

Southern Rockies Lynx Amendment

Overview and General Q&As

This section of the Implementation Guide for the Southern Rockies Lynx Amendment (SRLA) provides general Questions and Answers not addressed elsewhere in other dedicated sections of the Guide. Additional Questions and Answers related to specific topics (i.e., vegetation management, grazing, human use, habitat mapping) are provided in those related sections throughout the remainder of the Guide.

The following questions came from personnel with the Southern Rockies National Forests (Arapaho-Roosevelt; Grand Mesa, Uncompahgre and Gunnison; Medicine Bow-Routt; Pike and San Isabel; Rio Grande; San Juan; White River), as well as internally within the interagency Implementation Guide team.

1. What is the purpose of the Implementation Guide?

Answer: The Implementation Guide is essentially a user guide and toolbox to assist Forest Service and Fish and Wildlife Service personnel in understanding, implementing and streamlining projects and section 7 consultations under the SRLA. The Guide provides important clarification and guidance about the SRLA, as well as several helpful tools and templates. It was developed by an interagency team that included Forest Service members from the SRLA EIS team, as well as additional representatives of the Forest Service and Fish and Wildlife Service from the Ecological Services Office, National Forest, and Regional Office levels. The Guide is not intended to substitute for the SRLA decision or serve as a “stand alone document” for knowing and properly implementing the decision. Rather the Guide complements and should be used alongside the SRLA decision and associated documents to foster a fuller understanding and more consistent application of the SRLA in projects and consultations. The Guide is meant to be a dynamic toolbox to be supplemented and improved on over time to take in important new information and continue to be relevant and useful to the National Forests, Ecological Service offices, and Regional Offices in project planning, implementation, and interagency coordination in the Southern Rockies.

2. What is the process for updating the Guide?

Answer: Recommendations for corrections, updates, or additions to the Guide can be made at any time. The agencies request that submissions or recommendations from the field not routinely come through individuals, but be vetted through the Level 1 and/or Level 2 teams and reflect recommendations endorsed by those interagency bodies. This prior endorsement should streamline resolution of recommendations. The designated agency contacts to receive recommendations and lead final disposition of those recommendations are the Fish and Wildlife Service’s Colorado Ecological Services office designee (currently Leslie Ellwood) and the Forest Service’s Threatened, Endangered and Sensitive Species Program Leader for the Rocky Mountain Region/Southern Rockies National Forests (currently Nancy Warren). These contacts will coordinate further internal and cross-agency reviews as needed, including with other Level 1 teams in Colorado and Wyoming. These agency leads will also have the ability to propose updates to the Guide and will coordinate any proposals ahead of time with their respective field units and/or streamlining teams. The field offices will be notified through official correspondence about any final corrections or additions that the agencies have agreed should be made to existing copies of the Guide.

3. *How is the Southern Rockies Lynx Amendment (SRLA) direction different than the management direction provided in the LCAS?*

Answer: Most of the guidance provided in Chapter 7 (Conservation Measures) of the Lynx Conservation Assessment and Strategy (LCAS) has been incorporated in some form in the SRLA. Some of the LCAS guidance remains unchanged in the SRLA, while other guidance has been either modified or combined into new standards or guidelines. Additionally, where it was determined that specific risk factors were not negatively affecting the U.S. distinct population of Canada lynx as a whole, some LCAS standards became guidelines in the SRLA (e.g., grazing). Another change is that the SRLA places an increased emphasis on the importance of multi-story stands as lynx habitat. Table S-1 in the Final Environmental Impact Statement (pg. S-6) provides a crosswalk of the standards and guidelines between the LCAS and SRLA. Also, Appendix D in the Biological Assessment contains a crosswalk with a rationale for changes. The Biological Assessment and Biological Opinion, and many other related documents, are available on the SRLA web site at <http://www.fs.fed.us/r2/projects/lynx/>, as well as on the CD included with this Implementation Guide binder.

