

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 117**

[Docket No. USCG-2008-0256]

RIN 1625-AA09

**Drawbridge Operation Regulation; Duwamish Waterway, Seattle, WA, Schedule Change****AGENCY:** Coast Guard, DHS.**ACTION:** Notice of proposed rulemaking; withdrawal.

**SUMMARY:** The Coast Guard is withdrawing its notice of proposed rulemaking concerning drawbridge operations for the Spokane Street Bridge across the Duwamish Waterway, mile 0.3, in Seattle, Washington. The proposed rule would have established two daily closed draw periods Monday through Friday to help alleviate road traffic, with the proviso that openings would be provided at any time for vessels of 5000 gross tons or more. The proposed rule is being withdrawn because Spokane Street Bridge draw records along with road traffic counts conducted after the notice of proposed rulemaking was published indicate that the number of draw openings and the amount of traffic using the Spokane Street Bridge are not sufficient to warrant the negative impact that the proposed rule would have on commercial maritime traffic using the waterway under the bridge.

**DATES:** The notice of proposed rulemaking is withdrawn on October 21, 2008.

**ADDRESSES:** The docket for this withdrawn rulemaking is available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call Austin Pratt, Chief, Bridge Section, Waterways Management Branch, 13th Coast Guard District, at 206-220-7282. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, at 202-366-9826

**SUPPLEMENTARY INFORMATION:****Background**

On May 22, 2008, we published a notice of proposed rulemaking entitled "Drawbridge Operation Regulation; Duwamish Waterway, Seattle, WA, Schedule Change" in the **Federal Register** (73 FR 29723). The proposed rule would have established two daily closed draw periods for the Spokane Street Bridge across the Duwamish Waterway, mile 0.3, in Seattle, Washington, Monday through Friday to help alleviate road traffic, with the proviso that openings would be provided at any time for vessels of 5000 gross tons or more.

**Withdrawal**

The notice of proposed rulemaking is being withdrawn because the Spokane Street Bridge draw records along with road traffic counts conducted after the notice of proposed rulemaking was published indicate that the number of draw openings and amount of traffic using the Spokane Street Bridge are not sufficient to warrant the negative impact that the proposed rule would have on commercial maritime traffic using the waterway under the bridge.

Specifically, draw records indicate that the Spokane Street Bridge is opened an average of only two to three times per week during each of the proposed closed periods. While these openings halt traffic, the amount of traffic affected is much lower than other drawbridges in Seattle. Traffic counts on Spokane Street during the subject periods were also much lower than arterials like 15th Avenue and Montlake Avenue, which also cross drawbridges in Seattle.

The maritime traffic that would be affected by the proposed rule includes oceangoing ships, container barges, derrick barges, and other large vessels that require the drawspan to open. Tidal fluctuations are critical for many of these vessels to move in the waterway under the Spokane Street Bridge. The proposed closed periods would delay this maritime traffic as a result of the bridge being closed as well as the effect of the closures on the ability of the vessels to transit at the appropriate tide elevation. Such delays have a substantial negative effect on maritime commerce due to the necessity of timely transit and delivery of the cargo being carried.

The availability of a nearby alternate route was also considered. The West Seattle Bridge is a multi-lane, fixed, high-structure bridge immediately adjacent to the Spokane Street Bridge that can easily be used to transit to and from downtown Seattle instead of the Spokane Street Bridge, especially for

that traffic which does not have a local destination at Harbor Island.

The Coast Guard received 80 total responses to the notice of proposed rulemaking. 18 were from commercial maritime entities with an interest in using the waterway under the bridge. All of these responses rejected the proposed change due to delays in the movement of maritime traffic that would result from the proposed rule. The remaining responses were from individual commuters, many of which were bicyclists, with an interest in using the Spokane Street Bridge itself. All of these responses endorsed the proposal in order to facilitate commuting to and from downtown Seattle. At least one response objected to the exemption for vessels of 5000 gross tons or greater and another suggested that the closure proposed for the morning hours was more vital than the afternoon.

**Authority**

This action is taken under the authority of 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

Dated: October 8, 2008.

**J.P. Currier,***Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.*

[FR Doc. E8-24985 Filed 10-20-08; 8:45 am]

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**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17**

[FWS-R6-ES-2008-0026; 92210-1117-0000-B4]

RIN 1018-AV78

**Endangered and Threatened Wildlife and Plants; Revised Critical Habitat for the Contiguous United States Distinct Population Segment of the Canada Lynx (*Lynx canadensis*)****AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Revised proposed rule; reopening of comment period and announcement of public hearings, notice of availability of draft economic analysis, amended required determinations, and draft environmental assessment.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period and the scheduling of public hearings on the proposed revised designation of critical habitat for the contiguous

United States distinct population segment of the Canada lynx (*Lynx canadensis*) (lynx) under the Endangered Species Act of 1973, as amended (Act). We also announce the availability for public comment of the draft economic analysis (DEA), an amended required determinations section of the proposal, and the draft environmental assessment for the proposed revised critical habitat designation. We also seek comment on draft conservation agreements that cover lands in Maine (Unit 1) and in the northern Rockies (Unit 3) that could result in exclusions from the final critical habitat designation under section 4(b)(2) of the Act. We also seek public comment on whether lands entered in to the Healthy Forest Reserve Program are appropriate for exclusion. In addition, we propose to refine boundary descriptions for two critical habitat units: Unit 3 (Northern Rockies) and Unit 5 (Greater Yellowstone Area) based upon more detailed information we have obtained about lynx habitat in these areas. If you submitted comments previously, then you do not need to resubmit them because we have already incorporated them into the public record and we will fully consider them in preparation of our final determination.

