

**CANADA LYNX
CONSERVATION AGREEMENT**

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

February 7, 2000

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. 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 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, an interagency lynx coordination effort was initiated in March 1998. 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 the scientific foundation 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 has been initiated to promote the conservation of the Canada lynx and its habitat on federal lands managed by the signatories. It identifies actions the signatories agree to take to reduce or eliminate adverse effects or risks to the species and its habitat, and to maintain the ecosystems on which this species depends. These actions are a result of considering the 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 and planning 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 comprehensive approach to conserving lynx;

- To use the Science Report and LCAS, together with locally specific information as appropriate, as the basis for these actions;
- To use the Science Report and LCAS, together with locally specific information as appropriate, as the basis for streamlining section 7 conferencing and consultation between the FS and FWS should the lynx be listed under ESA.

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 CA or development of separate agreements.

IV. AUTHORITY FOR CONSERVATION AGREEMENTS

The actions in this Conservation Agreement are 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, 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 ESA, federal agencies must utilize their authorities to meet the purposes of the Act by carrying out programs for the conservation of threatened and endangered species.

Section 5 of the Endangered Species Act specifically authorizes and requires the Secretaries of the Interior and Agriculture to "establish and implement a program to conserve fish, wildlife, and plants, including those which are listed as endangered species or threatened species"

The National Forest Management Act regulations direct the Forest Service to manage habitat to maintain viable populations of existing native vertebrate species such as lynx (36 CFR 219.19). Land and Resource Management Plans for National Forests and Grasslands (Forest Plans) are formulated, in part, to accomplish this by providing habitat management guidance applicable to

subsequently approved project actions. The plans may also provide additional guidance or direction to conserve lynx.

While land and resource management plans provide guidance for project actions, they do not compel the FS to propose a particular action. Moreover, this CA does not propose actions that are inconsistent with the Forest Plans. Long-term direction for lynx is being developed through appropriate planning processes.

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," and to "develop and implement management practices to ensure that (sensitive) species do not become threatened or endangered because of Forest Service actions." FSM 2672.12 provides guidance on the identification of species that would qualify for conservation agreements for the purpose of "removing any threats to federal candidate species," so that they no longer qualify under the Endangered Species Act criteria for formal listing as threatened or endangered.

A national interagency Memorandum of Understanding (MOU) (94-SMU-058) for the conservation of species tending toward federal listing was signed by the signatories on January 25, 1994.

V. STATUS AND DISTRIBUTION OF THE SPECIES

In its proposal to list the lynx, the U.S. Fish and Wildlife Service considers the lynx to have been historically resident within 16 states: Maine, New Hampshire, Vermont, New York, Pennsylvania, Massachusetts, Michigan, Wisconsin, Minnesota, Montana, Wyoming, Idaho, Washington, Oregon, Utah, and Colorado. 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.

The Canada lynx is proposed for federal listing as a threatened species in the conterminous United States. It is a Forest Service designated sensitive species on many National Forests in Forest Service Regions 1, 2, 4, 6 and 9. 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 status and distribution of this species.

VI. CONSERVATION ACTIONS THAT WILL BE CARRIED OUT

PART 1 - IDENTIFYING SPECIFIC AREAS SUBJECT TO THIS AGREEMENT

The FS will identify and map lynx habitat and lynx analysis units within the National Forest System (NFS) administrative units listed in the LCAS by March 31, 2000. They will coordinate with the FWS and use the habitat descriptions from the LCAS in these mapping activities. Key linkage areas and shrub-steppe habitats adjacent to lynx habitat in western States will be identified and mapped within 6 months from the date of this agreement (July 2000). These mapping efforts will include consideration of local information and conditions. Lynx habitat, as used later in this document, refers to the designations resulting from this effort.

Administrative units within each lynx geographic area (refer to the LCAS for geographic area definitions) will coordinate mapping to achieve a level of map consistency sufficient to support programmatic and project planning, consultation and other lynx-related activities. State and Tribal governments may participate in these mapping activities.

This conservation agreement applies to all NFS lands mapped as lynx habitat in the administrative units listed in the LCAS. As information from the national lynx survey (see section 4.B), lynx research and other sources (including State and Tribal) becomes available the lynx habitat maps will be refined. As a result, the areas subject to this agreement may change. Such refinements will be fully coordinated between the signatories.

PART 2 - PROGRAMMATIC PLANNING

The FS agrees that Forest Plans should include measures necessary to conserve lynx for all administrative units identified as having lynx habitat. Any necessary changes in these plans will be made through amendments and/or revisions in accordance with the National Forest Management Act (NFMA) including National Environmental Policy Act (NEPA) disclosure and public participation. The following are key principles to guide these programmatic planning process:

- 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 and the FWS's final listing decision document.
- The NFS administrative units with 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 direction can also vary, including revisions, broad scale analysis and amendment processes, amendments of groups of Forest plans, and amendment of an individual Forest plan. The process will maximize use of ongoing efforts.

