

**CANADA LYNX
CONSERVATION AGREEMENT**

**U.S. FOREST SERVICE
AND
U.S. FISH AND WILDLIFE SERVICE**

I. INTRODUCTION

On July 8, 1998, the U.S. Fish and Wildlife Service published a proposed rule to list the Canada lynx in the coterminous United States as a threatened species under the Endangered Species Act of 1973, as amended (ESA) (Federal Register, Volume 63, No. 130). The normal 12 month rule-making process was extended for an additional six months to allow for consideration of new scientific information and additional public comments on the proposed rule. The final rule, listing the lynx as threatened, was published in the Federal Register, Volume 65, No. 58 and reaffirmed 68 FR 40076. A more complete history and description of the listing process for Canada lynx can be found at the US Fish and Wildlife Service Canada Lynx News website-- www.r6.fws.gov/endspp/lynx.

In March of 1998, an interagency lynx coordination effort was initiated in response to the emerging awareness of the uncertain status of lynx populations and habitat in the conterminous United States and the onset of the listing process. The U.S. Fish and Wildlife Service (FWS), USDA Forest Service (FS), Bureau of Land Management (BLM), and the National Park Service (NPS) have participated in this effort. Three products important to the conservation of lynx on federally managed lands have been produced through this effort: (1) "The Scientific Basis for Lynx Conservation" (Ruggiero et. al. 2000), hereafter referred to as the "Science Report"; the Lynx Conservation Assessment and Strategy (LCAS); and this Lynx Conservation Agreement (CA). Several States within the range of the lynx have contributed to this effort through interactions with participants and review of draft products.

The Science Report, prepared by an international team of experts in lynx biology and ecology, is a compendium and interpretation of current scientific knowledge about the Canada lynx, its primary prey and habitat relationships. This document serves as an important scientific reference for the various lynx activities of the cooperating Federal Agencies.

The LCAS builds upon this scientific base and identifies the risks to the species that may occur as a result of federal land management. It recommends conservation measures that could be taken to remove or minimize the identified risks. It was developed to provide a consistent and effective approach to conservation of Canada lynx on federal lands in the conterminous United States.

II. OBJECTIVE AND INTENT

This Agreement is an interim measure to promote the conservation of the Canada lynx on federal lands managed by the signatories. The signatories agree to take measures to reduce or eliminate adverse effects or risks to the species and its occupied habitat pending amendments to Forest Plans. This agreement is based upon new information about the Canada lynx contained in the Lynx Science Report and the LCAS. The LCAS is appended to this Agreement. Specifically, the signatories agree and intend:

- To coordinate assessment, analyses, planning, and management efforts between the two agency signatories and with other appropriate entities (e.g. Bureau of Land Management, National Park Service, State and Tribal agencies) to assure a consistent approach to conserving lynx;
- To use the Science Report, other relevant science, and LCAS, together with locally specific information as appropriate, as the basis for implementing this agreement.;

- To use the Science Report, other relevant science, and LCAS, together with locally specific information as appropriate, as the basis for streamlining section 7 consultation between the FS and FWS.

III. PARTIES TO THE CONSERVATION AGREEMENT

USDA Forest Service (FS), including Regions 1, 2, 4, 6 and 9.

USDI Fish and Wildlife Service (FWS), including Regions 1, 3, 5 and 6.

Additional parties (e.g. National Park Service, Bureau of Land Management, State agencies, and/or Tribal entities) may join in this lynx conservation effort through amendment to this Conservation Agreement or development of separate agreements.

IV. AUTHORITY FOR CONSERVATION AGREEMENTS

This Conservation Agreement is within existing authorities of the signatories.

The authority for the U.S. Fish and Wildlife Service to enter into this voluntary Conservation Agreement derives from the Endangered Species Act of 1973, as amended; the Fish and Wildlife Act of 1956, as amended; and the Fish and Wildlife Coordination Act of 1934, as amended.

The primary purpose of the ESA (section 2 (b)) is to provide a means whereby ecosystems upon which endangered and threatened species depend may be conserved. Further under section 7, federal agencies "...Shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species...." Each federal agency "... shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded or carried out by such agency... is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary... to be critical...."

Under the National Forest Management Act, the Forest Service prepares Land and Resource Management Plans (Forest Plans) for each National Forest. Forest Plans provide broad management guidance applicable to subsequently approved project actions. Forest Plans may be amended at any time, and revised when conditions have changed or at least every fifteen years.