**DATES: Written Comments:** We will accept public comments received on or before November 20, 2008.

**Public Hearings:** We announce two public hearings, to be held on November 7, 2008, at Red Lion Hotel, 20 N. Main Street, Kalispell, MT 59901 and on November 13, 2008 at Cody Auditorium, 1240 Beck Avenue, Cody, WY 82414. Both hearings, open to all who wish to provide formal, oral comments regarding the proposed revised critical habitat, will be held from 6 to 8 p.m., mountain time, with an open house from 5 to 6 p.m., mountain time.

**ADDRESSES:** You may submit comments by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **U.S. mail or hand-delivery:** Public Comments Processing, Attn: FWS-R6-ES-2008-0026; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.
- **Public Hearings:** Public hearings will be held (see **DATES**) at Red Lion Hotel, 20 N. Main Street, Kalispell, MT 59901, and at Cody Auditorium, 1240 Beck Avenue, Cody, WY 82414.

We will not accept e-mail or faxes. We will post all comments on <http://www.regulations.gov>. This generally

means that we will post any personal information you provide us (see the Public Comments section below for more information).

**FOR FURTHER INFORMATION CONTACT:** Mark Wilson, Field Supervisor, U.S. Fish and Wildlife Service, Montana Ecological Services Office, 585 Shepard Way, Helena, MT 59601; telephone 406-449-5225. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

**SUPPLEMENTARY INFORMATION:**

**Public Comments**

We will accept comments and information during this reopened comment period on our proposed revision to critical habitat for the Canada lynx published in the **Federal Register** on February 28, 2008 (73 FR 10860), the DEA of the proposed revised designation, the amended required determinations provided in this document, the draft environmental assessment, and information related to potential exclusions. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as critical habitat under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether the benefit of designation would outweigh threats to the species caused by the designation, such that the designation of critical habitat is prudent.

(2) Specific information on:

- The distribution of the Canada lynx,
- The amount and distribution of Canada lynx habitat, and
- Which habitat contains the necessary features (primary constituent elements) essential to the conservation of these species and why.

(3) Land-use designations and current or planned activities in the subject areas and their possible impacts on this species or proposed revised critical habitat.

(4) Whether we could improve or modify our approach to designating critical habitat to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

(5) Any foreseeable environmental impacts directly or indirectly resulting from the proposed designation of critical habitat.

(6) Any foreseeable economic, national security, or other potential impacts of designating areas that may be included in the final designation. We

are particularly interested in any impacts on small entities or families, and the benefits of including or excluding areas that exhibit these impacts.

(7) Information on whether the DEA identifies all Federal, State, and local costs and benefits attributable to the proposed revision of critical habitat, and information on any costs that have been inadvertently overlooked.

(8) Information on whether the DEA makes appropriate assumptions regarding current practices and any regulatory changes that likely may occur if we designate revised critical habitat.

(9) Information on the accuracy of our methodology in the DEA for distinguishing baseline and incremental costs, and the assumptions underlying the methodology.

(10) Information on whether the DEA correctly assesses the effect on regional costs associated with land use controls that may result from the revised designation of critical habitat.

(11) Information on whether the critical habitat designation will result in disproportionate economic impacts to specific areas or small businesses that should be evaluated under 4(b)(2) for possible exclusion from the final designation.

(12) Information on whether the DEA identifies all costs that could result from the critical habitat designation.

(13) Information on whether the benefit of an exclusion of any particular area outweighs the benefit of inclusion under section 4(b)(2) of the Act, in particular for those draft conservation agreements covering specified lands in Maine and Montana submitted to the Service for further evaluation and consideration.

(14) Information on any economic impacts associated with implementing the draft conservation agreements covering specified lands in Maine and Montana submitted to the Service for further evaluation and consideration.

(15) Any foreseeable impacts on energy supplies, distribution, and use resulting from the proposed designation and, in particular, any impacts on mining and oil and gas projects, and the benefits of including or excluding areas that exhibit these impacts.

(16) Information on the refined mapping techniques we are considering using to delineate critical habitat units based on public comments we received.

Regarding the proposed revised critical habitat rule, we specifically request information on potential critical habitat exclusions. Under section 4(b)(2) of the Act, we may exclude an area from critical habitat if we determine that the benefits of such exclusion outweigh the

benefits of including that particular area as critical habitat, unless failure to designate that specific area as critical habitat will result in the extinction of the species. We may exclude an area from designated critical habitat based on economic impacts, national security, or any other relevant impact, including but not limited to the value and contribution of continued, expanded, or newly forged conservation partnerships.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus; the educational benefits of mapping essential habitat for recovery of the listed species; and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; and/or implementation of a management plan that provides equal to or more conservation than a critical habitat designation would provide. In the case of Canada lynx, the benefits of critical habitat include public awareness of lynx presence and the importance of habitat protection, and in cases where a Federal nexus exists, increased habitat protection for lynx due to the protection from adverse modification or destruction of critical habitat. In practice, a Federal nexus exists primarily on Federal lands or for projects undertaken by Federal agencies. Since lynx were listed in 2000, we have had few projects on privately owned lands that had a Federal nexus to trigger consultation under section 7. On Federal lands we have been consulting with Federal agencies on their effects to lynx since lynx were listed. These consultations have resulted in a series of comprehensive conservation plans for Federal lands over much of the range of the DPS. These plans provide for sufficient lynx habitat protection for recovery of the DPS.