Once the lynx habitat, lynx analysis units, and key linkage areas are identified, the FS agrees to coordinate with the FWS on approaches to the programmatic planning process for lynx. The objective is to coordinate assessment and planning efforts to assure a comprehensive approach to conserving lynx on National Forests. This coordination will be completed within 3 months after the key linkage areas are identified (October 2000). A schedule for amendments or revisions will be provided for public notification. Where the programmatic planning processes have already been initiated for a geographic area (see below), they can proceed while incorporating the LCAS and Science Report.

A general description of the approach to amending or revising Forest Plans follows for each of the geographic areas utilized in the LCAS. 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 lynx habitat.

Northern Rockies Geographic Area

The Northern Rockies geographic area includes 31 National Forests in four Forest Service Regions. This geographic area offers the most complex administrative and geographic challenge for programmatic planning. Many of these units in Oregon, Washington, Idaho, and Montana are covered by the Interior Columbia Basin Ecosystem Management Project (ICBEMP). ICBEMP was initiated in 1994 to, among other things, address population viability and the long-term sustainability of threatened, endangered and sensitive species for agency administrative units in the Basin (59 Federal Register 234, p. 63071, December 7, 1994). The LCAS will be provided to the ICBEMP for consideration, as appropriate at the broad scale, in its final decision. A biological evaluation or assessment that addresses lynx will be prepared for the ICBEMP decision. Any additional finer scale protection measures needed within the Basin to reflect the findings and recommendations of the LCAS would be addressed through Forest Plan revisions. Forests in the ICBEMP area that are already in revision will include management direction for lynx habitat.

For the remaining units, the Forest Service will address lynx through either ongoing revision efforts (some Forests are currently in revision) or by amending the Forest plans. The number and timing of amendments will be determined after the coordination described above. Amendments could be through a single process for multiple units or perhaps by individual units if appropriate. If the lynx plan amendment process is completed, such decision may be subsequently modified as part of individual Forest plan revisions. Whether or not a lynx amendment is completed, the scope of future revisions will include management direction for lynx habitat.

Cascade Mountains Geographic Area

The Cascades geographic area includes eight National Forests. The 1994 Northwest Forest Plan and the Supplemental Environmental Impact Statement for Amendment to the Survey and Manage, Protection Buffer, and Other Mitigating Measures Standards and Guidelines (SDEIS,

December 1999) recognize the rarity of lynx and include standards and guidelines for management but do not fully reflect the findings and recommendations of the LCAS. Additional provisions for lynx found in the LCAS will be considered as Forest Plans are revised.

Southern Rockies Geographic Area

The Southern Rockies geographic area includes six National Forests. The Forest Service will initiate a regionwide process in FY 2000 to ensure species viability, including lynx, in Forest planning. The Forest Service has a process underway to amend all National Forest Plans with lynx habitat in the Southern Rocky Mountain Ecosystem.

Great Lakes Geographic Area

The Great Lakes geographic area includes five National Forests. The Chequamegon-Nicolet, Chippewa and Superior National Forests are currently revising their plans. The scope of these revisions will include management direction for lynx if the mapping effort described above in Section VII Part 1, identifies lynx habitat within these Forests. The Hiawatha and Ottawa National Forests are several years from revision and will review the LCAS and amend forest plans unless it is determined that their plans contain sufficient direction to meet lynx conservation needs.

Northeast Geographic Area

The Northeast geographic area includes two National Forests. The Green Mountain and White Mountain National Forests will enter into revision within the next year and will address new information on lynx as part of the revision process.

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. 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 for protection of human health or safety. If habitat needs of threatened or endangered species conflict with the habitat needs for lynx, the FS and the FWS shall discuss the prudent alternative courses of action during consultation on the listed species. 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 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 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 to ensure compliance with all applicable federal laws, including ESA, NEPA and NFMA during the agencies' analysis and decision-making processes.

For actions on NFS lands which are proposed by the FS and do not involve third parties, an evaluation will be prepared of the action using relevant new information, including the LCAS and the Science Report, 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 not authorize the activity until plans are revised or amended as indicated in Part 2, or it has been determined that plans do not need to be amended or revised to incorporate additional measures for lynx. After any necessary revisions or amendments of Forest Plans to incorporate additional measures for lynx, projects may be authorized provided they are consistent with the Forest Plans and comply with ESA and other applicable laws. This section does not change current plan direction but, for an interim period, will affect priorities for selecting and implementing particular management actions.

