

Tala DiBenedetto (*admitted pro hac vice*)  
CENTER FOR BIOLOGICAL DIVERSITY  
P.O. Box 371  
Oceanside, NY 11572-0371  
(718) 874-6734, ext. 555  
tdibenedetto@biologicaldiversity.org

Collette L. Adkins (*admitted pro hac vice*)  
CENTER FOR BIOLOGICAL DIVERSITY  
P.O. Box 595  
Circle Pines, MN 55014-0595  
(651) 955-3821  
cadkins@biologicaldiversity.org

Chelsea Stewart-Fusek, OSB # 224994  
CENTER FOR BIOLOGICAL DIVERSITY  
P.O. Box 11374  
Portland, OR 97211  
(971) 717-6425  
cstewartfusek@biologicaldiversity.org

*Attorneys for Plaintiff Center for Biological Diversity*

**UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF OREGON  
EUGENE DIVISION**

**CENTER FOR BIOLOGICAL DIVERSITY**, a  
non-profit organization,

Plaintiff,

v.

**U.S. FOREST SERVICE; BROOKE  
ROLLINS**, in her official capacity as Secretary of  
the U.S. Department of Agriculture; **REBECCA  
BROOKE**, in her official capacity of Forest  
Supervisor for the Siuslaw Forest.

Federal Defendants,

and

Case No. 6:24-cv-00930-AA

**PLAINTIFF'S MOTION FOR  
PRELIMINARY INJUNCTION AND  
SUPPORTING MEMORANDUM OF  
LAW**

**(EXPEDITED HEARING  
REQUESTED)**

**DOUGLAS COUNTY, OREGON**, a political  
subdivision of the State of Oregon, *et al.*,

Defendant-Intervenors.

### **MOTION**

Plaintiff Center for Biological Diversity hereby asks the Court to issue a preliminary injunction to prevent irreparable harm to federally-listed coastal martens in their designated critical habitat from large off-highway vehicle events permitted by Federal Defendants—the U.S. Forest Service; Brooke Rollins, Secretary of the U.S. Department of Agriculture; and Rebecca Brooke, Supervisor for the Siuslaw National Forest (hereinafter, “the Forest Service”)—in violation of federal law, as explained below. The first large event of the summer, the UTV Takeover, starts on June 24, 2025. Pursuant to Civil Local Rule 7-1, Plaintiff and Federal Defendants made a good faith effort through telephonic conference to resolve the dispute and have been unable to do so. Counsel for the Center contacted counsel for Federal Defendants and Defendant-Intervenors for their position on this motion and request for an expedited hearing. Federal Defendants indicated they oppose the motion and take no position on the request for an expedited hearing. Defendant-Intervenors did not provide a timely response.

## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	iii
FACTUAL BACKGROUND.....	2
I. Rare Coastal Martens Live in the Oregon Dunes National Recreation Area .....	2
II. Large Off-Highway Vehicle Events in the Dunes Harm Coastal Martens .....	4
LEGAL BACKGROUND .....	9
I. The Endangered Species Act .....	9
II. The National Environmental Policy Act.....	10
III. The Preliminary Injunction Standard.....	11
ARGUMENT.....	12
I. The Center is Likely to Succeed on the Merits of its Claims that the Forest Service’s Authorizations of OHV Events on the Dunes Violate the ESA and NEPA .....	12
A. The Forest Service Violated the ESA by Failing to Consult with FWS on Harmful Impacts to Coastal Martens from SUPs Issued for Large OHV Events.....	12
B. The Forest Service Violated NEPA by Unlawfully Relying on a Categorical Exclusion to Circumvent Required Environmental Impact Analysis of the SUPs.....	17
II. The Center’s Members and Coastal Martens are Likely to Suffer Irreparable Harm If Injunctive Relief is Not Granted .....	22
A. The Forest Service’s Authorizations of Large OHV Events on the Oregon Dunes Irreparably Harm the Center and its Members’ Recreational and Aesthetic Interests. ....	22
B. The Forest Service’s Authorizations of Large OHV Events on the Oregon Dunes Irreparably Harm Conservation of Coastal Martens .....	24

III. The Balance of Harms and the Public Interest Weigh in Favor of Granting Preliminary Relief .....	27
IV. The Court Should Enjoin the Forest Service from Allowing Large OHV Events to Harm Coastal Martens Until Proper Legal Analyses are Complete .....	27
V. The Center’s Claims Related to the Forest Service’s Issuance of SUPs Are Not Moot.....	28
CONCLUSION.....	30

## TABLE OF AUTHORITIES

### Cases

<i>Alaska Ctr. for the Env't v. U.S. Forest Serv.</i> , 189 F.3d 851 (9th Cir. 1999).....	29
<i>All. for the Wild Rockies v. Marten</i> , 685 F. Supp. 3d 971 (D. Mont. 2023) .....	19, 23
<i>Amoco Prod. Co. v. Vill. of Gambell</i> , 480 U.S. 531 (1987).....	23, 27
<i>Biodiversity Legal Found. v. Badgley</i> , 309 F.3d 1166 (9th Cir. 2002).....	12, 28
<i>Cal. ex rel. Lockyer v. USDA</i> , 575 F.3d 999 (9th Cir. 2009).....	13, 16
<i>Cal. ex rel. Van De Kamp v. Tahoe Reg'l Planning Agency</i> , 766 F.2d 1319 (9th Cir. 1985) .....	28
<i>Cent. Or. Landwatch v. Connaughton</i> , 905 F. Supp. 2d 1192 (D. Or. 2012).....	28
<i>Citizens for Better Forestry v. U.S. Dep't of Agric.</i> , 341 F.3d 961 (9th Cir. 2003).....	22
<i>Cottonwood Envtl. Law Ctr. v. U.S. Forest Serv.</i> , 789 F.3d 1075 (9th Cir. 2015).....	25, 27
<i>Ctr. for Biological Diversity v. Zinke</i> , 900 F.3d 1053 (9th Cir. 2018) .....	9
<i>Drakes Bay Oyster Co. v. Jewell</i> , 747 F.3d 1073 (9th Cir. 2014) .....	11
<i>Env't Prot. Info. Ctr. v. Carlson</i> , 968 F.3d 985 (9th Cir. 2020) .....	11
<i>Flathead-Lolo-Bitterroot Citizen Task Force v. Montana</i> , 98 F.4th 1180 (9th Cir. 2024) ....	11, 12
<i>Forest Guardians v. Johanns</i> , 450 F.3d 455 (9th Cir. 2006).....	28
<i>Friends of the Inyo v. U.S. Forest Serv.</i> , 103 F.4th 543 (9th Cir. 2024).....	11
<i>Fund for Animals, Inc. v. Lujan</i> , 962 F.2d 1391 (9th Cir. 1992).....	23
<i>Greater Yellowstone Coalition v. U.S. Forest Serv.</i> , 12 F. Supp. 3d 1268 (D. Idaho 2014) .....	19
<i>Greenpeace Action v. Franklin</i> , 14 F.3d 1324 (9th Cir. 1992).....	29
<i>Humane Soc'y of U.S. v. Hodel</i> , 840 F.2d 45 (D.C. Cir. 1988).....	23
<i>Karuk Tribe of Cal. v. U.S. Forest Serv.</i> , 681 F.3d 1006 (9th Cir. 2012).....	10
<i>Los Padres Forestwatch v. U.S. Forest Serv.</i> , 776 F. Supp. 2d 1042 (N.D. Cal. 2011).....	21

<i>Marsh v. Or. Nat. Res. Council</i> , 490 U.S. 360 (1989).....	10
<i>Melendres v. Arpaio</i> , 784 F.3d 1254 (9th Cir. 2015).....	28
<i>Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.</i> , 463 U.S. 29 (1983).....	20
<i>Murphy v. Hunt</i> , 455 U.S. 478 (1982) .....	29
<i>Nat’l Wildlife Fed’n v. Nat’l Marine Fisheries Serv.</i> , 886 F.3d 803 (9th Cir. 2018) .....	passim
<i>Nken v. Holder</i> , 556 U.S. 418 (2009) .....	11
<i>NRDC v. EPA</i> , 38 F.4th 34 (9th Cir. 2022).....	10
<i>Roman Cath. Diocese v. Cuomo</i> , 141 S. Ct. 63 (2020).....	23
<i>Stuhlbarg Int’l Sales Co., Inc. v. John D. Brush &amp; Co., Inc.</i> , 240 F.3d 832 (9th Cir. 2001).....	12
<i>Sw. Ctr. for Biological Diversity v. U.S. Forest Serv.</i> , 100 F.3d 1443 (9th Cir. 1996) .....	10
<i>Tenn. Valley Auth. v. Hill</i> , 437 U.S. 153 (1978).....	9
<i>W. Org. of Res. Council v. Johanns</i> , 541 F.3d 938 (9th Cir. 2008).....	27
<i>Winter v. Nat. Res. Def. Council, Inc.</i> , 555 U.S. 7 (2008).....	11, 12