When we evaluate the existence of a conservation plan when considering the benefits of exclusion, we consider a variety of factors, including but not limited to, whether the plan is finalized; how it provides for the conservation of the essential physical and biological features; whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future; whether

the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After evaluating the benefits of inclusion and the benefits of exclusion, we carefully weight the two sides to determine whether the benefits of exclusion outweigh those of inclusion. If we determine that they do, we then determine whether exclusion would result in extinction. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

Based on the information provided by entities seeking exclusion, as well as any additional public comments received, we will be evaluating whether certain lands in proposed critical habitat Unit 1 (Maine) and private lands in unit 3 (Montana and Idaho) are appropriate for exclusion from the final revised designation. We received a Draft Conservation Agreement from the Maine Forest Products Council that proposes a continued lynx conservation partnership between the private forest products industry and State and Federal wildlife agencies. As will be described, this draft agreement focuses heavily on the continuation of land access, research, information sharing, and education. We also received a single Draft Conservation Agreement from three private timberlands owners in Montana, including Plum Creek Timber, F.H. Stoltze Land and Lumber, and Stimson Lumber, who wish to foster partnerships between industrial forestry landowners and the Service to promote lynx conservation through cooperative conservation and education. Additionally, we are evaluating whether lands enrolled in the Healthy Forest Reserve Program (HFRP) in Maine are appropriate for exclusion. We will assess the benefits of excluding Maine and Montana lands included in these agreements and the HFRP and consider these lands for exclusion from the revised critical habitat final rule under section 4(b)(2) of the Act. If our analysis results in a determination that the benefits of excluding lands from the final designation outweigh the benefits of designating those lands as critical habitat, then we will exclude the lands from the revised final designation.

You may obtain a copy of draft conservation agreements for lands in Maine and Montana or the HFRP documents for lands in Maine by visiting the Federal eRulemaking Portal at <http://www.regulations.gov>, or our Web site [\[prairie.fws.gov/species/mammals/lynx/criticalhabitat/htm\]\(http://prairie.fws.gov/species/mammals/lynx/criticalhabitat/htm\) or by requesting copies of these documents by mail from the Montana Ecological Services Field Office \(see \*\*FOR FURTHER INFORMATION CONTACT\*\*\).](http://mountain-</a></p></div><div data-bbox=)

If you submitted comments or information on the proposed revised rule (73 FR 10860) during the initial comment period from February 28, 2008, to April 28, 2008, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final determination. Our final determination concerning revised critical habitat will take into consideration all written comments and any additional information we receive during both comment periods. On the basis of public comments, we may, during the development of our final determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning the proposed revised rule, DEA, or environmental assessment by one of the methods listed in the **ADDRESSES** section. We will not consider comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit a comment via <http://www.regulations.gov>, your entire comment—including your personal identifying information—will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on <http://www.regulations.gov>.

Comments and materials we receive, as well as selected supporting documentation we used in preparing this revised proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Montana Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**). Maps of the proposed revised critical habitat also are available on the Internet at <http://mountain-prairie.fws.gov/species/mammals/lynx/>.

You may obtain copies of the proposed revision of critical habitat, the associated DEA, and the environmental assessment on the Internet at <http://www.regulations.gov> (see Docket Number FWS-R6-ES-2008-0026), or by

mail from the Montana Fish and Wildlife Office (*see* **FOR FURTHER INFORMATION CONTACT**).

### Background

For more information on previous Federal actions concerning the Canada lynx, refer to the proposed revised designation of critical habitat published in the **Federal Register** on February 28, 2008 (73 FR 10860). On January 15, 2008, the U.S. District Court for the District of Columbia issued an order stating the Service's deadlines for a proposed rule for revised critical habitat by February 15, 2008, and a final rule for revised critical habitat by February 15, 2009. On February 28, 2008, we published a proposed revised rule (73 FR 10860) designating approximately 42,753 square miles (110,727 square kilometers) of land in northern Maine, northeastern Minnesota, the Northern Rocky Mountains (northwestern Montana/northeastern Idaho), the North Cascades (north-central Washington), and the Greater Yellowstone Area (southwestern Montana, northwestern Wyoming) as critical habitat.

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act.

Under section 4(b)(2) of the Act, we may exclude an area from critical habitat if we determine that the benefits of such exclusion outweigh the benefits of including that particular area as critical habitat, unless failure to designate that specific area as critical habitat will result in the extinction of the species. We may exclude an area from designated critical habitat based on economic impacts, national security, or any other relevant impact.

Section 7 of the Act will prohibit destruction or adverse modification of any designated critical habitat by any activity funded, authorized, or carried

out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

### Public Hearings

Section 4(b)(5)(E) of the Act requires a public hearing be held if any person requests it within 45 days of the publication of a proposed rule. In response to requests from the public, the Service will conduct two public hearings for this proposed revision to critical habitat on the dates and times and at the addresses identified in the **DATES** and **ADDRESSES** sections above.

People wishing to make an oral statement for the record are encouraged to provide a written copy of their statement and present it to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration. There are no limits on the length of written comments submitted to us. If you have any questions concerning the public hearing, please contact the Montana Ecological Services Office (*see* **FOR FURTHER INFORMATION CONTACT**).

People needing reasonable accommodations in order to attend and participate in the public hearings should contact Shawn Sartorius, Montana Ecological Services Office, at (406) 449-5225, extension 208, as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the hearing date. Information regarding this notice is available in alternative formats upon request.

### Draft Economic Analysis

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We have prepared a DEA of our February 28, 2008 (73 FR 10860), proposed revised rule to designate critical habitat for the contiguous United States distinct population segment of the Canada lynx.

The intent of the DEA is to identify and analyze the potential economic impacts associated with the proposed revised critical habitat designation for the Canada lynx. The DEA quantifies the economic impacts of all potential conservation efforts for the lynx; some of these costs will likely be incurred regardless of whether we designate

critical habitat. The economic impact of the proposed revised critical habitat designation is analyzed by comparing scenarios both "with critical habitat" and "without critical habitat." The "without critical habitat" scenario represents the baseline for the analysis, considering protections already in place for the species (for example, under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The "with critical habitat" scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we may consider in the final designation of critical habitat. The analysis looks retrospectively at baseline impacts incurred since the species was listed, and forecasts both baseline and incremental impacts likely to occur if we finalize the proposed revised critical habitat.

