

Proposed Revision of the Critical Habitat Designation for the Canada Lynx and Revised Definition of the Contiguous United States Distinct Population Segment of Canada Lynx

Questions and Answers

What action is the Fish and Wildlife Service taking?

The Service is proposing to revise the critical habitat designation for the Canada lynx (*Lynx canadensis*) in the contiguous United States. The lynx is listed as threatened under the Endangered Species Act (ESA). The proposed designation includes portions of Maine, Minnesota, Montana, Idaho, Washington and Wyoming. A final decision regarding the critical habitat designation is expected to be made by September 30, 2014, following the public comment period, any requested public hearings, and the revision of the economic analysis associated with this proposed rule. The Service also proposes to extend the protections of the ESA to lynx wherever they occur within the contiguous United States.

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

The proposal to revise the critical habitat designation for the Canada lynx is the result of litigation over the 2009 critical habitat designation. The proposal to revise the 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 the 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.

Would the Canada lynx only be protected in 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 proposed as critical habitat for the Canada lynx?

All areas proposed as critical habitat were naturally occupied by lynx 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 proposed revised critical habitat designation includes the following areas:

Maine: Approximately 11,162 square miles (mi²) 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. Exclusion of tribal lands and lands managed in accordance with the Healthy Forest Reserve Program, if finalized, would reduce the designation to 10,131 mi².

Minnesota: Approximately 8,147 mi² 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. Exclusion of tribal lands, if finalized, would reduce the designation to 8,069 mi².

Northern Rocky Mountains – Northwestern Montana and a small portion of northeastern Idaho: Approximately 10,474 mi² in portions of Boundary County in Idaho; and Flathead, Glacier, Granite, Lake, Lewis and Clark, Lincoln, Missoula, Pondera, Powell and Teton Counties in Montana. Proposed 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. Exclusion of Tribal lands and lands managed in accordance with the Montana Department of Natural Resources and Conservation Habitat Conservation Plan, if finalized, would reduce the designation to 9,833 mi².

North Cascades – North-central Washington: Approximately 1,999 mi² in portions of Chelan and Okanogan Counties. Proposed critical habitat occurs mostly on federal lands including the Okanogan-Wenatchee National Forest and BLM lands in the Spokane District. Timber harvest and management are the dominant land uses within this area. Exclusion of lands managed in accordance with the Washington Department of Natural Resources Lynx Habitat Management Plan, if finalized, would reduce the designation to 1,834 mi².

Greater Yellowstone Area (GYA) –Southwestern Montana and northwestern Wyoming: Approximately 9,766 mi² in portions of Carbon, Gallatin, Park, Stillwater and Sweetgrass Counties in Montana; and Fremont, Lincoln, Park, Sublette and Teton Counties in Wyoming. Proposed 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. Exclusion of lands managed in accordance with the Montana Department of Natural Resources and Conservation Habitat Conservation Plan, if finalized, would reduce the designation to 9,765 mi².

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

Land ownership within proposed Canada lynx critical habitat units (mi² (percent)):

	Federal	State	Private	Tribal	Other
Maine	0 (0%)	823 (7.4%)	10,230 (91.7%)	87 (0.8%)	22.1 (0.2%)
Minnesota	3,864 (47.4%)	2,732 (33.5%)	1,473 (18.1%)	78 (1.0%)	0 (0%)
N. Rockies	8,652 (82.6%)	381 (3.6%)	1,072 (10.2%)	370 (3.5%)	0 (0%)
N. Cascades	1,830 (91.6%)	164 (8.2%)	4 (0.2%)	0 (0%)	0 (0%)
GYA	9,465 (96.9%)	30 (0.3%)	271 (2.8%)	0 (0%)	0.5 (0%)
TOTAL	23,811 (57.3%)	4,129 (9.9%)	13050 (31.4%)	535 (1.3%)	23 (0.1%)

Approximately 57 percent of the proposed critical habitat occurs on federal lands, 31 percent on private lands, and 10 percent on state lands, with the remaining areas under tribal or other ownership.

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

During development of this critical habitat proposal, 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 to areas occupied by lynx populations at the time of listing in 2000 was 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 proposed as critical habitat for the Canada lynx include large boreal forest landscapes with high 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 proposal?

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 back into southern Canada. Many died soon after release or during dispersal movements. The Southern Rocky Mountains, including Colorado, are not included in this proposal because the historic record does not suggest that this area ever supported a persistent reproducing lynx population, it remains uncertain whether the area is capable of supporting the introduced population over the long term, and the Service has determined that the introduced population is not essential to the conservation of the DPS.

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

The Service is seeking public and peer-review comments on whether lands in the Kettle Range, the Southern Rockies, or northern New Hampshire and northern Vermont are essential for the conservation of the DPS, and, if so, why.

Will the public have an opportunity to comment on this proposal?

Public comments will be accepted until December 26, 2013 [90 days after publication]. Written comments may be hand delivered or mailed to: Public Comments Processing, Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222, Arlington, VA 22203. Comments and information may be submitted electronically via the federal eRulemaking Portal at www.regulations.gov.

The Service has scheduled both a public hearing and a public meeting on this proposal.

Public Hearing: A public hearing will be held on this proposed rule on Monday, November 25, 2013, from 6 to 9 p.m. (Mountain Time) at the Red Lion Colonial Hotel, 2301 Colonial Drive, Helena, Montana, 59601. The formal public hearing will be preceded by an open house and general information meeting from 2 to 5 p.m.

Public Meeting: An informational public meeting will be held on Monday, November 4, 2013, from 7 to 9 p.m. at the George W. Stearns High School auditorium at 199 State Street, Millinocket, Maine, 04462.

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 proposed critical habitat designation?

Federal agencies are required to consult with the Service on actions they carry out, fund or authorize that might affect 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 critical habitat or a listed species. 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 would timber harvest and forestry management practices be affected by a 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 initially used 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 a critical habitat designation have economic impacts?

The Service conducted an analysis of potential economic impacts of proposing critical habitat for the lynx when critical habitat was designated in 2009. This economic analysis will be used as a basis for a new economic analysis along with new economic information received since 2009. The new economic analysis will be made available for public comment at a later date. After taking into consideration the potential economic impacts, the Secretary of the Interior may exclude any areas from critical habitat where the benefits of exclusion outweigh the benefits of inclusion, as long as the exclusion would not result in the extinction of the species.

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.