Final Revised Critical Habitat Designation for the Contiguous US Distinct Population Segment of the Canada Lynx & Revised DPS Range Extending ESA Protections to Lynx "Where Found" in the Contiguous US - Questions and Answers

What action is the Fish and Wildlife Service taking?

The Service has revised the critical habitat designation for the Contiguous U.S. Distinct Population Segment (DPS) of the Canada lynx (*Lynx canadensis*) and also rescinded the State boundary-based definition of the DPS to extend the protections of the Endangered Species Act (ESA) to lynx wherever they occur within the contiguous United States. The Service listed the lynx DPS as threatened under the Endangered Species Act (ESA) in 2000, due to the inadequacy, at that time, of existing regulatory mechanisms. After considering peer-review and public comments on the proposed rule, the Service revised the designation to include critical habitat in portions of Maine, Minnesota, Montana, Idaho, Washington and Wyoming.

Why did the Service revise the Canada lynx critical habitat designation and the definition of the lynx distinct population segment (DPS)?

Revising the critical habitat designation for the Canada lynx is the result of litigation over the 2009 critical habitat designation. The revised DPS definition is in response to a petition to extend ESA protection to lynx that entered New Mexico after being released into Colorado.

What is critical habitat?

Critical habitat is a term defined in the ESA. It identifies specific geographic areas that contain features essential to the conservation of a threatened or endangered species and that may require special management or protection. Areas designated as critical habitat receive protection under Section 7 of the ESA. Federal agencies engaged in activities that may impact listed species are required to consult with the Service to ensure that those activities do not destroy or adversely modify critical habitat. Consultation under Section 7 does not apply to activities on private lands or other non-federal lands that do not involve a federal nexus such as funding or permits.

Are Canada lynx only afforded ESA protections when inhabiting designated critical habitat areas?

No. All other protections afforded by the ESA apply to all lynx within the range where listed, regardless of whether they inhabit designated critical habitat or not. Listed species, both inside and outside critical habitat, are protected from "take," which includes harming (e.g., shooting, killing, trapping, collecting) and harassing individual animals.

What areas are being designated as critical habitat for the Canada lynx?

All areas designated as critical habitat were naturally occupied by lynx populations when the species was listed as threatened in 2000; currently support the most abundant, persistent and productive lynx populations in the contiguous United States; and contain the physical and biological features essential to the conservation of the species.

The revised critical habitat designation includes the following areas:

Maine: Approximately 10,123 square miles (mi^2) of mostly private lands in northern Maine in portions of Aroostook, Franklin, Penobscot, Piscataquis and Somerset Counties. Timber harvest and management are the dominant land uses within this area. Tribal lands (96 $mi^{2)}$ and lands covered by the Maine Healthy Forest Reserve Program (943 mi^2) have been excluded from the final designation in accordance with section 4(b)(2) of the ESA.

Minnesota: Approximately 8,069 mi^2 in northeast Minnesota on federal, state, and private lands in portions of Cook, Koochiching, Lake and St. Louis Counties. Timber harvest and management are the dominant land uses within this area. Tribal lands (78 $mi^{2)}$ have been excluded from the final designation in accordance with section 4(b)(2).

Northern Rocky Mountains – Northwestern Montana and a small portion of northeastern Idaho: Approximately 9,783 mi^2 in portions of Boundary County in Idaho; and Flathead, Glacier, Granite, Lake, Lewis and Clark, Lincoln, Missoula, Pondera, Powell and Teton Counties in Montana. Designated critical habitat occurs mostly on federal lands including portions of the Idaho Panhandle, Flathead, Helena, Kootenai, Lewis and Clark, and Lolo National Forests; Glacier National Park; and Bureau of Land Management (BLM) lands in the Garnet Resource Area. Timber harvest and management are the dominant land uses within this area. Tribal lands (370 mi2) and lands covered by the Montana Department of Natural Resources and Conservation Habitat Conservation Plan (271 $mi^{2)}$ have been excluded from the final designation in accordance with section 4(b)(2).

North Cascades – North-central Washington: Approximately 1,834 mi^2 in portions of Chelan and Okanogan Counties. Designated critical habitat occurs mostly on federal lands including the Okanagan-Wenatchee National Forest and BLM lands in the Spokane District. Timber harvest and management are the dominant land uses within this area. Lands covered by the Washington Department of Natural Resources Lynx Habitat Management Plan (164 mi^2) have been excluded from the final designation in accordance with section 4(b)(2).