## **Statutes**

16 U.S.C. §§ 1531 <i>et seq.</i> .....	1
42 U.S.C. §§ 4321 <i>et seq.</i> .....	1
16 U.S.C. §§ 1600 <i>et seq.</i> .....	1
5 U.S.C. §§ 701 <i>et seq.</i> .....	1
16 U.S.C. § 1531(c)(1).....	9
16 U.S.C. § 1536(a)(2).....	9, 12
16 U.S.C. § 1538(a)(1)(B) .....	25
16 U.S.C. § 460z.....	4
42 U.S.C. § 4321.....	11

42 U.S.C. § 4332(2)(c).....	1, 10
-----------------------------	-------

## **Rules**

85 Fed. Reg. 63,806 (Oct. 8, 2020).....	2, 3, 4
89 Fed. Reg. 46,576 (May 29, 2024) .....	3, 7, 25
Fed. R. Civ. P. 65(c) .....	28

## **Regulations**

36 C.F.R. § 220.4(e)(1).....	11
36 C.F.R. § 220.6.....	10
36 C.F.R. § 220.6(b)(1)(i).....	10, 17
36 C.F.R. § 220.6(b)(1)(iii).....	10, 17
50 C.F.R. § 402.02 .....	10
50 C.F.R. § 402.14.....	12
50 C.F.R. § 402.14(a).....	10
50 C.F.R. § 402.14(g) .....	9

## **MEMORANDUM**

Plaintiff Center for Biological Diversity (“the Center”) respectfully moves this Court for a preliminary injunction pursuant to Rule 65(a) of the Federal Rules of Civil Procedure. On June 11, 2024, Plaintiff filed a Complaint in this Court seeking declaratory and injunctive relief based on alleged violations of the Endangered Species Act, 16 U.S.C. §§ 1531 *et seq.*; National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.*; National Forest Management Act (“NFMA”), 16 U.S.C. §§ 1600 *et seq.*; and the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701 *et seq.* See Compl. ¶¶ 109–160. The allegations of Plaintiff’s Complaint are incorporated herein and made part of this motion by reference.

Nestled in dense shore pine forests along the central Oregon coast live stealthy, cat-sized carnivores known as coastal martens. Once thought to be extinct, imperilled coastal martens survive in just a few isolated populations. About 71 of the estimated 400 individuals left in existence reside in two small subpopulations in the Oregon Dunes National Recreation Area (“Oregon Dunes” or “Dunes”), managed by the U.S. Forest Service. Nevertheless, every year the Forest Service permits huge, multiday riding events that bring thousands of loud and destructive off-highway vehicles (“OHVs”) into key marten habitats and corridors in the Oregon Dunes.

Abundant scientific evidence and numerous statements by Forest Service staff demonstrate that these events pose threats to martens from noise that disrupts feeding and other necessary behaviors, destruction and fragmentation of marten habitat by OHVs, and increased threat of vehicle strikes. Plus, these events occur during the summer, when vulnerable marten mothers are raising their kits. Despite the severe risks to martens and documented history of issues with sound, safety, sanitation, and traffic during these events, the Forest Service continues to authorize them, year after year, without analyzing their harmful environmental impacts.



As such, the Center seeks a preliminary injunction to protect coastal martens from the impacts of these large events, which the Forest Service permits without the analysis and consultation required under the Endangered Species Act (“ESA”) and the National Environmental Policy Act (“NEPA”). The Center asks that this Court grant the requested injunction because, as explained below, these events are set to begin in June and are substantially likely to cause irreparable harm to the martens and their habitat, as well as the Center and its members. The Center is likely to succeed on the merits of its claims that the challenged activity “may affect” listed martens and their critical habitat, requiring the completion of ESA consultation, and that the Forest Service failed to comply with NEPA by refusing to analyze impacts and instead relying on a “categorical exclusion,” which is unlawful given the permits’ effects on the ESA-listed marten. Plus, the public interest highly weighs in favor of an injunction to protect endangered species.

Given that only two to three annual human-caused mortalities threaten the very existence of coastal martens in the Oregon Dunes, the Forest Service cannot continue to permit these large riding events in violation of federal law.

## **FACTUAL BACKGROUND**

### **I. Rare Coastal Martens Live in the Oregon Dunes National Recreation Area**

Martens are small, long-bodied carnivores with triangular ears and bushy tails. *See* Threatened Species Status for Coastal Distinct Population Segment of the Pacific Marten With a Section 4(d) Rule, 85 Fed. Reg. 63806, 63807 (Oct. 8, 2020) (“Marten Listing Rule”). They typically feed on small mammals, but also consume insects, birds, and fruits. *Id.* at 63807. Martens give birth in the spring, nurse their young for about six weeks, and care for their kits until late

summer. Ex. 1, Species Status Assessment, at 25–27. As such, spring and summer are a “critical and sensitive period” for martens and their kits. Ex. 2, Delheimer et al. 2021, at 1.



*Coastal marten photo by Mark Linnell, U.S. Forest Service*

Unlike other martens found across the country, “coastal martens” live only in Oregon and Northern California. Ex. 1, Species Status Assessment, at 9. Scientists thought coastal martens to be extinct until their rediscovery in the 1990s. *Id.* at 78. In 2020, in response to a petition from the Center, the U.S. Fish and Wildlife Service (“FWS”) listed the coastal “distinct population segment” of the Pacific marten as “threatened” under the ESA. *See* Marten Listing Rule, at 63806.

In 2024, FWS designated approximately 1.2 million acres of critical habitat for the marten, including 28,843 acres in the Oregon Dunes National Recreation Area, comprising nearly the entire Oregon Dunes. *See* Designation of Critical Habitat for the Coastal Distinct Population Segment of the Pacific Marten, 89 Fed. Reg. 46576, 46588–89 (May 29, 2024) (“Critical Habitat Designation”); *see also* Ex. 3, Oregon Dunes National Recreation Area Webpage (providing that Oregon Dunes totals 31,500 acres).

In 2020, the coastal marten population on the Oregon Dunes was estimated at 71 individuals across two subpopulations – 42 martens north of the Umpqua River and 29 martens south of it – if all available habitats are assumed occupied. Ex. 4, Oregon Dunes Restoration

Consultation, at 5. The Oregon Dunes population is “vulnerable to extirpation” because of its small size and isolation from other populations. Ex. 5, Restoration Project EA, at 14. A “population viability analysis” determined that even two or three annual human-caused mortalities would strongly increase the extinction risk for coastal martens on the Dunes. Ex. 6, Linnell et al. 2018, at 11. As such, “[a]ny increase in human-caused mortality is expected to negatively impact the [Oregon Dunes] population.” Ex. 5, Restoration Project EA, at 14.

Habitat degradation, human disturbance, and vehicle strikes are the primary threats to coastal martens. Marten Listing Rule, at 63810, 63825, 63828. According to the Forest Service, “[f]ragmentation and loss of habitat within this marten home range could cause the loss of individual marten and therefore would likely...cause a loss of viability to the population or species.” Ex. 5, Restoration Project EA, at 14.

## **II. Large Off-Highway Vehicle Events in the Dunes Harm Coastal Martens**

The Oregon Dunes is a “national recreation area” established to provide for the “conservation of scenic, scientific, historic, and other values” and “public outdoor recreation.” 16 U.S.C. § 460z. The Forest Service manages the Dunes as part of the Siuslaw National Forest, and it consists of temperate coastal sand dunes, forests, and ocean spanning 31,500 acres. Ex. 3, Oregon Dunes National Recreation Area webpage.