The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed revised critical habitat designation for the lynx over the next 20 years, which was determined to be the appropriate period for analysis because limited planning information was available for most activities to forecast activity levels for projects (e.g., development, mining, recreation projects) beyond a 20-year timeframe. Where information was available to reliably forecast activities beyond the 20-year timeframe, we incorporated it into the analysis. For example, timber harvests are typically on a 40- to 80-year rotation within the study area allowing us to address forest management impacts over a longer time period.

The current DEA estimates the foreseeable economic impacts of the proposed revised critical habitat designation. The economic analysis identifies potential incremental costs as a result of the proposed revised critical habitat designation; these are those costs attributed to critical habitat over and above those baseline costs attributed to listing. The DEA quantifies economic impacts of lynx conservation efforts associated with the following activities: (1) Timber activities, (2) development, (3) recreation, (4) mining and oil and gas activities, (5) fire management, (6) wind energy developments, (7) transportation and utilities projects, (8) livestock

grazing, and (9) species research and active management.

The pre-designation impacts associated with species conservation activities for the lynx in areas proposed as critical habitat are approximately \$25.7 million applying a 3 percent discount rate and \$30.1 million applying a 7 percent discount rate. The post-designation impacts associated with species conservation were estimated over the period 2009 to 2028. The quantified post-designation baseline impacts (those estimated to occur regardless of the critical habitat designation) are \$9.4 to \$10.3 million on an annualized basis applying a 3 percent discount rate, or \$11.6 to \$12.8 million on an annualized basis applying a 7 percent discount rate. Because these costs are projected to occur whether critical habitat is designated or not, they are not considered in our determination of whether the benefits of including an area as critical habitat outweigh the benefits of excluding the area.

The majority of the post-designation, baseline impacts are associated with proposed, single, large-scale development project in Maine (Unit 1), for which the proponent has sought state-approved rezoning. Subsequent development of the rezoned lands may require the implementation of avoidance, minimization, or mitigation measures to conserve lynx. Elsewhere, additional post-designation, baseline impacts are associated with adherence to existing lynx management plans, which direct lynx conservation efforts for activities such as timber management, recreation, and mining.

The only incremental identified and quantified in the analysis are administrative costs of actions taken under section 7 of the Act associated with the geographic area proposed as revised critical habitat for the lynx. The DEA forecasts these incremental impacts associated with the proposed rulemaking to be \$142,000 on an annualized basis using a 3 percent discount rate, and \$141,000 on an annualized basis using a 7 percent discount rate.

Only the incremental costs that may result from the designation of critical habitat, over and above the costs associated with species protection under the Act more generally, may be considered in designating critical habitat; therefore, the methodology for distinguishing these two categories of costs is important. In the absence of critical habitat, Federal agencies must ensure that any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of any endangered species or threatened

species—costs associated with such actions are considered baseline costs. Once an area is designated as critical habitat, proposed actions that have a Federal nexus in this area also will require consultation and potential modification to ensure that the action does not result in the destruction or adverse modification of designated critical habitat—costs associated with these actions are considered incremental costs. Incremental consultation that takes place as a result of critical habitat designation may fall into one of three categories: (1) Additional effort to address adverse modification in a new consultation; (2) re-initiation of consultation to address effects to critical habitat; and (3) incremental consultation resulting entirely from critical habitat designation (i.e., where a proposed action may affect unoccupied critical habitat). However, because no unoccupied habitat is being proposed for designation, no consultations in category 3 are projected.

We request comment on the accuracy of our methodology for distinguishing baseline and incremental costs, and the assumptions underlying the methodology. The DEA considers the potential economic effects of actions relating to the conservation of the lynx, including costs associated with sections 4, 7, and 10 of the Act, as well as costs attributable to the designation of revised critical habitat.

We are soliciting comments from the public on the DEA, and on the proposed revised rule and environmental assessment. We may revise the proposed rule or supporting documents to incorporate or address information we receive during this comment period. In particular, we may exclude areas from revised critical habitat if we determine that the benefits of excluding an area outweigh the benefits of including it as revised critical habitat, provided the exclusions will not result in the extinction of the species.

#### **Areas Considered for Exclusion Under Section 4(b)(2) of the Act**

##### *Northern Maine Unit 1: Maine Forest Products Council*

We have received a draft Conservation Partnership Agreement for the Benefit of Canada Lynx in Maine from the Maine Forest Products Council (MFPC) and Maine Department of Inland Fisheries and Wildlife (Maine DIFW). As drafted, MFPC has identified the Service as a signatory to the agreement. The MFPC is a trade organization representing the Maine forest products community, whose members include landowners,

loggers, truckers, paper mills, and lumber processors. Approximately 74 percent of the lands proposed for lynx critical habitat designation in Maine are private commercial forest lands owned by members of the MFPC.

The MFPC and its landowner members have been contributing to lynx conservation since the 1990s by funding lynx and snowshoe hare research through the University of Maine's Cooperative Forestry Research Unit (UMaine CFRU). Additionally, MFPC landowners have supported lynx research and monitoring by allowing researchers from Maine DIFW, the Service, University of Maine and others access to their private property to conduct lynx surveys and research and by providing logistical assistance (lodging, field maps, etc.) to the lynx researchers.

In summary, the draft conservation agreement proposes a framework for, among other things, funding of landscape-level habitat mapping using satellite imagery and state-of-the-art lynx and snowshoe hare habitat models; assistance from MFPC landowners to supplement the mapping analyses with information and data owned by the companies; continued funding of lynx research and monitoring and logistical assistance; professional education, information dissemination, and training of landowners, forest managers, loggers, and others on lynx habitat requirements; development of multi-species landscape-scale planning guidelines to balance the needs of lynx with other species in the northern forest; lynx workshops to discuss lynx research, management challenges, opportunities, land management tools, and forest practices trends; and annual reporting. This agreement does not prescribe specific land management actions to be taken by landowners. We are currently reviewing the context of this draft agreement, including MFPC's explanations of the above proposed commitments and its treatment of our roles and responsibilities as a signatory.