While Forest Plans provide guidance for project actions, they do not compel the FS to propose or undertake a particular action. Moreover, this Conservation Agreement does not propose actions and is not inconsistent with the Forest Plans nor does this agreement establish management criteria for National Forests or restrict the agency's ability to undertake additional conservation measures.

Objectives under the Forest Service Manual 2670.2 include: "Manage National Forest System habitats and activities for threatened and endangered species to achieve recovery objectives so that special protection measures provided under the Endangered Species Act are no longer necessary.

V. LYNX STATUS, DISTRIBUTION AND RISK FACTORS

In the final rule published by the Fish and Wildlife Service, the contiguous United States distinct population segment of Canada lynx was listed as threatened in the forested portions of Colorado, Idaho, Maine, Michigan, Minnesota, Montana, New Hampshire, New York, Oregon, Utah, Vermont, Washington, and Wisconsin. Lynx are not known to currently occur in New Hampshire, Vermont, New York, and Oregon. In the Lynx Science Report, McKelvey et. al. (1999) reported finding records of lynx occurrence in 24 states. Lynx occur primarily in boreal, sub-boreal, and western montane forests in North America that support their primary prey, snowshoe hares.

Lynx are classified as endangered by four states (Vermont, New Hampshire, Michigan, and Colorado), threatened by Washington, sensitive by Utah, extirpated by Massachusetts, presumed extirpated by Pennsylvania, a species of special concern in Maine, a protected species in Wisconsin, and as small game or furbearer with no harvest allowed in New York, Minnesota, Wyoming, Idaho, and Montana.

The Lynx Conservation Assessment and Strategy identifies 17 lynx risk factors in 4 different categories-- factors affecting lynx productivity, lynx mortality, lynx movements, and other large-scale risk factors. Risk factors identified activities or existing conditions that could adversely affect either individual or groups of lynx.

Factors identified include timber management; wildland fire management; recreation; forest/backcountry roads and trails; livestock grazing; other human developments; trapping; predator control; incidental or illegal shooting; competition and predation as influenced by human activities; highways (vehicular collisions); highway, railroad and utility corridors; land ownership patterns; ski areas and large resorts; fragmentation and degradation of lynx refugia; lynx movement and dispersal across shrub-steppe habitats; and habitat degradation by non-native invasive plant species.

The Science Report, the LCAS and the FWS's listing process documents (proposed and final rule) are sources of more complete descriptions of the risk factors, status and distribution of this species.

VI. CONSERVATION MEASURES THAT WILL BE CARRIED OUT

PART 1 - IDENTIFYING SPECIFIC AREAS SUBJECT TO THIS AGREEMENT

The FS identified and mapped lynx habitat and lynx analysis units within the NFS administrative units listed in the LCAS, in coordination with the FWS and using the habitat descriptions from the LCAS. Linkage areas and shrub-steppe habitats adjacent to lynx habitat in western States also were identified and mapped.

As new criteria for mapping become available the lynx habitat maps may be refined. Site specific application of mapping criteria may also lead to changes in what is mapped as lynx habitat. As a result, the areas subject to this agreement may change. Such refinements will be fully coordinated between the signatories. Lynx habitat, as used later in this document, refers to the results of these mapping efforts.

It is U.S. Fish and Wildlife Service policy to authorize incidental take and issue appropriate terms and conditions for projects only when there is reasonable certainty that take will occur if the action

proceeds as proposed. Therefore, the parties agree that measures to minimize incidental take of lynx under this agreement will apply only to proposed actions in occupied lynx habitat.

In order to implement this agreement, the FWS and FS will jointly identify 'occupied lynx habitat' as a subset of mapped lynx habitat. The identification of occupied lynx habitat will include consideration, as appropriate, of the Science Report, the LCAS, FWS's final listing decision documents, any information used to designate critical habitat, and new scientific information regarding the ecology and distribution of lynx, and population data. Current and future agreements between federal and state agencies regarding the sharing and use of population data will be utilized.

This conservation agreement applies until forest plans have been amended or revised to provide guidance necessary to conserve lynx and applies only to NFS lands mapped as occupied lynx habitat.