On the Oregon Dunes, OHV use is allowed on designated routes and open riding areas established by the Forest Service. Ex. 7, 10(C) Project FEIS, at 3. Many riders operate utility task vehicles (“UTVs”) that are large, fast, and often equipped with “paddle tires” that dig into the surface. These vehicles are often retrofitted with modified mufflers that make them louder than allowed under the Forest Service’s noise limits. Ex. 8, Draft Sound Project Initiation Letter, at 2 (“[D]ata from 2015–2020 indicates a 35% compliance rate. Further analysis of the 2015–2020 data

shows a 50% compliance rate for OHVs with stock (unmodified) mufflers, whereas OHVs with modified mufflers had a 12% compliance rate.”).

For the past decade, the Forest Service has consistently issued “Special Use Permits” (“SUPs” or “permits”) to commercial riding event organizers so they can use the Oregon Dunes. In previous years, the Forest Service issued SUPs for the “UTV Takeover” and “DuneFest.” *See, e.g.*, Ex. 9, 2024 UTV Takeover SUP; Ex. 10, 2023 DuneFest SUP.<sup>1</sup> In the SUPs, the Forest Service has authorized night rides and other special events on the Dunes, as well as concentrated group camping on sites located on the sand across the Dunes. Ex. 9, 2024 UTV Takeover SUP; Ex. 10, 2023 DuneFest SUP. The UTV Takeover is marketed as the West Coast’s biggest UTV event. Ex. 12, UTV Takeover Coos Bay 2025 Homepage.

In 2024, the Forest Service issued a SUP for the UTV Takeover held in the Coos Bay portion of the Oregon Dunes on June 26–30. Ex. 9, 2024 UTV Takeover SUP, at 1–6. Another event organized by the UTV Takeover occurred in the Winchester Bay portion of the Dunes on September 3–8, 2024. *See* Ex. 13, UTV Takeover Winchester Bay 2024 Post. The 2024 permit authorized multiday treasure hunts, day and night group rides consisting of 50 to 100 vehicles, and concentrated sand camping accommodating at least 260 trailers and accompanying vehicles in “pods” abutting forest habitats in the Oregon Dunes. Ex. 9, 2024 UTV Takeover SUP, at 2; *see also* Ex. 14, Brooke Letter, at 6 (explaining that the Forest Service counted a total of 3,197 attendees that went through the event gates for the 2023 Coos Bay UTV Takeover).

In addition to the UTV Takeover, the Forest Service has permitted another large event called DuneFest for over a decade. This event typically takes place in the Winchester Bay portion

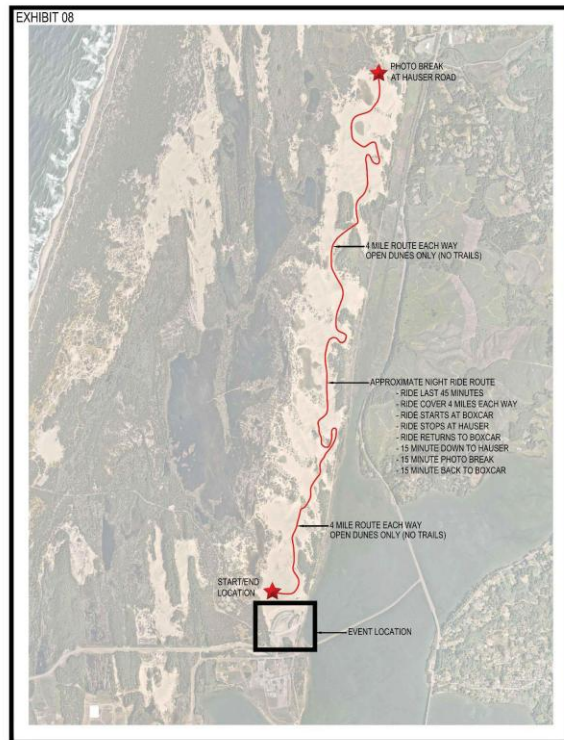
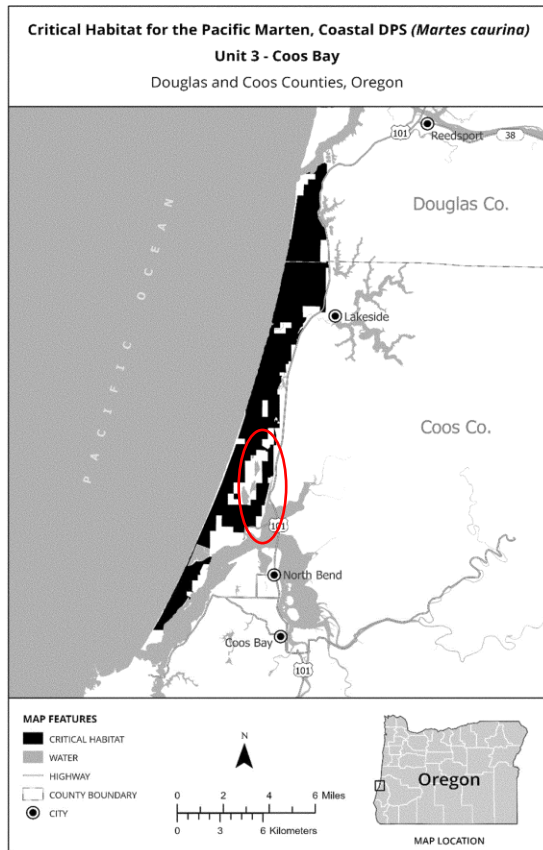
---

<sup>1</sup> The DuneFest organizers submitted applications for 2024 and 2025 events; the 2024 event took place between July 30 and August 4, 2024. *See* Ex. 11, 2024–2025 DuneFest Application.

of the Dunes. In previous years, organizers estimated well over 10,000 attendees. Ex. 15, DuneFest Article. The event takes place over six days and similarly involves concentrated sand camping, group rides, and treasure hunts. Ex. 10, 2023 DuneFest SUP, at 3.

On March 27, 2024, the Forest Service commenced the process of documenting a “categorical exclusion” for the 2024 UTV Takeover. Ex. 32, Form 3: Small Projects; High-Level Complexity CE with DM. In June of that year, it prepared a “biological evaluation” and determined issuance of the SUP would have “no effect” on threatened coastal martens or their critical habitat. Ex. 16, UTV Takeover BE for CE. Additionally, on June 5, 2024, the Forest Service issued a determination pursuant to ESA Section 7(d) finding that use of OHVs on the Dunes would not constitute an “irreversible or irretrievable commitment of resources.” Ex. 17, 7(d) Determination.

The coastal marten occurs in and near areas where the Forest Service has permitted the UTV Takeover and DuneFest to occur. As pictured below, the Coos Bay UTV Takeover occurs east of Horsfall Lake in marten critical habitat, as designated by FWS, and across habitat corridors identified by the Forest Service. Ex. 9, 2024 UTV Takeover SUP, at 31–32, 38–39; Ex. 18, Dunes Restoration Project EA Maps, at 15; *see also* Ex. 19, UTV Takeover Planning Meeting #1, at 2 (“[W]e now have marten critical habitat within the permit area.”).



Critical Habitat Designation, at 46614

Ex. 9, 2024 UTV Takeover SUP, at 40

The Coos Bay UTV Takeover takes place during the early summer when martens rear their young. Ex. 9, 2024 UTV Takeover SUP, at 2. DuneFest occurs in late summer when marten kits leave their family groups, and it brings OHVs into marten critical habitat west of Clear Lake and Lake Edna. Ex. 11, 2024–2025 DuneFest Application, at 10–11; Ex. 18, Oregon Dunes Restoration Project EA Maps, at 13.

Martens need safe habitats where they can look for food, find mates, and raise their young. Curry Decl. ¶ 18. Habitat destruction impairs these essential marten behaviors and makes martens vulnerable to injury or death from predation or vehicle strikes. Curry Decl. ¶¶ 17–20. OHV use destroys marten habitat, including corridors connecting core habitats. Curry Decl. ¶¶ 38–40. The photo below depicts damage to vegetation from OHV use in the Oregon Dunes. Curry Decl. ¶ 39.