##### *Northern Maine Unit 1: Lands Subject to the Healthy Forest Restoration Act*

In 2003, Congress passed the Healthy Forest Restoration Act. Title V of the Act designates an HFRP with objectives to (1) promote the recovery of threatened and endangered species, (2) improve biodiversity, and (3) enhance carbon sequestration. In 2006, Congress provided the first funding for the HFRP, and three States, Maine, Arkansas, and Mississippi, were chosen as pilots to receive funding through their respective Natural Resources Conservation Service (NRCS) State offices. The NRCS and the

Service determined that the most efficient way to complete consultations under section 7 of the Act and to deliver the Safe Harbor-like assurances that the Healthy Forest Restoration Act both defines and requires was by developing programmatic biological opinions for each of the participating States. The program underwent formal consultation under section 7 of the Act. The resulting programmatic biological opinion provides a framework for determining incidental take, baseline conditions, and terms and conditions when reviewing projects selected for future funding. The Service completed the biological opinion for Maine in 2006; this document is available on [www.regulations.gov](http://www.regulations.gov) with the other documents announced in this reopening notice.

The NRCS and the Service offered the HFRP to landowners in the proposed Canada lynx critical habitat unit to promote development of lynx forest management plans to achieve important objectives for lynx recovery. Five landowners were enrolled in the HFRP—the Passamaquoddy Tribe, The Nature Conservancy, the Forest Society of Maine (as a conservation easement holder for the Merriweather LLC-West Branch Project), Katahdin Forest Products, and Elliotsville Plantation Company. Lynx forest management plans will be developed for about 680,000 acres (275,186 hectares) within the 6.8 million-acre (2.75 million-hectare) proposed revised critical habitat. Tiered section 7 consultations will occur under the programmatic opinion for each of the five projects. The tiered consultations will document the environmental baseline and incidental take for each project. If additional HFRP funding is made available to Maine in the future, this programmatic biological opinion will guide the consultation between NRCS and the Service. New projects will be tiered under this programmatic opinion. The programmatic opinion will be revised as new information is obtained or if new rare, threatened, or endangered species are considered for Healthy Forest Reserve funding.

Landowner forest management plans will be based on the Service's *Canada Lynx Habitat Management Guidelines for Maine* (McCollough 2007). These guidelines were based on the best available science on lynx management and have been revised as new research results become available. The guidelines are:

1. Avoid upgrading or paving dirt or gravel roads traversing lynx habitat. Avoid construction of new high-speed/high-traffic volume roads in lynx

habitat. Desired outcome: Avoid fragmenting potential lynx habitat with high-traffic/high-speed roads.

2. Maintain through time at least one lynx habitat unit of 35,000 acres (14,164 hectares) (~1.5 townships) or more for every 200,000 acres (80,937 hectares) (~9 townships) of ownership. At any time, about 20 percent of the area in a lynx habitat unit should be in the optimal mid-regeneration conditions (see Guideline 3). Desired outcome: Create a landscape that will maintain a continuous presence of a mosaic of successional stages, especially mid-regeneration patches that will support resident lynx.

3. Employ silvicultural methods that will create regenerating conifer-dominated stands 12–35 feet (3.7–10.7 meters) in height with high stem density (7,000–15,000 stems/acre) (17,290–37,050 stems/hectare) and horizontal cover above the average snow depth that will support (0.44 hares/acre) >1.1 hares/hectare. Desired outcome: Employ silvicultural techniques that create, maintain, or prolong use of stands by high populations of snowshoe hares.

4. Maintain land in forest management. Development and associated activities should be consolidated to minimize direct and indirect impacts. Avoid development projects that occur across large areas, increase lynx mortality, fragment habitat, or result in barriers that affect lynx movements and dispersal. Desired outcome: Maintain the current amount and distribution of commercial forest land in northern Maine. Prevent forest fragmentation and barriers to movements. Avoid development that introduces new sources of lynx mortality.

5. Encourage coarse woody debris for den sites by maintaining standing dead trees after harvest and leaving patches (at least 0.75 acre (0.30 hectare)) of windthrow or insect damage. Desired outcome: Retain coarse woody debris for denning sites.

The HFRP forest management plans must provide a net conservation benefit for lynx, employ the lynx guidelines, identify baseline habitat conditions and meet NRCS standards for forest plans. Plans must be developed for an entire forest rotation (70 years) and include a decade-by-decade assessment of where lynx habitat will be located on the ownership. Some landowners are developing plans exclusively for Canada lynx, whereas others are combining lynx management with pine marten (*Martes americana*) (an umbrella species for mature forest) or biodiversity objectives. Most landowners are writing their own plans, however, The Nature

Conservancy contracted with the University of Maine Department of Wildlife Ecology to develop a lynx-pine marten umbrella species model that will serve as a model that will be made available to other northern Maine landowners.

Landowners have two years from enrollment to complete their lynx forest management plans. Plans must be reviewed and approved by NRCS with assistance from the Service. The first plans will be completed in fall, 2009. By year seven, there must be demonstrated harvest schedule and on-the-ground implementation of the plan. Safe Harbor Agreements or similar assurances, as defined by the Healthy Forest Restoration Act, will be made available to landowners enrolled in the program at the conclusion of the 10-year cost-share agreement.

#### *Northern Rocky Mountains Unit 3: Private Timber Lands*

We have also received a draft conservation agreement from three timber products companies in Montana: Plum Creek Timber, F.H. Stoltze Land and Lumber, and Stimson Lumber (forest products companies). These three companies are the largest individual private timberland-owners in Unit 3 of the proposed critical habitat designation. This agreement proposes to form a conservation partnership to preserve habitat and protect the Canada lynx by implementing the following actions:

1. Landowners and forest products companies would distribute lynx habitat management information developed collaboratively with the USFWS and supporting agencies and organizations to a variety of forest landowners and contractors in the geographic area currently contained in proposed critical habitat not currently engaged with the USFWS or informed about Canada lynx habitat management measures.