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 section of the Conservation Agreement is intended to alter existing laws and regulations. In addition, section 504 of the 1995 Rescissions Act requires that, notwithstanding any other law, grazing permits which expire before scheduled NEPA analysis and decision shall be issued under the same terms and conditions. Section 504 also provides upon completion of the scheduled NEPA analysis and decision, the terms and conditions of existing grazing permits may be modified or reissued as necessary. As such, if an expiring grazing permit subject to Section 504 of the 1995 Rescissions Act is at issue, the new permit will be issued in accordance with the provisions of section 504.

B. Ongoing actions

This category includes all actions that have gone through the agency planning process and have a documented agency decision (decision memo, decision notice or record of decision).

Consistent with agency policy, new information on the lynx, including that in the LCAS and Science Report, will be reviewed and considered, as appropriate, for all ongoing actions to ensure compliance with applicable federal laws including but not limited to ESA, NEPA and NFMA.

C. Determination of Effect.

The parties agree to use the definition of "likely to adversely affect" found in the Endangered Species Consultation Handbook (NMFS/USFWS, March 1998, p.3-13): " any adverse effect to listed species or critical habitat that may occur as a direct or indirect result of the proposed action

or its interrelated or interdependent actions" and such adverse effects are not discountable or insignificant.

The Lynx LCAS will be used and referenced in all determinations of effect for lynx. It will be used as described in the LCAS in the section entitled "Approach to Development of Conservation Measures," and as provided for in current and future LCAS implementation guidance.

The LCAS frames 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. Effects determinations will also take into account modifications made to projects or plans that reduce or eliminate potential adverse effects to lynx. Documentation of effects determinations would occur in accordance with regulatory and agency policy for sensitive species or species listed or proposed for listing as endangered or threatened.

Administrative units in each lynx geographic area (as defined in the LCAS) should consider working together to supplement the guidance in this section (C) 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 will be 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, 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 and documentation of the progress in implementing this CA. This review could lead to the modification and exceptions discussed in part VIII below.

The agencies agree to use the Interagency Lynx Steering Committee and the interagency Biological 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. ADDITIONAL ACTIONS TO BE CARRIED OUT IF THE LYNX IS LISTED

If the Lynx is listed under the Endangered Species Act by the U.S. Fish and Wildlife Service the FS and FWS agree to enter into an interagency coordination agreement(s) and/or process(es) to ensure that joint ESA responsibilities are fully met and to allow for the agencies to efficiently undertake section 7 consultation on all actions that may affect listed species or designated critical habitat. Such interagency coordination agreement(s)/process(es) will be based on the agreement of the agencies to utilize the LCAS as a primary source of information to base all ESA Section 7 consultations and will be used to develop a streamlined and coordinated approach to analyzing and documenting the effects of actions on lynx. This process will allow agencies to prepare and receive Biological Assessments, concurrence letters and Biological Opinions in a timely manner. The LCAS will also be considered as a primary source of information for species recovery planning.

All agency actions will comply with the Endangered Species Act. For proposed agency actions, decision documents will not be signed until the decisionmaker has determined the action will be in compliance with the ESA.

The results of effects determinations for lynx will be documented in a Biological Assessment(s) or Biological Evaluation as part of ESA consultation with the U.S. Fish and Wildlife Service.

In the event of listing, all ongoing agency actions determined to likely to adversely affect the lynx will be halted until the consultation requirements of ESA have been met, unless the action has been determined not to irreversibly and irretrievably commit resources that would foreclose reasonable and prudent alternatives under Section 7(d) of ESA.

VIII. 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 or candidate species, or when new, relevant scientific information becomes available. 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 CA 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, 2004, at which time it will be reviewed for renewal or expiration.

IX. 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.

The principal contacts for this agreement are:

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X. SIGNATURES

/S/ DALE N. BOSWORTH

DALE N. BOSWORTH
Regional Forester, Northern Region

/S/ RALPH O. MORGENWECK

RALPH O. MORGENWECK
Regional Director, Region 6

/S/ JACK A. BLACKWELL

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/S/ ANNE BADGLEY

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/S/ HARVEY L. FORSGREN, II

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/S/ WILLIAM HARTWIG

WILLIAM HARTWIG
Regional Director, Region 3

/S/ LYLE LAVERTY

LYLE LAVERTY
Regional Forester, Rocky Mountain Region

/S/ RALPH PISAPIA (for)

RON LAMBERTSON
Regional Director, Region 5

/S/ ROBERT T. JACOBS

ROBERT T. JACOBS
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