The OHV events in the Oregon Dunes create noise from thousands of people and their vehicles over many consecutive days and nights, which can significantly disrupt martens' breeding, feeding, and sheltering. Ex. 20, UTV Takeover 12.23 Email (noting over 3,197 ticketed attendees for the 2023 UTV Takeover Coos Bay Event); Curry Decl. ¶¶ 26–29. Science shows that loud or chronic anthropogenic noise may impede wildlife's ability to perceive environmental cues from prey, predators, or potential mates. Curry Decl. ¶¶ 26–29. The Forest Service has done minimal enforcement of vehicle decibel limits during OHV events, instead opting for voluntary sound checks aimed at “building awareness,” and event organizers have not been required to turn away or limit the participation of any vehicles that are over the established decibel limit. Ex. 21, UTV Takeover Sound Management Recommendations.

These OHV events – that bring thousands of vehicles into the martens' habitat – also pose an undue risk of marten fatalities from vehicle strikes. In Oregon, the most common verified mortality source for the coastal marten has been vehicular strikes along Highway 101, which runs along the eastern edge of the Oregon Dunes. Ex. 22, Moriarty et al. 2016, at 8. The central coastal

Oregon population of coastal martens encompassing the Oregon Dunes “appears substantially more vulnerable to roadkill mortalities” than other coastal marten populations in part because of the relatively high traffic volume on Highway 101 and its popularity as a “highly promoted tourist destination.” Ex. 1, Species Status Assessment, at 44. There have also been longstanding issues with safety and direction of traffic during the riding events, increasing the likelihood of vehicle strikes along Highway 101. Ex. 23, USFS Email Re: 2024 DuneFest Permit; Ex. 24, Email from DuneFest to USFS.

Moreover, destruction of habitat corridors by OHVs within the Oregon Dunes impairs martens’ movements across their territories and leaves them vulnerable to injury or death from predation or vehicle strikes if they try to cross an uncovered area, such as an OHV route. Ex. 1, Species Status Assessment, at 39–40.

## **LEGAL BACKGROUND**

### **I. The Endangered Species Act**

The ESA is considered “the most comprehensive legislation for the preservation of endangered species ever enacted by any nation,” and embodies Congress’s “commitment to halt and reverse the trend toward species extinction, whatever the cost.” *Ctr. for Biological Diversity v. Zinke*, 900 F.3d 1053, 1059 (9th Cir. 2018) (quoting *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 180, 184 (1978)) (cleaned up). “[A]ll Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of [the ESA].” 16 U.S.C. § 1531(c)(1).

To that end, the Forest Service must ensure through “consultation” with FWS that its activities comply with the ESA. *Id.* § 1536(a)(2); 50 C.F.R. § 402.14(g). An agency is required to review its actions “at the earliest possible time” to determine whether the action “may affect” listed



species or critical habitat. 50 C.F.R. § 402.14(a). “‘May affect’ is broadly understood,” and includes “[a]ny possible effect, whether beneficial, benign, adverse or of an undetermined character.” *NRDC v. EPA*, 38 F.4th 34, 53 (9th Cir. 2022) (internal citations omitted) (emphasis in original). An agency is relieved of the obligation to consult on its actions only where the action will have “no effect” on listed species or designated critical habitat. *Karuk Tribe of Cal. v. U.S. Forest Serv.*, 681 F.3d 1006, 1027 (9th Cir. 2012) (citing *Sw. Ctr. for Biological Diversity v. U.S. Forest Serv.*, 100 F.3d 1443, 1447–48 (9th Cir. 1996)); see 50 C.F.R. § 402.02 (defining “[e]ffects of the action”).

## **II. The National Environmental Policy Act**

NEPA lays out “a national policy [to] encourage productive and enjoyable harmony between man and his environment.” 42 U.S.C. § 4321. It requires federal agencies to prepare an environmental impact statement (“EIS”) for “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(c). It also requires agencies to evaluate and publicly disclose the potential environmental impacts of proposed actions. *Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 371 (1989).

A proposed action may be “categorically excluded” from further analysis only if no “extraordinary circumstances” exist related to the proposed action. 36 C.F.R. § 220.6. Resource conditions that may constitute “extraordinary circumstances,” and thus require further analysis in an EA or EIS, include “[f]ederally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species” and “Congressionally designated areas, such as wilderness, wilderness study areas, or national recreation areas.” 36 C.F.R. §§ 220.6(b)(1)(i), (iii).

Scoping is required for all Forest Service proposed actions, including those that would appear to be categorically excluded from further analysis. 36 C.F.R. § 220.4(e)(1). Categorical exclusions are designed to streamline the NEPA process “when a class of proposed actions has been found to have little to no effect on the environment.” *Friends of the Inyo v. U.S. Forest Serv.*, 103 F.4th 543, 556 (9th Cir. 2024) (citing *Env’t Prot. Info. Ctr. v. Carlson*, 968 F.3d 985, 988 (9th Cir. 2020)). However, when an agency applies these exclusions “in a manner that in a way that circumvents NEPA’s procedural requirements and renders the environmental impact of a proposed action unknown, the purpose of the exclusions is undermined.” *Id.*

### **III. The Preliminary Injunction Standard**

A party seeking a preliminary injunction must demonstrate: (1) it is likely to succeed on the merits; (2) it is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in its favor; and (4) injunctive relief is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); see *Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180, 1190 (9th Cir. 2024). When the government is a party under a preliminary injunction analysis, the public interest and balance of equities factors merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)).

The ESA alters this standard such that courts “presume...that the balance of interests weighs in favor of protecting endangered species, and that the public interest would not be disserved by an injunction.” *Nat’l Wildlife Fed’n v. Nat’l Marine Fisheries Serv.*, 886 F.3d 803, 817 (9th Cir. 2018). Accordingly, a preliminary injunction is appropriate where plaintiffs show they are likely to succeed on the merits of their ESA claims and are likely to suffer irreparable

harm in the absence of preliminary injunctive relief. *Id.* at 818; *Biodiversity Legal Found. v. Badgley*, 309 F.3d 1166, 1177 (9th Cir. 2002).

While the court considers a motion for a preliminary injunction, it has authority to issue a temporary restraining order, according to the same standard to grant a preliminary injunction. *Stuhlberg Int’l Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001).

## ARGUMENT

### **I. The Center is Likely to Succeed on the Merits of its Claims that the Forest Service’s Authorizations of OHV Events on the Dunes Violate the ESA and NEPA**

A party moving for a preliminary injunction must typically show they are “likely to succeed on the merits” of their underlying claims. *Winter*, 555 U.S. at 20. However, the Ninth Circuit has adopted a “sliding scale” variant of the *Winter* test—under which, if the plaintiff shows the balance of hardships “tips sharply” in their favor, they only need to show “serious questions” going to the merits (rather than likelihood of success). *Flathead-Lolo-Bitterroot*, 98 F.4th at 1190. Here, as further explained below, because this case involves a federally protected species, the Center need only satisfy the lowered standard set forth under the “serious questions” test, which it easily does.

#### **A. The Forest Service Violated the ESA by Failing to Consult with FWS on Harmful Impacts to Coastal Martens from SUPs Issued for Large OHV Events**

Despite the ESA’s mandate that agencies consult with FWS at the “earliest possible time,” the Forest Service has repeatedly permitted large, disruptive events that bring thousands of noisy, destructive off-road vehicles in and near listed martens and their critical habitat without completing consultation with FWS. 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14.

The need for consultation on these permits has been underscored by the Forest Service’s own biologist, who—after speaking with FWS—stated in a January 2023 email:

we need to consult before permitting [the UTV Takeover] and really should have done so in 21' and 22'. There's a lot of moving parts and it takes time to integrate new information after listing so I don't think we need to worry about the past, but moving forward, we have a responsibility to the marten and the ESA.

Ex. 25, January 2023 Benson Email.

Activities authorized by SUPs for the UTV Takeover and DuneFest meet the “low” threshold of those that “may affect” listed species or their critical habitats for which consultation is required. *Cal. ex rel. Lockyer v. USDA*, 575 F.3d 999, 1018–19 (9th Cir. 2009). These activities bring thousands of individuals and vehicles into the Dunes and harm martens and their designated habitats in at least three ways.