2. The forest products companies would contact forest products mills within the geographic area currently contained in proposed critical habitat to enlist their support of the Agreement. Supporting mills would distribute habitat management and other lynx information to landowners and log sellers as part of their fiber procurement programs. This action, combined with the actions of the Agreement signatories, would inform the vast majority of private landowners in Unit 3 who undertake forest management activities and sell their products on lynx habitat management to guide their on-the-ground activities for the benefit of lynx.

3. The Parties would collaborate to encourage private landowners and forest

product companies to pursue funding for conservation efforts, e.g., cost-share, incentive programs, or grants for the purpose of Canada lynx habitat conservation.

4. Landowners and forest product companies would develop new Canada lynx habitat management training for private field-level forest managers and contractors.

5. Landowners and forest product companies would host annual workshops that include the USFWS to discuss recent research outcomes and management recommendations, identify collaborative adaptive management opportunities, and/or identify further research opportunities for lynx conservation.

6. Landowners and forest product companies would develop, in collaboration with the Service, voluntary landscape-level management priorities and guidelines for private lands in Montana. These guidelines will be incorporated into the education and outreach efforts in 1, 3, and 4 above.

7. Landowners and forest product companies would support Canada lynx research and monitoring through encouraging participating landowners and forest product companies to voluntarily provide reasonable access to their lands to conduct research, logistical and material support, financial support, and/or dissemination and implementation of the research results.

The agreement is designed to strengthen partnerships among the three industrial timberland owners and State and Federal agencies. This agreement does not prescribe specific land management actions to be taken by landowners.

#### **Draft Environmental Assessment; National Environmental Policy Act**

The draft environmental assessment (EA) presents the purpose of and need for critical habitat designation, the Proposed Action and alternatives, and an evaluation of the direct, indirect, and cumulative effects of the alternatives pursuant to the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA) as implemented by the Council on Environmental Quality regulations (40 CFR 1500, *et seq.*) and according to the Department of the Interior's NEPA procedures.

The EA will be used by the Service to decide whether or not critical habitat will be designated as proposed, if the Proposed Action requires refinement or if another alternative is appropriate, or if further analyses are needed through preparation of an environmental impact statement (EIS). If the Proposed Action

is selected as described (or is changed minimally) and no further environmental analyses are needed, then a Finding of No Significant Impact (FONSI) would be the appropriate conclusion of this process. A FONSI would then be prepared for the EA.

#### **Proposed Changes to Boundaries of Canada Lynx Revised Critical Habitat Units 3 and 5**

Following publication of our proposed critical habitat rule on February 28, 2008 (73 FR 10860), we received comments from the U.S. Forest Service, Montana Department of Natural Resources and Conservation (Montana DNRC), Plum Creek Timber Company, and others providing information that large areas of the proposed revised critical habitat designation did not contain the essential physical and biological feature described in the rule and should not be included in the final designation. In response to those comments, we solicited updated lynx habitat mapping data from the U.S. Forest Service, National Park Service, Montana DNRC, U.S. Bureau of Land Management, and Plum Creek Timber Company to confirm the proposed boundaries or make corrections to those boundaries where they either include significant areas of non-lynx habitat or leave out significant areas of lynx habitat that may contribute to lynx conservation. As a result of this inquiry, we identified several areas on the periphery of Units 3 and 5 that contain features essential to the conservation of lynx and may warrant inclusion inside the final critical habitat boundary, and areas that do not contain essential feature and may have been inappropriately included inside the boundary of the proposed revision. In general, where mapped lynx habitat corresponds to U.S. Forest Service lynx analysis units (LAU), we are considering the use of LAU boundaries to define the final designation. Where LAUs do not include significant lynx habitat or where they include large areas that are not mapped lynx habitat, we may use other landscape features such as roads, watershed boundaries, or contour lines to incorporate mapped lynx habitat into the final rule. LAUs are areas identified by the U.S. Forest Service that have significant lynx habitat and are delineated at the scale of the area required for a female home range. Because LAU boundaries are based on mapped lynx habitat as well as landscape features, we believe that the most important lynx habitat is generally found within LAUs. The following is a summary of specific changes to the proposal that we are considering that

result in significant changes to the aerial extent of the proposed designation. The numbers reported below do not sum to the final size of the unit due to small changes to the boundary when fitting the boundary line to LAU boundaries.

Significant mapped lynx habitat exists on Montana DNRC lands between subunits 11 and 12. Including these lands in the designation would link the subunits into one and increase the area of the two subunits by approximately 60 square miles (155 square kilometers). Also, outside the eastern boundary of subunit 12 along the North Fork of the Flathead River, mapped lynx habitat extends east of the line identified in the February 2008 proposed revision, and we are considering changing the boundary to correspond to the Forest Service Lynx Analysis Unit (LAU) boundary there, incorporating an estimated 70 square miles (181 square kilometers) of additional area to subunit 12.

For subunit 16 we are considering, based on the comments received, to change the subunit's boundaries such that the subunit's eastern boundary follow the eastern boundary of Glacier National Park south (as it does in the February 2008 proposed revision) and then follow the eastern boundaries of U.S. Forest Service LAUs to the south to U.S. Highway 12. This would result in a reduction of approximately 124 square miles (321 square kilometers). The valley bottom areas of the southeastern portion of Unit 3 contains very little mapped lynx habitat and we are considering removing approximately 865 square miles (2,240 square kilometers) from the area north of Highway 12. This area is a mix of Helena National Forest, BLM, private, and Montana DNRC land. Based on the new information received, we would leave the mapped lynx habitat on BLM and private lands in the Garnet Mountain Range as separate critical habitat subunits.

