as other needed site preparation and reforestation work. This means that nearly all high severity burned areas are likely to have vegetative type conversion from forest to brushfields. Therefore, the high severity burned areas are no longer habitat and are no longer occupied. Areas within the proposed critical habitat designation that overlap with high severity burn areas should be eliminated because those areas are not habitat.



#### IV. Conclusion

California Farm Bureau appreciates the opportunity to provide comments in opposition to the Service's Proposed rule that seeks to designate critical habitat for the federally endangered Southern Sierra Nevada DPS of fisher. It has been well documented that critical habitat designations influence federal land management. Additionally, critical habitat designations directly and indirectly impact farmers, ranchers, and private landowners. If questions about these comments, please contact me via email at [ehuston@cbbf.com](mailto:ehuston@cbbf.com) or by telephone at 916-849-3746.

Sincerely,

A handwritten signature in dark ink that reads 'Erin D. Huston'.

ERIN HUSTON

Federal Policy Consultant