First, permitted activities bring riders into habitats used by the martens, where the activity and noise may disturb martens. The treasure hunt brings participants out of open riding areas and into, and near, forest habitats used by the martens so the riders can take photos with posted signs. Ex. 9, 2024 UTV Takeover SUP, at 24, 42–57; Ex. 11, 2024–2025 DuneFest Application, at 11. Night rides involve many dozens of vehicles riding together across the Dunes in the evening, Ex. 9, 2024 UTV Takeover SUP, at 24–25, when martens need to be active to find food, and the rides generate noise that can be heard from miles away. Curry Decl. ¶¶ 26–28; Mangan Decl. ¶ 8. Concentrated sand camping creates increased anthropogenic noise and activity in marten habitat, as well as unsafe conditions in which it is difficult to prevent violations of or enforce Forest Service regulations. Ex. 26, OHV-Sand Camping Project EA, at 6, 8 (“Overcrowding in small geographical locations in the off-road environment has contributed to ‘out-of-control’ conditions in the areas of these large camps. Often a crowd mentality takes over leading to group efforts at intentional violation of laws and regulations.”).

The Forest Service’s stated nonenforcement of existing decibel limits exacerbates vehicle noise from these events. The Forest Service instead relies on event organizers to conduct their own

sound tests, which have yielded questionable results or have not been completed in previous years, with no apparent bearing on the Forest Service’s issuance of additional permits in following years. Ex. 27, UTV Takeover Pre-Permit Meeting (“It does not seem like having permit holders do their own [sound] testing is working well. It isn’t happening, or we are receiving poor data.”).

Additionally, the timing of the events—the Coos Bay UTV Takeover event in late June and DuneFest Winchester Bay event in late July—is particularly problematic for martens searching for mates and marten mothers rearing their vulnerable young. Curry Decl. ¶ 29.

According to the Forest Service, there is “[g]eneral agreement between agency personnel that...sound is possibly, or even likely affecting the marten.” Ex. 28, September 2023 Benson Email, at 2. Indeed, agency staff have recognized that “[l]oud noise is obviously detrimental to wildlife, resulting in significant disturbance/disruption to portions of their life cycle (foraging, mating, rearing of young, etc),” and that further analysis must be undertaken to ascertain the impacts of anthropogenic sound on individual species in the Oregon Dunes. Ex. 29, October 2022 Benson Email. This is consistent with abundant science showing that wildlife may perceive noise as a threat and react with an anti-predatory response, ignoring other important environmental cues from prey, predators, or potential mates, and that mustelids in particular—including close relatives of coastal martens—are sensitive to certain loud noises and human disturbance. Curry Decl. ¶¶ 26–28.

Second, OHVs in the Oregon Dunes destroy marten habitat. Answer ¶ 97 (“Defendants admit the allegation contained in the first sentence of paragraph 97 that OHV riders’ activities can at times impact vegetation to the extent those riders ride outside of designated riding areas....”); *see, e.g.*, Answer ¶ 99 (“The allegations contained in paragraph 99 purport to characterize a photograph reproduced in Plaintiff’s Complaint, which speaks for itself and provides the best

evidence of its contents.”). Predictably, because the Forest Service has inadequate signs and barriers, OHV intrusions occur in unauthorized areas. Curry Decl. ¶¶ 38–40, 46. These intrusions likely occur during large events, where thousands of participants descend on the Dunes and events like the treasure hunts draw “extra [OHV] traffic to vegetation line.” Ex. 30, Suggested Changes to the UTV Takeover.

The UTV Takeover Coos Bay event takes place squarely within designated marten critical habitat, and negatively impacts important coastal marten habitat identified by the Forest Service though consultation with FWS on the 2020 vegetation management project on the Dunes. Ex. 19, UTV Takeover Planning Meeting #1, at 2 (noting marten critical habitat in the permit area); *see* Ex. 18, Dunes Restoration Project EA Maps, at 15 (Map I shows two “Corridor[s]” shaded in yellow, one east of Spirit Lake and another East of Horsfall Lake); *see also* Ex. 9, 2024 UTV Takeover SUP, at 40 (depicting event location in Oregon Dunes South Riding Area). In particular, the night rides for the 2024 UTV Takeover in Coos Bay directed riders through two coastal marten corridors, Ex. 9, 2024 UTV Takeover SUP, at 40 (depicting map of the South Riding Area marked with the night ride route), and destinations for the treasure hunts bring riders out into more remote areas near dense vegetation likely serving as marten habitat. Ex. 9, 2024 UTV Takeover SUP, at 46–57 (depicting 2024 treasure hunt locations). Similarly, the 2024 DuneFest night ride route directed riders immediately adjacent to and through coastal marten habitat and corridors identified by the Forest Service, and the signs for the treasure hunts directed riders into vegetated areas next to coastal marten habitat and corridors. Ex. 11, 2024–2025 DuneFest Permit Application, at 11. Absent obvious signs or barriers, there is no way for the large number of vehicles flocking to these areas to distinguish between vegetated areas serving as coastal marten habitat and corridors and other vegetated areas that do not. Ex. 19, UTV Takeover Planning Meeting #1, at 3 (“The operating

plan should require signage regarding sound limits and keeping OHVs out of closed areas. Management of closure areas is very important: In particular, the treasure hunt activity can scrape into the closed areas bit by bit.”).

Third, issues with increased traffic and mismanagement of vehicles during events may exacerbate risks to martens from vehicle strikes in and adjacent to the Oregon Dunes. Ex. 23, USFS Email Re: 2024 DuneFest Permit; Ex. 24, Email From DuneFest to USFS. Scientists have identified vehicle strikes along Highway 101, which runs along the eastern edge of the Oregon Dunes, as the most common source of marten mortality in Oregon. Ex. 22, Moriarty et al., at 1, 8. Forest Service staff acknowledge that martens living in the Dunes are vulnerable to vehicle strikes and have raised concerns over whether large OHV events contribute to marten deaths from vehicle strikes along Highway 101. Ex. 19, UTV Takeover Planning Meeting #1 (Jan. 18, 2023). Chronic mismanagement of vehicles and traffic during the events, including failure to keep participants out of areas closed to OHVs and poor direction of traffic, may exacerbate the risk of vehicle strikes. Ex. 19, UTV Takeover Planning Meeting #1, at 2–3.

In summary, abundant science and numerous statements from Forest Service staff demonstrate that large riding events permitted by the Forest Service “may affect” coastal martens, and thus the Forest Service must consult with FWS. Risk of disturbance of the imperiled martens, degradation of their designated critical habitat, and increased risk of vehicle strikes easily meets this “low” threshold for consultation. *Cal. ex rel. Lockyer*, 575 F.3d 999, at 1018–19. The ESA’s consultation requirement serves to ensure that the Forest Service analyzes the impacts of these riding events, so it can implement reasonable measures to minimize and mitigate harms, as necessary to protect this fragile population of threatened martens. The Forest Service should not

continue to authorize such harms to martens via permits for these large, disruptive events without undertaking the life-saving analysis required by the ESA.

Accordingly, the Court should hold that the Center is likely to succeed on its claim that the Federal Defendants violated the ESA by failing to engage in required ESA consultation prior to authorizing activities via issuance of these SUPs that “may affect” coastal martens and their critical habitat.

**B. The Forest Service Violated NEPA by Unlawfully Relying on a Categorical Exclusion to Circumvent Required Environmental Impact Analysis of the SUPs**

The harmful impacts that necessitate ESA consultation also require further analysis under NEPA. Rather than prepare an environmental assessment prior to issuance of SUPs for the UTV Takeover and DuneFest, as NEPA requires, the Forest Service unreasonably invoked a “categorical exclusion” to avoid meeting its obligations under the statute. But the Forest Service’s regulations implementing NEPA make clear that the agency cannot rely on a categorical exclusion when there are “extraordinary circumstances,” including impacts on federally listed species or activity affecting a national recreation area. 36 C.F.R. § 220.6(b)(1)(i), (iii). These large, disruptive, and destructive events have serious impacts on federally listed wildlife, as well as people who wish to quietly enjoy the National Recreation Area.

As explained above, these permitted events impact coastal martens and their critical habitat via, *inter alia*, increased harmful anthropogenic sound and activity, destruction of vegetation serving as marten habitat, and increased risk of marten death from vehicle strikes. Yet the Forest Service unreasonably determined that its issuance of the SUP for the UTV Takeover would have “no effect” on threatened coastal martens or their critical habitat, and it therefore improperly relied on a “categorical exclusion.” Ex. 16, UTV Takeover BE for CE; Ex. 32, UTV Takeover Form 3.