Also in Unit 3, in the Swan/Clearwater River Valleys along the U.S. Highway 83 corridor, there is mapped lynx habitat both east and west of the Highway that occurs outside of the February 28, 2008, proposal. We are considering extending the boundary of critical habitat on both sides of the highway to incorporate mapped lynx habitat in this area, a change that would result in an increase of 104 square miles (269 square kilometers).

The changes being considered, based on information received, would result in a net decrease in the size of Unit 3 of approximately 833 square miles (2,157 square kilometers) leaving

approximately 10,471 square miles (27,120 square kilometers) in Unit 3.

In Unit 5, mapped lynx habitat indicates a lack of lynx habitat on much of the Custer National Forest that was included in the February 28, 2008, proposal. We are considering amending the northeastern boundary to more closely reflect the lack of mapped lynx habitat by using the northeastern LAU boundaries on the Custer National Forest as the critical habitat boundary there. This change would result in a net reduction of critical habitat area of approximately 705 square miles (1,826 square kilometers). In addition, on the east side of Unit 5, we are considering the use of Forest Service LAU boundaries to define the critical habitat boundary in this area, however, information submitted by the Forest Service indicates that much of the mapped lynx habitat in this area is insufficient to support snowshoe hares in the numbers required for lynx survival and reproduction. For this reason, we would not incorporate all mapped lynx habitat in this unit, but instead include only those LAUs that include the most important lynx habitat and also recent lynx records. This change would result in a net decrease in the area of the designation of 130 square miles (337 square kilometers). We also are considering amending the boundaries of critical habitat within Yellowstone National Park in the Area of the Lamar Valley and the Northern Range south of Gardiner to reflect the lack of mapped lynx habitat in this area. We would potentially use Yellowstone National Park LAU boundaries to describe the critical habitat boundary in this area for a net reduction of 546 square miles (1,414 square kilometers) in the designation. The above changes would result in a net decrease of 1,867 square miles (4,836 square kilometers) from Unit 5, leaving 8,723 square miles (22,592 square kilometers) in Unit 5.

We request comments and additional information on the mapping techniques that we are considering using to delineate critical habitat units.

#### Required Determinations—Amended

In our February 28, 2008, proposed revised rule (73 FR 10860), we indicated that we would defer our determination of compliance with several statutes and Executive Orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA data to make these determinations. In this document we affirm the information in our proposed rule concerning Executive Orders (E.O.)

13132, E.O. 12988, the Paperwork Reduction Act, the National Environmental Policy Act, and the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951). However, based on the DEA data, we revise our required determinations concerning E.O. 12866 and the Regulatory Flexibility Act, E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act, and E.O. 12630 (Takings).

#### Regulatory Planning and Review

The Office of Management and Budget (OMB) has determined that this proposed rule is significant and has reviewed the proposed revised rule under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of \$100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues. OMB has determined that this rule is significant because it raises novel legal or policy issues.

#### Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2)) (SBREFA), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Based on our DEA of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. This determination is subject to revision based on comments received from the public.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if the proposed revised designation of critical habitat for the Canada lynx would affect a substantial number of small entities, we considered the number of affected small entities within particular types of economic activities (*e.g.*, timber harvesting, livestock grazing, residential and related development, recreation activities, mining, and transportation). We considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat affects activities conducted, funded, permitted, or authorized by Federal agencies.

In our DEA of the proposed revised critical habitat designation, we evaluated the potential economic effects on small business entities from conservation actions related to the listing of the Canada lynx and proposed revised designation of the species' critical habitat. The activities affected by Canada lynx conservation efforts may include land development, transportation and utility operations, and conservation on public and tribal lands. The following is a summary of the information contained in the draft economic analysis:



## (a) Development

According to the draft economic analysis, Canada lynx development-related costs account for less than 1 percent of forecast incremental costs, and is estimated at \$8,130 (in 2008 dollars) over 20 years. The costs consist of administrative costs of conducting consultations under section 7 of the Act on development projects. As a result of this information, we have determined that the proposed designation is not anticipated to have a significant economic impact on a substantial number of small businesses with respect to development activities.

## (b) Forest Management

Potential costs to forest management in habitat proposed for designation account for another 16 percent of forecast costs. Undiscounted costs are estimated at \$233,000 (in 2008 dollars) over 20 years. The costs consist of administrative costs of conducting consultations under section 7 of the Act on forest management. These costs are expected to be borne by Federal and State governments, private timber landowners, tribal landowners, and other private landowners across the units of the designation. The administrative costs would be divided among many entities and projects over a 20-year period. As a result of this information, we have determined that the proposed designation is not anticipated to have a significant economic impact on small forest management businesses.

## (c) Recreation

Future costs associated with managing recreation account for an additional 19 percent of forecast costs. Costs are estimated to be \$285,000 (in 2008 dollars) over 20 years. The costs consist of administrative costs of conducting consultations under section 7 of the Act associated with managing recreation (*i.e.*, reductions of snowmobile opportunities) in Unit 4 (North Cascades). Incremental costs would be incurred by State and Federal agencies. As a result of this information, we have determined that the proposed designation is not anticipated to have a significant economic impact on a substantial number of small recreation businesses.

## (d) Lynx Management Plans

Future costs associated with development of lynx management plans account for approximately one percent of forecast costs. Costs are estimated to be \$12,300 (in 2008 dollars) over 20 years. The costs consist of administrative costs of conducting

consultations under section 7 of the Act on lynx management plans by Federal agencies. As a result of this information, we have determined that the proposed designation is not anticipated to have a significant economic impact on a substantial number of small businesses.

## (e) Mining/Oil and Gas

Future costs associated with mining and oil and gas exploration and development activities account for an additional 8 percent of forecast costs. Costs are estimated at \$115,000 (in 2008 dollars) over 20 years. The costs consist of administrative costs of conducting consultations under section 7 of the Act on mining and oil and gas projects by Federal agencies in Units 2, 4, and 5. As a result of this information, we have determined that the proposed designation is not anticipated to have a significant economic impact on a substantial number of small mining or oil and gas businesses.