4. *What is the continued role of the LCAS now that the SRLA is in effect?*

Answer: The LCAS has for several years provided the agencies with the “best available information” and management guidance until final management direction for the lynx could be added to Forest Plans. While the LCAS remains a valuable reference document, its usefulness to the Forest Service has diminished with issuance of the SRLA decision that contains much of the LCAS guidance *plus* the best available information that emerged since the LCAS was first published in late 2000 (the LCAS has never been officially revised and updated). The SRLA decision now takes precedence in guiding management of the National Forests relative to lynx conservation.

5. *What lynx guidance do the Bureau of Land Management and National Park Service follow – do they still use the LCAS?*

Answer: Because the Bureau of Land Management and National Park Service do not have a current, signed Conservation Agreement, they likely have flexibility to incorporate provisions of the SRLA Record of Decision (ROD) in their decision documents. As part of the ESA Section 7 consultation process, the Bureau of Land Management and National Park Service would likely be looking closely at the SRLA since it incorporates new scientific information after the LCAS was completed.

6. *How should the Forest Service manage a LAU if it is jointly managed by different Federal agencies, such as Forest Service and Bureau of Land Management or Forest Service and National Park Service?*

Answer: The Forest Service should manage that portion of the LAU under its jurisdiction according to the management direction specified in the Record of Decision, while continuing to coordinate with the other Federal agency.

7. *How is occupied lynx habitat defined in the Southern Rockies?*

Answer: All lynx habitat in the Southern Rockies is considered to be occupied. This designation is based on observations of individual lynx, as well as documented reproduction in the Southern Rockies. The question of occupied habitat versus unoccupied habitat is more of an issue in the Northern Rockies, where some Forests are considered to be unoccupied.

8. *How will new information, such as lynx habitat information, project activities, human use, etc., influence the applicability of these standards?*

Answer: The National Environmental Policy Act (NEPA) requires that the best available information be used to inform decision-making. If new information could lead to a change in the Record of Decision, a Supplemental Information Report (SIR) could be prepared. As described in the reinitiation statement in the Biological Opinion, the formal consultation should be reinitiated if (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action on listed species or critical habitat in a manner or to an extent not considered in the BO; (3) the agency action is subsequently modified in a manner that causes an effect not considered in the BO; or (4) a new species is listed or critical habitat designated that may be affected by the action.

9. *Do changes in data or current information that results in a No Effect call require peer review or consultation, when the original information or data would have resulted in a may effect or adverse effect call?*

Answer: Documentation of a No Effect determination is required to be maintained in Forest Service records. See discussion in *Section 8: Habitat Mapping* later in this Implementation Guide, regarding the procedure to follow if the new information is the result of a change in the lynx habitat mapping.

10. *Now that the SRLA is in place, can the standards and guidelines be changed?*

Answer: The National Forest Management Act (NFMA) requires that projects be consistent with the Forest Plan. All Forest Service personnel implementing projects in lynx habitat will need to follow the guidance provided in the SRLA. At the Forest level, a Forest Supervisor can choose to do a “site-specific” Forest Plan amendment, which would allow that Forest to not be consistent with a standard in that specific project area. That site-specific amendment should be specifically stated in the external scoping process and would need an appropriate section 7 consultation. Deviations from guidelines must be documented in the annual reporting to the Fish and Wildlife Service and the NEPA document and/or decision document.

11. *Do I need to consider the SRLA decision for pre-existing authorizations, or projects for which a decision was already signed?*

Answer: The SRLA Record of Decision considered pre-existing, site-specific decisions and associated effects and included these in the baseline. Therefore, their implementation is not in conflict with the decision and amended Forest Plans. Further, it is not necessary to apply the SRLA management direction retroactively to pre-

existing use and occupancy authorizations, such as timber sale contracts, livestock grazing permits, ski area permits, and so on. However, deciding officers have the discretion, on a case-by-case basis, to modify previous decisions or authorizations if they are not consistent with the amended management direction. Some decisions recently made *but not yet implemented* should be reviewed, adjusted and implemented to meet the management direction in the amended Plans.