In addition, increased activity from people and their OHVs during these events harms local residents that live near the Dunes, who have lodged “numerous complaints” regarding excessive noise. Ex. 31, ODNRA Sound Project IDT Meeting, at 3 (“Nearby residents and recreationists have submitted numerous complaints about disruptive OHV noise emissions at the Oregon Dunes. Excessive OHV noise degrades other visitors’ recreation experience and disrupts daily life for nearby residents; there is a need to reduce these disruptive noise emissions or otherwise mitigate the negative impacts” to surrounding areas.); Ex. 23, USFS Email Re: 2024 DuneFest Permit (“She does not feel the [Dunefest] organizer understands...just how badly it went last year, nor what’s at stake when that happens in a congressionally-designated national recreation area.”).

These events also impede other legitimate recreational uses of the Oregon Dunes, such as hiking and wildlife watching, as OHVs make the area less safe and enjoyable to non-motorized recreation. Ex. 19, UTV Takeover Planning Meeting #1 (noting issues with sound – including complaints from nearby residents – safety and compliance with restrictions on alcohol and area closures during events); Ex. 31, ODNRA Sound Project IDT Meeting, at 2 (“Regarding economics and local communities, non-motorized recreation is equally important to the economics of local areas....We know some people have stopped visiting the dunes due to illegal OHV use.”). Moreover, during past events, organizers and staff have wrongfully excluded citizens from the Dunes who did not buy tickets for the commercial event. Ex. 23, USFS Email Re: 2024 DuneFest Permit, at 2 (noting problems and complaints with DuneFest not allowing “non-event beachgoers (typically locals, dog-walkers and such) access to parking,” and indicating exclusive use of the area). Poor management of the large events worsens impacts their impacts. Ex. 23, USFS Email Re: 2024 DuneFest Permit (noting issues with traffic, camping, sanitation and sound with the previous DuneFest event).

The Forest Service’s “no effect” determination unreasonably ignores that the agency’s permitting of large riding events inevitably results in *unauthorized* motorized activities, such as riders using areas closed to OHVs and riding vehicles that emit noise exceeding established decibel limits. These indirect effects have been well documented and must be considered under NEPA. *See Greater Yellowstone Coalition v. U.S. Forest Serv.*, 12 F. Supp. 3d 1268, 1279 (D. Idaho 2014) (holding that the Forest Service “failed to comply with NEPA, and acted in an arbitrary and capricious manner,” when it failed to “consider or rule out possible noise impacts on [a recommended wilderness area] or possible impacts from illegal ATV use in connection with the proposed alternative” in connection with motorized vehicle trail project); *see also All. for the Wild Rockies v. Marten*, 685 F. Supp. 3d 971, 991 (D. Mont. 2023) (relying on “potential effects of unauthorized motorized access or potential ineffectiveness of access management efforts, including closures” to hold that the agency authorization may affect listed species).

The Oregon Dunes contains significant coastal marten critical habitat—comprising “almost the entirety (92%) of [critical habitat] Units #2 and #3”—and martens have been documented across the Dunes, including areas in and near where these events take place. Ex. 16, UTV Takeover BE for CE, at 2. As explained in greater detail above, activities permitted by these SUPs—including concentrated sand camping, night rides, and treasure hunts—take place directly adjacent to and overlap with identified coastal marten habitat and corridors. Despite this, the Forest Service attempts to justify its categorical exclusion by concluding that permitted activities “do not have potential to impact relevant species or Critical habitat,” asserting that “[n]o vegetation disturbance would be permitted as part of the proposed permit-specific activities” because activities would occur “primarily along paved roads, designated sand routes, and open sand areas, which do not contain required habitat elements.” Ex. 16, UTV Takeover BE for CE, at 2.

The Forest Service has not and cannot reasonably explain how permitting large riding events has “no effect” to coastal martens or their habitat. The events overlap with marten critical habitat and agency staff have conceded that these events bring increased human activity and sound into the Dunes, and that event organizers have failed to adequately prevent intrusions into areas closed to OHVs. *See Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (holding an agency “must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’” (quotation omitted)).

The agency also bases its conclusion that there would be no effect to coastal martens on the “elevated baseline for noise and human presence associated with the recreation area.” Ex 16, UTV Takeover BE for CE, at 3. However, the agency has acknowledged that OHV use on the Oregon Dunes has increased significantly over the past few years, and these events increase use of the Dunes and create more human disturbance—including sound—than would occur on a typical weekend. Ex. 28, September 2023 Benson Email, at 3 (“More OHVs now than there used to be with a massive increase in the last three years.”); *id.* at 4 (“The nature (type, amount, duration, intensity, etc) of OHV recreation has changed since the development of the 1994 plan. Just recently, the dunes and OHV use have exploded in popularity and now there are more machines, more people, less enforcement, and almost no respite during daylight hours from the noise pollution that is created.”); Ex. 19, UTV Takeover Planning Meeting #1, at 1 (“The event leads to increased use on the Dunes in general, including increased use outside of the event permit area”).

Nor can the agency rely on its bald assertion that “[p]roposed activities conform with existing land use designations, applicable Standards and Guidelines” to support its “no effect”

determination.<sup>2</sup> Ex 16, UTV Takeover BE for CE, at 2–5. There is a well-documented history of riders operating in noncompliance with the decibel limit set forth in the Dunes Plan. In fact, the Forest Service is aware of data showing a mere 35% compliance with the limit of 93 decibels in the Oregon Dunes between 2015–2020, with a much lower compliance rate of just 12% for vehicles with modified mufflers. Ex. 8, Draft Sound Project Initiation Letter. Further, documented OHV intrusions and associated destruction of vegetation indicate persistent noncompliance with established land use designations. Curry Decl. ¶¶ 38–40. As explained above, consistent with the science, Forest Service staff acknowledge that excessive anthropogenic sound and activity may affect coastal martens in the Oregon Dunes by inhibiting their ability to seek food, shelter, and mates. Curry Decl. ¶¶ 26–29.

Given the potential harms to coastal martens from permitting these events in the Oregon Dunes during sensitive periods, to quote the Forest Service’s own Wildlife Biologist, “there’s no logically consistent way to arrive at a No Effect call for permitting OHV activity, during the breeding season, within occupied habitat.” Ex. 25, January 2023 Benson Email, at 1.

Further, the Forest Service’s failure to allow any public participation in the scoping process on its categorical exclusion further demonstrates that their action was arbitrary and capricious. In *Los Padres Forestwatch v. U.S. Forest Serv.*, the court held that plaintiff environmental group was likely to succeed on its claim that the Forest Service violated NEPA where its internal scoping on issuance of a categorical exclusion allowed for no public input and there was no interagency

---

<sup>2</sup> Land use designations and applicable Standards and Guidelines are set forth in the Management Plan for the Oregon Dunes National Recreation Area. Ex. 33, Dunes Plan. Specifically, the Plan established “separate management areas with differing resource emphases” within the Oregon Dunes which designate where OHVs may be present. Ex. 33, Dunes Plan, at Ch. I-2; *see* Ex. 7, 10(C) Project FEIS. The Plan includes an Area-Wide standard (“AW-10”) for “ORV Noise” that directs Forest Service to enforce “ORV noise goals of 95 decibels beginning in 1997 and 90 decibels in 1999.” Ex. 33, Dunes Plan, at Ch. III-29.

consultation under the ESA. 776 F. Supp. 2d 1042, 1043 (N.D. Cal. 2011). NEPA requires that agencies inform the public of their actions especially where, as here, environmental consequences are manifest. *Citizens for Better Forestry v. U.S. Dep’t of Agric.*, 341 F.3d 961, 970–71 (9th Cir. 2003) (explaining that, in connection with completion of an EA, the “wholesale neglect of the regulations’ mandatory inclusion of the public in the process results in a procedural injury... [and] undermines the very purpose of NEPA, which is to ensure[] that federal agencies are informed of environmental consequences before making decisions and that the information is available to the public”) (internal quotation marks omitted)). It is thus fatal that the Forest Service did not allow public participation in connection with the scoping process for the categorical exclusion the Forest Service attempts to rely on for these SUPs.