In summary, we have considered whether the proposed revised rule would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if promulgated, this proposed revised rule would not have a significant impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis is not required.

**Executive Order 13211: Energy Supply, Distribution, and Use**

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As described above, this proposed rule is considered a significant regulatory action under E.O. 12866 due to potential novel legal and policy issues. OMB's guidance in M-01-27 for implementing this Executive Order outlines nine outcomes that may constitute "a significant adverse effect" when compared to no regulatory action. The DEA finds that none of these outcomes will result from the critical habitat designation for lynx (refer to Appendix B of the draft economic analysis). Thus, based on the information in the draft economic analysis, no energy-related incremental impacts associated with Canada lynx proposed revised critical habitat are expected other than administrative costs. Costs are estimated at \$115,000 (in 2008 dollars) over 20 years. The costs consist of administrative costs of conducting consultations under section

7 of the Act on mining and oil and gas projects by Federal agencies in Units 2, 4, and 5. As such, the proposed designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use and a Statement of Energy Effects is not required.

**Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*)**

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), we make the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)-(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments," with the following two exceptions: It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding" and the State, local, or tribal governments "lack authority" to adjust accordingly. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program."

Critical habitat designation does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Designation of critical habitat may indirectly impact non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule would significantly or uniquely affect small governments. The draft economic analysis discusses potential impacts of critical habitat designation for the Canada lynx on timber management, recreation, land development, mining, oil and gas development, and the development of management plans. The analysis estimates costs of the rule to be \$2.11 million at present value over a 20-year period (\$142,000 annualized) assuming a 3 percent discount rate, and \$1.49 million (\$141,000 annualized) assuming a 7 percent discount rate. Most of the impacts are expected to affect Federal agencies through administrative costs associated with consultations under section 7 of the Act. Impacts on small governments are not anticipated, or they are anticipated to be passed through to consumers. The SBA does not consider the Federal Government to be a small governmental jurisdiction or entity. Consequently, we do not believe that the designation of critical habitat for the Canada lynx will significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

#### Executive Order 12630: Takings

In accordance with E.O. 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of proposing revised critical habitat for the Canada lynx in a takings implications assessment. The takings implications assessment concludes that this proposed designation of critical habitat for lynx does not pose significant takings implications.

#### Authors

The primary authors of this notice are the staff members of the Division of Endangered Species, Mountain-Prairie Region, U.S. Fish and Wildlife Service.

#### Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 9, 2008.

**Mitchell Butler,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. E8-24827 Filed 10-20-08; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 224 and 226

**RIN 0648-XJ93; RIN 0648-AW77**

#### Endangered and Threatened Species; Proposed Endangered Status for the Gulf of Maine Distinct Population Segment of Atlantic Salmon; Proposed Critical Habitat for the Gulf of Maine Distinct Population Segment of Atlantic Salmon

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of two public hearings; notice of extension of public comment period.

**SUMMARY:** We (NMFS) will hold two public hearings in Maine in November 2008 for the purposes of answering questions on the proposal to list the Gulf of Maine (GOM) Atlantic salmon distinct population segment (DPS) as endangered under the Endangered Species Act of 1973, as amended (ESA) and the NMFS proposal to designate critical habitat for the GOM DPS of Atlantic salmon. NMFS also extends the public comment period for the proposed critical habitat designation.

**DATES:** The hearings will be held on November 5, 2008, from 7 to 9 p.m. in Augusta, ME, and on November 6, 2008, from 7 to 9 p.m. in Brewer, ME. Informational sessions will be held prior to each hearing from 6 to 7 p.m.

NMFS extends the due date for public comments on the proposal to designate critical habitat for the GOM DPS of Atlantic salmon by 30 days, from November 4, 2008, to December 5, 2008. Comments must be received by December 2, 2008, for the proposed rule to list the GOM DPS as endangered under the ESA and December 5, 2008, for the proposal to designate critical habitat for the GOM DPS.

**ADDRESSES:** The November 5, 2008, hearing will be held at the Augusta Civic Center, 76 Community Dr., Augusta, ME, and the November 6, 2008, hearing will be held at Jeff's Catering, 15 Littlefield Way, Brewer, ME.

You may submit comments, identified by the RIN 0648-XJ93 (proposed listing rule) or RIN 0648-AW77 (proposal to designate critical habitat), by any of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.

- **Mail:** Assistant Regional Administrator, NMFS, Northeast Regional Office, Protected Resources Division, One Blackburn Drive, Gloucester, MA 01930

- **Fax:** For proposed listing decision fax comments to the attention of Jessica Pruden at (978) 281-9394; for proposal to designate critical habitat fax comments to the attention of Dan Kircheis at (207) 866-7342.

**Instructions:** All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. We will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only. The proposed rule and status review report are also available electronically at the NMFS website at [http://www.nero.noaa.gov/prot\\_res/altsalmon/](http://www.nero.noaa.gov/prot_res/altsalmon/).

**FOR FURTHER INFORMATION CONTACT:** For the proposal to list the GOM DPS as endangered, Rory Saunders, NMFS, at (207) 866-4049; or Jessica Pruden, NMFS, at (978) 281-9300 ext. 6532. For the proposal to designate critical habitat for the GOM DPS, Dan Kircheis, NMFS, at (207) 866-7320.

#### SUPPLEMENTARY INFORMATION:

##### Background

On September 3, 2008, we published a proposed rule (73 FR 51415) to list an expanded GOM DPS of Atlantic salmon as endangered under the Endangered Species Act of 1973 (ESA), as amended. On September 5, 2008, NMFS published a proposed rule (73 FR 51747) to designate critical habitat for this expanded GOM DPS of Atlantic salmon. We stated that we would hold public hearings on these proposals. NMFS will accept oral comment regarding the proposed listing decision and critical habitat designation for the GOM DPS of Atlantic salmon at two public hearings.