Consultation and Coordination

12. Are all projects that follow the SRLA considered to have adverse effects?

Answer: Projects that are consistent with the SRLA can have either a “No Effect,” “May Affect, Not Likely to Adversely Affect” (NLAA), or “May Affect, Likely to Adversely Affect” (LAA) determination. There is no specific metric, such as acres or percentage of a Lynx Analysis Unit (LAU) affected, that distinguishes a NLAA project from a LAA project. This will likely be based on site-specific conditions and characteristics of the project, project area, and lynx and lynx habitat there. The project evaluation should include several considerations, such as: 1) condition of the LAU (e.g., percentage of habitat in unsuitable/early Stand Initiation Structural Stage (SISS), amount and condition of hare habitat, surrounding habitat, etc., 2) amount of lynx habitat affected by a proposed project, especially snowshoe hare habitat, and 3) project design (e.g., Will project be consistent with Objectives VEG O1, VEG O2, and VEG O4?). While some projects are so large or small that a LAA or NLAA determination, respectively, is a likely conclusion, many projects will occur within the grey area and require more substantive consideration and deliberation.

13. Does the use of an exemption or exception for a vegetation management project under the SRLA automatically mean that the project will have an adverse effect and will require the preparation of a Biological Opinion?

Answer: No, proposed projects that use an exemption or exception could be considered either a NLAA or LAA project, with the difference depending on the scope and impacts of the proposed action as well as the condition of the LAU. For instance, a treatment that reduces only minimal amounts of dense horizontal cover in a LAU in good condition could be considered a NLAA project. Each project needs to be evaluated individually on a site-specific basis. However, all acres treated through the use of an exemption or exception need to be counted towards the Forest's cap, regardless of whether or not the projects are considered NLAA or LAA. Furthermore, projects can be considered to have an "adverse effect" even if the project meets the conditions of the exemption and exceptions.

In its programmatic Biological Opinion for the SRLA, the Fish and Wildlife Service agreed with the Forest Service's determination that implementation of the SRLA, which could collectively affect 340,972 acres of lynx habitat in the Southern Rockies through the use of the exemption and exceptions, would result in adverse effects to the Canada lynx. The Fish and Wildlife Service then evaluated whether these adverse effects to lynx would rise to the level of jeopardizing the continued existence of the Canada lynx

in the Southern Rockies, and determined that these adverse effects would not rise to a jeopardy level.

14. *Since the SRLA section 7 consultation was a programmatic one, what will be the consultation process for individual projects?*

Answer: Individual project consultations under the SRLA are considered “Tiered” consultations, whether they are formal or informal. In a Tiered formal consultation for vegetation management projects that use the exemptions and exceptions, a “short-form” Biological Opinion is prepared by the Fish and Wildlife Service that tiers to the analysis, conclusions and Incidental Take Statement found in the Tier One, or programmatic, Biological Opinion (in this case, the Biological Opinion on the SRLA). In a Tiered informal consultation, the Fish and Wildlife Service will provide a concurrence letter. See *Section 6: ESA Tools* later in this Implementation Guide for an example of a project and Tiered Biological Opinion for a formal consultation under the SRLA. Also, Forest Service personnel will be able to use the Colorado lynx screens for NLAA determinations, where appropriate.

15. *Why does the SRLA Biological Opinion only provide Incidental Take for specific vegetation projects and not other types of activities?*

Answer: During the section 7 consultation process, it was possible to anticipate the amount of lynx habitat that could be affected and this was primarily based on fuels treatments within the Wildland Urban Interface (WUI) areas and other vegetation treatments. However, there was not sufficient information available to anticipate the amount of lynx habitat that could be affected by other project types addressed in the SRLA, such as roads, ski areas, etc. The incidental take provided in the SRLA Biological Opinion was only for specific vegetation treatments. Therefore, other project types that may have an adverse effect will require a separate formal consultation and Biological Opinion.