PART 2 - PROGRAMMATIC PLANNING

The FS agrees that Forest Plans within states where lynx are listed should include guidance to conserve lynx for those portions of administrative units identified as occupied lynx habitat. During the period covered by this agreement, any necessary changes in these plans will be made through amendments and/or revisions in accordance with the National Forest Management Act (NFMA) including appropriate public participation and disclosure. The following are key principles to guide the programmatic planning process during the interim period:

- Where appropriate, the process will consider multiple scales of analysis as described in the LCAS.
- The process of amending or revising a Forest Plan will include consideration of the Science Report, the LCAS, FWS's final listing decision documents, scientific information regarding the ecology and distribution of lynx in the plan area, and population data, including current or future agreements between federal and state agencies regarding the sharing and use of population data.
- The NFS administrative units with occupied lynx habitat have plans of varying ages and are in various stages of being amended or revised. Consequently, the specific strategy for updating lynx management guidance can also vary, including revisions, broad scale analysis and amendments of groups of Forest plans, and amendment of an individual Forest plan. The process will maximize use of ongoing efforts.

The FS agrees to coordinate with the FWS on approaches to the programmatic planning process for lynx, to assure a comprehensive approach to conserving lynx on National Forests.

The FS and FWS agree to coordinate the planning efforts described here with any concurrent planning by the National Park Service or Bureau of Land Management and other appropriate entities for adjacent occupied lynx habitat.

PART 3 - PROJECT PLANNING AND IMPLEMENTATION

The Agencies agree that the LCAS includes a set of recommendations that are based on the best currently available scientific information about lynx, risks to the species and/or individuals posed by management activities, current habitat conditions, and measures that are likely needed to conserve the species and minimize adverse effects. The agencies agree that the implementation of this agreement will be informed by, but does not require, new information on the Lynx gathered and/or analyzed prior to the approval of projects or activities. The Agencies agree to the following actions and considerations associated with project planning and implementation.

Exceptions to the provisions in this section will be made where such projects or authorizations are required by law or are necessary to protect or reduce risk to human health or safety. If habitat needs of other threatened or endangered species conflict with the habitat needs for lynx, the FS and the FWS shall identify and pursue necessary alternative courses of action during consultation. All exceptions considered will be coordinated with the FWS and disclosed during the documentation of the semi-annual review sessions discussed below in Part 4 C.

A. Proposed actions

The FS agrees to review and consider the recommendations in the LCAS prior to making any new decision to undertake actions in occupied lynx habitat. A proposed or new action is one for which a federal agency has no documented agency decision (does not yet have a decision notice, record of decision, or decision memo).

For actions on NFS lands in occupied lynx habitat which are proposed by and/or involve third parties, such as pipeline corridors, access requests, issuance of new authorizations upon expiration of existing authorizations or permits, etc. the agencies agree to review and consider the new information on the lynx included in the LCAS, the Science Report, and appropriate local information during the agencies' analysis and decision-making processes.

For actions on NFS lands in occupied lynx habitat which are proposed by the FS and do not involve third parties, the Forest Service will prepare an evaluation of the action using relevant information, including the LCAS, the Science Report, and appropriate local information to determine whether the activity may affect the lynx. If the evaluation indicates an activity is likely to adversely affect the lynx, the agency will revise the project considering recommendations in the LCAS, as appropriate, so that the activity is not likely to adversely affect lynx.

When performing effects analysis for any fuels treatment project, which may affect Lynx or their habitat, the direction outlined in the FWS and NOAA Fisheries December 10, 2002 joint memorandum entitled, "Evaluating the Net Benefit of Hazardous Fuels Treatment Projects" shall be followed. The direction in this joint memorandum is based upon the latest ecological methodologies and approaches to consultation under Section 7 of the ESA.

More specifically it states that, "... when conducting an effects analysis under the Act, the Services determine the current condition of the listed species and its habitat within the action area (i.e., the environmental baseline) and across its range, project the species' condition anticipated after implementation of the proposed project, and then compare this condition against the condition anticipated if the project is not implemented. In the analysis, the conditions and effects that will result if no action is taken act as the control against which to measure the effects of the proposed project. This difference is the effect of the proposed action. Without comparing the proposed

project to a no project alternative, it is impossible to make conclusions regarding the net effects of the treatments (Krebs, C. J. 1999. Ecological Methodology, Second edition. Addison Wesley Longman Inc. Menlo Park, CA. Pages 341 - 347).

The FS and FWS will also look for opportunities to undertake proactive management actions to benefit lynx, based on the LCAS, to the extent they are consistent with current land and resource management plans.