Greater Yellowstone Area (GYA) – Southwestern Montana and northwestern Wyoming: Approximately 9,146 mi^2 in portions of Carbon, Gallatin, Park, Stillwater and Sweetgrass Counties in Montana; and Fremont, Lincoln, Park, Sublette and Teton Counties in Wyoming. Designated critical habitat occurs mostly on federal lands including Grand Teton and Yellowstone National Parks; the Bridger-Teton, Custer, Gallatin, and Shoshone National Forests; and BLM lands in the Kemmerer and Pinedale Districts. Timber harvest and management and recreation are the dominant land uses within this area. Lands covered by the Montana Department of Natural Resources and Conservation Habitat Conservation Plan (1.3 $mi^{2)}$ have been excluded from the final designation in accordance with section 4(b)(2)..

What is the land ownership of the designated critical habitat areas?

Land ownership within designated Canada lynx critical habitat units (mi^2 (percent)):

Unit	Federal	State	Private	Other
1 (Maine)	0 (0%)	819 (8.1%)	9,281 (91.7%)	22 (0.2%)
2 (Minnesota)	3,863 (47.9%)	2,947 (36.5%)	1,259 (15.6%)	0 (0%)
3 (N. Rockies)	8,788 (89.8%)	156 (1.6%)	839 (8.6%)	0 (0%)
4 (N. Cascades)	1,829 (99.7%)	0 (0 %)	5 (0.3%)	0 (0%)
5. (GYA)	8,922 (97.6%)	23 (0.3%)	200 (2.2%)	0.5 (0%)
TOTAL	23,402 (60.1%)	3,945 (10.1%)	11,584 (29.7%)	23 (0.1%)

Approximately 60 percent of critical habitat occurs on federal lands, 30 percent on private lands, and 10 percent on state lands, with the remaining areas under other ownership.

How did the Service determine what lands should be designated as critical habitat for lynx?

The Service used the best scientific data available as well as information from state, federal and tribal agencies and from academic and private organizations. Based on this information, the Service first determined which lands were essential to the conservation of the Canada lynx by defining the physical and biological features essential to the conservation of the species and delineating the specific areas that contain those features, as well as recent verified records of lynx presence. Focusing the designation only on areas occupied by lynx populations at the time of listing in 2000 is important because large numbers of lynx occasionally move into the northern contiguous United States when hare populations in Canada crash, and these lynx often occur temporarily in habitats that are incapable of supporting populations over time. It is necessary to distinguish these areas from the areas that can support lynx populations over time and which, therefore, are essential to the conservation of the DPS. Areas designated as critical habitat for the Canada lynx include large boreal forest landscapes with adequate densities of snowshoe hares that provide food for lynx and persistent deep, fluffy snow, which gives lynx a competitive advantage over bobcats and other hare predators.

What areas of potential lynx habitat were not included in this designation?

Lynx are capable of dispersing over long distances, and natural selection pressures favor an ability to locate and make use of suitable habitats. The Service has found no compelling evidence that there are large areas of suitable habitat in the contiguous United States that lynx have been unable to locate and occupy. One possible exception is the Kettle Range in north-central Washington, which historically supported a lynx population and appears to have high quality lynx and hare habitats. The Kettle Range has not been occupied by a reproducing lynx population in the last 20 years, although the reasons for this remain unclear.

Just prior to listing under the ESA, lynx captured in Alaska and Canada were released into Colorado. Some of these lynx survived, established home ranges, and produced kittens in some years in Colorado. Some also dispersed into neighboring states and into southern Canada. Many died soon after release or during dispersal movements. The Southern Rocky Mountains, including Colorado, are not included in this designation because the historic record does not suggest that this area ever supported a resident lynx population; the potential habitats are patchily-distributed, have poor to marginal hare densities, and are disjunct and isolated relative

to others lynx populations and habitats; and it remains uncertain whether the area is capable of supporting lynx over the long term. The Service has determined that this area does not contain the features necessary to support lynx populations over time and that the area and the introduced lynx population are not essential to the conservation of the DPS. Therefore, we have not designated critical habitat in the Southern Rockies, including Colorado.

Additionally, reproduction by a small number of lynx has been documented in northern New Hampshire and northern Vermont over the past several years. We have not designated critical habitat in these areas because we have determined that habitats there are unlikely to support lynx over time, and that these areas are not essential to the conservation of the lynx DPS.

What kind of opportunity did the public have to comment on this proposal?