Accordingly, the Center is also likely to succeed on the merits of its claim that the Forest Service’s categorical exclusion and reliance on its “no effect” determination violates NEPA, and is thus arbitrary and capricious.

## **II. The Center’s Members and Coastal Martens are Likely to Suffer Irreparable Harm If Injunctive Relief is Not Granted**

The Forest Service’s forthcoming authorizations of large OHV events in the Oregon Dunes threatens irreparable harm to the Center and its members’ interests in observing and conserving coastal martens in the wild. The Forest Service’s authorizations also threaten irreparable harm to the vulnerable population of coastal martens living on the Dunes. These harms warrant the issuance of a preliminary injunction.

### **A. The Forest Service’s Authorizations of Large OHV Events on the Oregon Dunes Irreparably Harm the Center and its Members’ Recreational and Aesthetic Interests**

Without a preliminary injunction, the Center and its members will suffer irreparable harm to their recreational and aesthetic interests in experiencing coastal martens and their habitat on the

Oregon Dunes. That harm, as discussed above, is caused by the Forest Service’s authorizations of large OHV events that cause environmental degradation by drawing thousands of OHVs and their riders to the Oregon Dunes.

Harm to recreational and aesthetic interests is a cognizable injury. *Fund for Animals, Inc. v. Lujan*, 962 F.2d 1391, 1396 (9th Cir. 1992); *Roman Cath. Diocese v. Cuomo*, 141 S. Ct. 63, 67–68 (2020). Specifically, actions that impair a plaintiff’s ability to enjoy wildlife in its natural environment is cognizable harm. *Nat’l Wildlife Fed’n*, 886 F.3d at 821 (fewer opportunities to view species in their habitat constituted harm to recreational and aesthetic interests); *see also Humane Soc’y of U.S. v. Hodel*, 840 F.2d 45, 52 (D.C. Cir. 1988) (a plaintiff’s viewing of “environmental degradation” harms “classic aesthetic interests”). And that harm is irreparable harm because it cannot be undone. *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 545 (1987) (“Environmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, i.e., irreparable.”).

Here, the Center’s members use the Oregon Dunes for recreational pursuits, including hiking, birdwatching, bike riding, and wildlife viewing. Mangan Decl. ¶ 5; Curry Decl. ¶¶ 4–5, 7. In doing so, the Center’s members seek to observe, photograph, track, study, read sign of, and simply be in the presence of coastal martens in their native habitat. Mangan Decl. ¶ 5; Curry Decl. ¶¶ 4–5, 7. The members derive significant aesthetic, recreational, scientific, spiritual, and other benefits from these activities. Mangan Decl. ¶ 4; Curry Decl. ¶¶ 47–51.

The Forest Service’s authorizations also irreparably harm the Center’s members by hurting their ability to enjoy their own property and safely recreate with their loved ones on the Oregon Dunes during OHV events. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011) (upholding finding of irreparable harm where plaintiff organization asserted that a proposed

timber project would “harm its members’ ability to ‘view, experience, and utilize’ the areas in their undisturbed state”). Mr. Mangan lives near the Dunes in North Bend, Oregon, and he, his wife, and his grandchildren, regularly go to the Dunes to seek out signs of coastal martens and view their habitats. Mangan Decl. ¶ 5. He explains that unrestricted OHV use makes it “more difficult and less safe” for him to recreate on the Dunes with his family. Mangan Decl. ¶ 8. And that “excessive noise from OHV activity on the Dunes,” which he can hear from his property, causes “significance disturbance and disrupt[s] the quiet use and enjoyment of [his] property, particularly during the warmer months when [he] spend[s] more time outside and when large OHV events take place on the Dunes.” *Id.*

The Center, its staff, and its members also have long-standing interests in the preservation and recovery of coastal martens in the Oregon Dunes, both because they place a deep value on these animals, and because the presence of coastal martens is essential to healthy functioning of the ecosystem. Mangan Decl. ¶ 4; Curry Decl. ¶¶ 8, 51. The Center, its staff, and its members have been active in seeking to protect and recover coastal martens through an array of actions, including public outreach and education, scientific analysis, and advocacy. Curry Decl. ¶¶ 9, 11–12, 14; Mangan Decl. ¶ 6. Consequently, the harm to coastal martens caused by the Forest Service’s authorization of large OHV events on the Oregon Dunes will irreparably harm the Center and its members’ interests in coastal marten conservation. Curry Decl. ¶¶ 47–51; Mangan Decl. ¶¶ 7–8.

In summary, these established harms to the Center’s members’ aesthetic and recreational interests in coastal martens and their habitat on the Dunes prove likelihood of irreparable harm.

#### **B. The Forest Service’s Authorizations of Large OHV Events on the Oregon Dunes Irreparably Harm Conservation of Coastal Martens**

Given the ESA’s purpose of “conserving endangered and threatened species and the ecosystems that support them, establishing irreparable injury” in an ESA case “should not be an

onerous task.” *Cottonwood Envtl. Law Ctr. v. U.S. Forest Serv.*, 789 F.3d 1075, 1091 (9th Cir. 2015). The ESA prohibits the “take” of “any animal from a listed species.” 16 U.S.C. § 1538(a)(1)(B). Thus, the Ninth Circuit holds that threat of “[h]arm to...members” of a species “is irreparable.” *Nat’l Wildlife Fed’n*, 886 F.3d at 818. As such, it is not necessary for plaintiffs to show that there is likely to be irreparable harm to the species as a whole. *Nat’l Wildlife Fed.*, 23 F.3d at 1512 n.8 (“We are not saying that a threat of extinction to the species is required before an injunction may issue under the ESA. This would be contrary to the spirit of the statute, whose goal of preserving threatened and endangered species can be achieved through incremental steps.”).

The coastal marten lives in and near areas where the Forest Service annually permits large OHV events to occur. Curry Decl. ¶¶ 35–37. Each of these events draws thousands of vehicles and people to the Dunes, where they participate in group rides across the Dunes, gather their RVs and other vehicles at concentrated camping pods on the Dunes, and race their OHVs along the forested edges to take selfies for the treasure hunts. All these activities risk killing martens through vehicle strikes or disturbing their feeding and other behaviors needed for survival. Curry Decl. ¶¶ 41–44.

Additionally, destruction of habitat—including the ericaceous shrubs used by martens for sheltering and feeding—by OHVs is well documented in the Dunes, and it may be exacerbated by the Forest Service’s authorization of large riding events that attract thousands of riders. Curry Decl. ¶ 42; Compl. ¶¶ 94–102; Answer ¶¶ 97, 99.

For example, the Forest Service’s SUP for the Coos Bay UTV Takeover authorizes 50–100 OHVs to participate in a nightly group ride in the South Riding Area that extends from Boxcar Campground to Hauser Road. Ex. 9, 2024 UTV Takeover SUP, at 25, 40. FWS designated this entire area as “critical habitat” for the marten. Critical Habitat Designation, at 46611. The night ride route directs users through two key marten corridors identified by the Forest Service. Ex. 18,



Restoration Project EA Maps, at 15. And documented marten sightings directly to the west demonstrate that martens rely on this area. Curry Decl. ¶ 34. This huge riding event occurs at dusk, when visibility for OHV riders is poor, and coastal martens move throughout the Dunes to feed themselves. Curry Decl. ¶ 43. This creates a likelihood of vehicle strikes. Curry Decl. ¶ 42. The loud noise from hundreds of vehicles also disturbs the martens' ability to engage in essential behaviors like feeding and avoiding predators. Curry Decl. ¶¶ 26–29. Making matters worse, this event occurs during the most sensitive time of the year for martens, during the summer, when marten mothers are raising kits. Curry Decl. ¶ 29.

The harms to coastal martens caused by the large OHV events are compounded by ongoing threats to the fragile marten population on the Dunes. *Nat'l Wildlife Fed'n*, 886 F.3d at 818–19 (holding that “[i]rreparable harm may be caused by activities broader than those that plaintiffs seek to enjoin”). These harms include risks of being struck by a vehicle on Highway 101. Curry Decl. ¶ 42. The coastal marten population on the Dunes is the most vulnerable to vehicle strikes, due in part to the high level of activity. Ex. 1, Species Status Assessment, at 38. And this is made substantially worse during big events like DuneFest and the UTV Takeover. Ex. 19, UTV Takeover Planning Meeting #1, at 1 (noting the UTV Takeover leads to “increased use outside of the event permit area”).