Nothing in this Conservation Agreement is intended to alter existing laws and regulations. For example, Section 325 of the 2004 Department of Interior Appropriations Act (P.L. 108-108) directs the Forest Service to review certain expiring grazing permits and that the terms and conditions of those permits shall remain in effect until the agency completes processing of the permits in accordance with applicable laws.

B. Determination of Effect.

Effects analysis and determinations for lynx and occupied lynx habitat will be documented in a Biological Assessment(s) or Biological Evaluation as part of ESA consultation with FWS. The LCAS and other relevant information will be used and referenced in all determinations of effect for lynx. The LCAS will be used as described in the section entitled "Approach to Development of Conservation Measures," as provided for in current and future LCAS updates, and informed by new information.

The LCAS provides the initial framework for the preferred and advisable courses of action for conservation of lynx. Effects determinations will include consideration of local conditions and activities by local biologists using the LCAS and other relevant information sources.

Administrative units in each lynx geographic area (as defined in the LCAS) should consider as appropriate, working together to supplement the guidance in this section with more specific tools, such as project screens, that could help insure consistency and accuracy in determination of effects.

PART 4 - MONITORING AND REPORTING

The FS and FWS agree to the following actions subject to the availability of funding.

A. Research

Current lynx research will be continued and new lynx research programs developed that emphasize the needs discussed in the LCAS section entitled "Inventory, Monitoring, and Research Needs" and in the Science Report, Chapter 17;

B. Inventory and Monitoring

1. The National Lynx Survey effort initiated in 1999 has been completed.
2. The FS and FWS will cooperate and involve other agencies and interested states and tribes in the inventory and monitoring of lynx distribution and lynx habitat as further described in the LCAS.

3. As recommended in the LCAS, appropriate actions, including research, administrative studies, or monitoring, will be taken to verify the effectiveness of the lynx conservation measures.

C. Conservation Agreement Implementation Monitoring and Assistance

The agencies agree to a joint, semi-annual review of the progress in implementing this CA. This review could lead to the modification and exceptions discussed in part VII below.

The agencies agree to use the Interagency Lynx Steering Committee and the interagency Lynx Biology Team that developed the LCAS to the extent necessary to ensure the consistent application of this Conservation Agreement and the LCAS, and to help resolve detailed questions that surface as implementation proceeds.

VII. AMENDMENTS, EXCEPTIONS AND DURATION OF AGREEMENT

Exceptions or amendments to this agreement may be jointly agreed to by the signatories on a case-by-case basis, where such deviations would better provide for protection and conservation of the lynx, where conflicts must be resolved between the needs of lynx and other listed species, or when new, relevant scientific information becomes available or when required by applicable laws or regulations. Such exceptions or amendments shall be agreed to by modification. All modifications within the scope of this agreement shall be made by issuance of a modification executed by all parties prior to any changes being performed.

Additional parties (e.g. National Park Service, Bureau of Land Management, State agencies and Tribal entities) may join in this lynx conservation effort through amendment to this Conservation Agreement or development of separate agreements.

Any of the parties to this agreement may terminate the agreement in whole, or in part, at any time before the date of expiration. This agreement shall be considered fully executed when all signatories have signed. The agreement shall expire on December 31, 2006, at which time it will be reviewed for renewal or expiration.

VIII. QUALIFICATIONS AND CONTACTS

This agreement in no way restricts any of the signatories from participating in similar activities with other public or private agencies, organizations, and individuals.

This agreement is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between the parties to this agreement will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This agreement does not provide such authority. Specifically, this agreement does not establish authority for noncompetitive award to the cooperator of any contract or other agreement. Any contract or agreement for training or other services must fully comply with all applicable requirements for competition.


This agreement does not create any private rights of action.

The principal contacts for this agreement are:

Deputy Regional Forester
USDA Forest Service, Region 1
PO Box 7669
Missoula, MT 59807

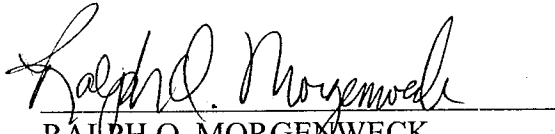
Assistant Regional Director – Ecological Services
U.S. Fish and Wildlife Service
134 Union Boulevard, Suite 645
Lakewood, CO 80228

IX. SIGNATURES



ABIGAIL R. KIMBELL
Regional Forester, Northern Region

May 25, 2005
DATE



RALPH O. MORGENWECK
FWS Regional Director, Mountain-Prairie Region

May 31, 2005
DATE