Public comments were accepted until December 26, 2013 [during a 90-day comment period after publication of the proposed rule], and a public hearing was held in Helena, Montana on November 25, 2013. The comment period was reopened June 20, 2014 for 30 days to July 21, 2014, to allow the public to review and comment on the draft economic analysis and draft environmental assessment and on the September 26, 2013 proposed rule. All relevant information received from the public, government agencies, the scientific community, peer reviewers, industry, or any other interested parties was considered and addressed in the final rule, which identifies and designates critical habitat essential to the conservation of the lynx DPS.

What are the benefits of a critical habitat designation?

Federal agencies that undertake, fund or permit activities that may affect critical habitat are required to consult with the Service to ensure such actions do not adversely modify or destroy designated critical habitat. Critical habitat can provide non-regulatory benefits to the species by informing the public and private sectors of areas that are important for species recovery and where conservation actions would be most effective. Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features essential for the conservation of that species, and can alert the public and land-managing agencies to the importance of those areas. Critical habitat also identifies areas that may require special management considerations or protection, and may help provide protection to areas where significant threats to the species have been identified by helping people to avoid causing accidental damage to such areas.

Who could be affected by this critical habitat designation?

Federal agencies are required to consult with the Service on actions they carry out, fund or authorize that might destroy or adversely modify designated critical habitat. In most cases, consultation already occurs under the Section 7 interagency consultation requirements of the ESA in the areas proposed for designation, as these areas are known to be occupied by lynx. Non-federal entities, including private landowners, that may also be affected could include, for example, those seeking a U.S. Army Corps of Engineers permit under section 404 of the Clean Water Act, or those seeking federal funding to implement private property improvements, where

such actions affect lands designated as critical habitat. But again, in most cases this is already occurring under the Section 7 interagency consultation requirements of the ESA.

How does a critical habitat designation affect private lands?

Requirements for ESA Section 7 consultation on critical habitat do not apply to entirely private actions on private lands. Critical habitat designations only apply to federal lands, federal actions, or federally-funded or permitted activities on private lands. Activities on private or state lands that are funded, permitted, or carried out by a federal agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, or a section 402 permit under the Clean Water Act from the Environmental Protection Agency, will be subject to the Section 7 consultation process with the Service if those actions may affect listed species or designated critical habitat. Through consultation, the Service advises agencies whether their proposed actions would likely jeopardize the continued existence of the species or adversely modify critical habitat. Federal actions not affecting critical habitat, Canada lynx, or its habitat (e.g., potentially suitable habitat outside of critical habitat), and actions on non-federal lands that are not federally funded, permitted or carried out, will not require Section 7 consultation.

How will timber harvest and forestry management practices be affected by the critical habitat designation?

Federally permitted forestry operations would require Section 7 consultation with the Service. Timber harvest and associated forestry management can have either positive or negative effects to lynx depending on harvest methods and specifications. Forestry practices can be beneficial for lynx when the resulting understory densities meet the forage and cover needs of snowshoe hares. Although areas that are cut may not be used initially by snowshoe hares and lynx, after regeneration, those areas can provide high quality hare habitat and sustain lynx populations. However, thinning activities (e.g., mechanized pre-commercial thinning or herbicide treatments) to promote vigorous growth of fewer trees removes the understory cover preferred by snowshoe hares. As a result, thinned stands tend to have lower snowshoe hare densities than those needed to support lynx populations. Nonetheless, for actions that are entirely private or with no federal involvement, consultation is not necessary.

Will this critical habitat designation have economic impacts?

The Service conducted an analysis of potential economic impacts of designating critical habitat for the lynx when critical habitat was designated in 2009. This economic analysis and new economic information received since 2009 were used as the basis for the new economic analysis for the current critical habitat designation, which was available for public comment for 30 days from June 20 to July 21, 2014. After taking into consideration the potential economic impacts, the Secretary of the Interior decided against exercising her office's authority to exclude any areas from critical habitat based on economic considerations, in accordance with section 4(b)(2) of the ESA.

How much of an economic impact would designation of the proposed critical habitat revisions have on local economies according to the Economic Analysis?

In the economic analysis for proposed rule, the Service determined that the economic impact of designating lynx critical habitat is anticipated to be minor and largely administrative – most costs are expected to relate to additional analyses during consultations under section 7 of the ESA to ensure that critical habitat is not destroyed or adversely modified. According to the economic analysis, because no small entities – i.e., private businesses – are likely to be regulated by this revision of lynx critical habitat, the Service estimates that there would not be a significant economic impact on a substantial number of small entities.

How long does a critical habitat designation remain in effect?

A critical habitat designation remains in effect until the species is considered to be recovered and is delisted, or until the critical habitat designation is revised.

-FWS-