Given the precarious status of coastal martens on the Dunes, any additional coastal marten mortality would be devastating and undermine recovery of the population. Curry Decl. ¶¶ 20, 24–25. Scientific studies show that even two or three marten deaths caused by people would strongly increase the extinction risk for the two populations on the Dunes, and the Forest Service has therefore acknowledged that “[a]ny increase in human-caused mortality is expected to negatively impact the population.” Ex. 5, Restoration Project EA, at 14. Importantly, the Ninth Circuit has

endorsed a finding of irreparable harm largely based on the “precarious state” of species. *Nat’l Wildlife Fed’n*, 886 F.3d at 820–22.

Based on existing case law and the facts before this Court, the Court should issue a preliminary injunction to prevent irreparable harm to the Center, its members, and the Oregon Dunes’s fragile coastal martens before the Court has an opportunity to issue a decision on the merits.

### **III. The Balance of Harms and the Public Interest Weigh in Favor of Granting Preliminary Relief**

Because the ESA establishes an “unparalleled public interest” in preserving endangered species, the remedies available at law are presumed inadequate and the public interest is presumed to weigh in the Plaintiff’s favor. *Cottonwood Envtl. L. Ctr. v. U.S. Forest Serv.*, 789 F.3d 1075, 1090 (9th Cir. 2015). Similarly, in cases brought under NEPA, the balance of harms “will usually favor the issuance of an injunction to protect the environment,” because “[e]nvironmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, i.e., irreparable.” *W. Org. of Res. Council v. Johanns*, 541 F.3d 938, 944 (9th Cir. 2008) (quoting *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 545 (1987) (internal quotation marks omitted)). Here, the public interest in conserving the coastal marten exceeds the harm caused by requiring the commercial OHV events organizers to instead utilize non-federal lands for their large riding events.

### **IV. The Court Should Enjoin the Forest Service from Allowing Large OHV Events to Harm Coastal Martens Until Proper Legal Analyses are Complete**

The Center satisfies the test for preliminary injunctive relief, and the Court should thus impose measures restricting OHV use on the Dunes as necessary to prevent irreparable injury to coastal martens, as well as the Center’s members, during the pendency of this lawsuit. *Nat’l*

*Wildlife Fed’n v. Nat’l Marine Fisheries Serv.*, 886 F.3d 803, 817 (9th Cir. 2018). The “specific harm” to be enjoined stems from thousands of people and OHVs drawn to the Oregon Dunes during the large riding events permitted by the Forest Service without adequate mitigation measures, and as such, the Forest Service must be enjoined from allowing these large OHV events to harm coastal martens living on the Dunes. *Melendres v. Arpaio*, 784 F.3d 1254, 1265 (9th Cir. 2015). Because the Dunes are generally open to the public for riding, many aspects of the large OHV events could likely go forward on the Dunes, causing irreparable harm, even if the court enjoined the Forest Service’s SUPs. As such, the Center asks the Court to give the parties an opportunity to reach agreement on the proper scope of the injunction, and if they cannot, the parties would provide additional briefing to the Court on how to tailor effective injunctive relief.<sup>3</sup>

#### **V. The Center’s Claims Related to the Forest Service’s Issuance of SUPs Are Not Moot**

The Forest Service bears the burden to establish mootness, and it is a heavy one. *Forest Guardians v. Johanns*, 450 F.3d 455, 461 (9th Cir. 2006). Because the Forest Service’s annual issuance of permits—just weeks before the large riding events occur—would otherwise evade judicial review, the Center’s claims are not moot.

The doctrine of mootness does not apply when the challenged action “is capable of repetition, yet evading review.” *Biodiversity Legal Found. v. Badgley*, 309 F.3d 1166, 1173 (9th Cir. 2002). This exception occurs when 1) “the challenged action [is] too short to be fully litigated

---

<sup>3</sup> It is “well established that in public interest environmental cases the plaintiff need not post bonds because of the potential chilling effect on litigation to protect the environment and the public interest. Federal courts have consistently waived the bond requirement in public interest environmental litigation, or required only a nominal bond.” *Cent. Or. Landwatch v. Connaughton*, 905 F. Supp. 2d 1192, 1198 (D. Or. 2012); *see Cal. ex rel. Van De Kamp v. Tahoe Reg’l Planning Agency*, 766 F.2d 1319, 1325–1326 (9th Cir. 1985) (requiring only nominal bonds is proper in public interest litigation). The Center thus asks the Court to impose a nominal bond. Fed. R. Civ. P. 65(c).

prior to its cessation or expiration,” and 2) “there [is] a reasonable expectation that the same complaining party w[ill] be subjected to the same action again.” *Murphy v. Hunt*, 455 U.S. 478, 482 (1982).

Regarding the first prong, the Center cannot litigate claims involving the annual permits before expiration of those permits. The Forest Service issued its permit for the 2024 UTV Takeover only eight days before the event took place. Ex. 9, 2024 UTV Takeover SUP, at 1. Previous permits for DuneFest have been issued on the same day as scheduled event setup. Ex. 10, 2023 DuneFest SUP, at 1, 8. *See Greenpeace Action v. Franklin*, 14 F.3d 1324, 1329–30 (9th Cir. 1992) (holding regulation “in effect for less than one year” satisfied the durational component because a year is not enough time for judicial review); *see also Alaska Ctr. for the Env’t v. U.S. Forest Serv.*, 189 F.3d 851, 856 (9th Cir. 1999) (“In this case, [plaintiff] is attempting to challenge the Forest Service’s policy of issuing temporary permits under the categorical exclusion without any environmental analysis. The only way to challenge this policy is to bring an action when one of these temporary permits is issued.”).

Regarding the second prong, the Forest Service’s past practice establishes that it will continue to issue SUPs for the UTV Takeover and DuneFest. The Forest Service has consistently permitted these events for at least a decade. Further, the UTV Takeover has begun advertising its upcoming events in Coos Bay on June 24–29, 2025, and Winchester Bay on August 5–10, 2025. Ex. 12, UTV Takeover Coos Bay 2025 webpage; Ex. 34, UTV Takeover Winchester Bay 2025 webpage. The organizers have even begun selling campsites on the Oregon Dunes for these events. Ex. 35, UTV Takeover Coos Bay On-Site Camping webpage; Ex. 36, UTV Takeover Winchester Bay On-Site Camping webpage. No evidence indicates that the Forest Service will not issue SUPs

again this year, unless the Court enjoins the harmful actions to protect the Center and its interests in the coastal marten.

Thus, the Center's claims related to the Forest Service's issuance of SUPs for the UTV Takeover and DuneFest are not moot because they are capable of repetition, yet evade review, and the Court may grant the Center effective relief by enjoining the harmful OHV use.

### CONCLUSION

The Forest Service's authorizations of large OHV events in the Dunes without required analysis of the harmful impacts to coastal martens violates the ESA and NEPA. Absent intervention from this Court, thousands of OHVs—drawn to the Dunes during multiday events permitted by the Forest Service—are likely to expose martens to noise that impairs their ability to feed and rear young, degrade marten habitat, and create risk of coastal martens harmed or killed by vehicle strikes, thereby irreparably harming coastal martens and the Center's members. The Center respectfully urges this Court to issue an injunction to avoid irreparable harm from the upcoming events.

Dated: May 1, 2025

Respectfully submitted,

/s/ Tala DiBenedetto

Tala DiBenedetto (*admitted pro hac vice*)  
CENTER FOR BIOLOGICAL DIVERSITY  
P.O. Box 371  
Oceanside, NY 11572-0371  
(718) 874-6734, ext. 555  
tdibenedetto@biologicaldiversity.org

/s/ Collette L. Adkins

Collette L. Adkins (*admitted pro hac vice*)  
CENTER FOR BIOLOGICAL DIVERSITY  
P.O. Box 595  
Circle Pines, MN 55014-0595  
(651) 955-3821

cadkins@biologicaldiversity.org

*Attorneys for Plaintiff Center for Biological  
Diversity*