16. *How long will tiered consultations take?*

Answer: Projects that fit within the Tiered consultation process, both informal and formal, should be completed within 30 days upon receiving a request for concurrence with a complete Biological Assessment. However, the Fish and Wildlife Service anticipates that some of the early projects to go through a consultation involving the SRLA may take longer than 30 days while the process is still being sorted out. The goal and trend over time will be to move to the \leq 30-day consultation.

17. *How will the Fish and Wildlife Service consult on formal projects that include activities that use the exemption and exceptions that occur both within and outside the WUI?*

Answer: Projects that have adverse effects and utilize an exemption or exceptions to the SRLA vegetation standards will result in the preparation of a Tier 2 streamlined Biological Opinion, regardless of whether the project occurs inside or outside the WUI. However, if a project will have adverse effects but has a combination of activities, some of which use the exemption/exceptions and some activities that do not use any of these, the Fish and Wildlife Service would then prepare a traditional Biological Opinion

(e.g., not a Tier 2 streamlined Biological Opinion). Similarly, if a project will have adverse effects and will not use an exemption or exception, the Fish and Wildlife Service would prepare a traditional Biological Opinion. In addition, if Forest Plan standards would not be met by the proposed project and the project cannot use the exemptions and exceptions, a site-specific Forest Plan amendment would then be required.

Annual Monitoring and Reporting

18. How to track lynx habitat changes and where we are re: 1) the 30% by LAU in stand initiation structural stage; 2) the 1.5%, 3%, and 4.5% thresholds by Forest; 3) monitoring #2a; and 4) monitoring # 2e (the 4.5% threshold)?

Answer: See annual reporting section of the Guide and reporting forms there.

19. What tool to use to keep track of treated acres so that we can meet the 3% standard for fuel reduction projects?

Answer: See *Section 6: ESA Tools* later in this Implementation Guide for monitoring requirements and tracking forms.

20. It is unclear if we are to report at the time of the project decision, at the time of project implementation, or both. The SRLA decision says report on the required monitoring items when vegetation management project decisions are signed. However, it is not uncommon for implementation acres to be less than those identified for the proposal at the time of signing.

Answer: By “reporting,” the point is that each Forest should keep track of the required monitoring elements by project. This can be done at signing and again later if the actual post-project acres are different. Once a year the Regional Forester will collect the annual forms from all of the Southern Rockies forests and provide them to the U.S. Fish and Wildlife Service. These forms should contain the actual numbers associated with implementation of each project listed in the spreadsheets.

21. Will the FACTS database be the tabular database used for reporting? Under VEG S2 only group selection areas will be counted as acres treated as part of the overall impact calculation; in some cases, the entire unit will be reported as treated in the fuels arena. If FACTS is used, we need direction and/or additional activity codes for treatment in lynx habitat.

Answer: Reporting of projects affecting lynx habitat is primarily by the annual reporting forms found in *Section 6: ESA Tools* in this Implementation Guide.

22. What’s the plan to tally the % of WUI treated by Forest? We need to know that we are under the 3% cap if we cannot meet all the standards of S1, S2, S5 and S6. Who manages this tally? It’s possible that a single district can treat all 3% and leave the other districts with no way to legally accomplish their work.

Answer: It could be possible for one Ranger District to use all of a Forest's 3% fuels exemption over the life of the Plan amendment. All Ranger Districts and the Supervisor's Office need to coordinate on the annual Forest-wide treatment priorities.

23. *How will the Wyoming FWS office be made aware of the cumulative annual changes in LAUs? Will the RO send a copy of the annual reporting to both the CO and WY FWS offices?*

Answer: The Forest Service annual report will go to the FWS Colorado Field Office in Lakewood, which will then coordinate with their other offices in Colorado and Wyoming.

Lynx Screens

24. *Ensure SRLA comments are communicated to the Lynx screen revision team, so that the revised screens help clarify issues raised now.*

Answer: As the Lynx Implementation Guide team discovers SRLA information leading to a potential screen update/edit, these will be forwarded to the Region 2 Regional Office.