

List of Subjects in 36 CFR Part 4

National Parks.

For the reasons stated in the preamble we propose to amend 36 CFR Part 4 as follows:

PART 4—VEHICLES AND TRAFFIC SAFETY

1. The authority for part 4 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. Section 4.30 is revised to read as follows:

§ 4.30 Bicycles

(a) *Park roads.* The use of a bicycle is permitted on park roads and in parking areas that are otherwise open for motor vehicle use by the general public.

(b) *Existing trails.* Except when rulemaking publication in the **Federal Register** is required by § 1.5(b) of this Chapter, a hiking or horse trail that currently exists on the ground and does not require any construction or significant modification to accommodate bicycles may be designated for bicycle use only if:

(1) The park has or will complete a park planning document addressing bicycle use on existing trails in the park; and

(2) The park has completed either an environmental assessment (EA) or an environmental impact statement (EIS) evaluating bicycle use. In addition to the requirements otherwise applicable to the preparation of an EA or EIS, the park will publish a notice in the **Federal Register** providing the public at least thirty (30) days for review and comment on an EA issued under this section; and

(3) A written determination is signed by the superintendent stating that the addition of bicycle use on existing hiking or horse trails is consistent with the protection of the park area's natural, scenic and aesthetic values, safety considerations and management objectives and will not disturb wildlife or park resources. The park will publish in the **Federal Register** a notice of the determination and provide at least thirty (30) days for public review and comment before implementing that decision for bicycle use.

(c) *New Trails.* Trails that do not exist on the ground, and therefore would require trail construction activities (such as clearing brush, cutting trees, excavation, or surface treatment), may be developed and designated for bicycle use only after:

(1) The park has completed the requirements set forth in paragraphs (b)(1) and (2) of this section; and

(2)(i) For new trails located outside of a park's developed areas, as identified in the relevant park plan, the park has promulgated a special regulation authorizing bicycle use; or

(ii) For new trails located within a park's developed areas, as identified in the relevant park plan, the park has completed the requirements set forth in paragraph (b)(3) of this section.

(d) *Administrative roads.*

Administrative roads closed to motor vehicle use by the public, but open to motor vehicles use for administrative purposes, may be designated for bicycle use by the superintendent pursuant to the criteria and procedures of §§ 1.5 and 1.7 of this chapter.

(e) *Closures.* A superintendent may close any park roads, parking areas, administrative roads, existing trails, or new trails to bicycle use pursuant to the criteria and procedures of §§ 1.5 and 1.7 of this chapter.

Dated: December 9, 2008.

Lyle Laverty,

Assistant Secretary, Fish and Wildlife and Parks.

[FWS Doc. E8–29892 Filed 12–17–08; 8:45 am]

BILLING CODE 4312–52–P

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

[FWS–R6–ES–2008–0122; MO 9221050083–B2]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To Change the Listing Status of the Canada Lynx

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to revise the listing of the Canada lynx (*Lynx canadensis*) as threatened under the Endangered Species Act of 1973, as amended (Act), to include New Mexico. We find that the petition presents substantial scientific or commercial information indicating that changing the listing status of the contiguous United States Distinct Population Segment of Canada lynx to include New Mexico may be warranted. Therefore, with the publication of this notice, we are initiating a further review in response to the petition, and we will issue a 12-month finding to determine if the petitioned action is warranted. To

ensure that our review is comprehensive, we are soliciting feedback from the public regarding this species.

DATES: To allow us adequate time to conduct this review, we request that we receive information on or before February 17, 2009.

ADDRESSES: You may submit information 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–2008–0088; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203. We will not accept e-mail or faxes. We will post all information provided to us at <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Information Solicited section below for more details).

ADDRESSES: This finding is available on the Internet at <http://www.regulations.gov>. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the Montana Ecological Services Field Office, 585 Shepard Way, Helena, MT 59601. Please submit any new information, materials, comments, or questions concerning this finding to the above address.

FOR FURTHER INFORMATION CONTACT:

Mark Wilson, Field Supervisor, Montana Ecological Services Field Office (see **ADDRESSES** section), 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:**Information Solicited**

When we make a finding that a petition presents substantial information to indicate that listing a species may be warranted, or in this case, to revise the listing of a species, we are required to promptly commence further review. To ensure that the review is complete and based on the best available scientific and commercial information, we are soliciting information from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning the status of the lynx. We are seeking information regarding the species' historical and current status and distribution, its

biology and ecology, and threats to the species and its habitat.

Please note that submissions merely stating support or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations shall be made “solely on the basis of the best scientific and commercial data available.” At the conclusion of the review, we will issue the 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act (16 U.S.C. 1533(b)(3)(B)).

You may submit your information concerning this 90-day finding by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section. Finally, we may not consider comments that we do not receive by the date specified in the **DATES** section.

If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy 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 submissions on <http://www.regulations.gov>.

Information and materials we receive, as well as supporting documentation we used in preparing this 90-day finding, 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 Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Endangered Species Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We must base this finding on information contained in the petition and supporting information readily available in our files at the time of the petition review. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and publish our notice of this finding promptly in the **Federal Register**.

Our standard for “substantial information” in the Code of Federal Regulations (CFR) regarding a 90-day

petition finding is “that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted” (50 CFR 424.14(b)). If we find that the petition presented substantial information, we are required to promptly commence a review of the status of the species.

We received a petition from Forest Guardians and six other organizations, dated August 1, 2007, requesting that we revise the listing status of the contiguous United States Distinct Population Segment of Canada lynx (lynx) (*Lynx canadensis*) to include the mountains of north-central New Mexico. We acknowledged receipt of the petition in a letter dated August 24, 2007. In that letter we advised the petitioners that we could not address their petition at that time because existing court orders and settlement agreements for other listing actions required nearly all of our listing funding. We also concluded that emergency listing of the lynx in New Mexico was not warranted.

We received a 60-day notice of intent to sue from Forest Guardians on January 24, 2008, and on April 17, 2008, (the newly-named) WildEarth Guardians *et al.* filed a complaint against the Service in the U.S. District Court in the District of Columbia for failing to make a 90-day finding on their August 1, 2007, petition. We anticipate that completion of this finding will moot the litigation filed in the U.S. District Court.

In making this finding, we relied on information provided by the petitioners, as well as information readily available in our files. We evaluated the information in accordance with 50 CFR 424.14(b). Our process for making this 90-day finding under section 4(b)(3)(A) of the Act and section 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the “substantial scientific and commercial information” threshold.

Regulatory History

For more information on previous Federal actions concerning the lynx, refer to the final listing rule published in the **Federal Register** on March 24, 2000 (65 FR 16052), and the clarifications of findings published in the **Federal Register** on July 3, 2003 (68 FR 40075), and January 10, 2007 (72 FR 1186). The final listing rule designated lynx as threatened in the contiguous United States as a Distinct Population Segment (DPS), including the States of Colorado, Idaho, Maine, Michigan, Minnesota, Montana, New Hampshire, New York, Oregon, Utah, Vermont, Washington, Wisconsin, and Wyoming. The 2003 clarification addressed listing

status, issues related to the DPS determinations, threats, and definitions of resident populations and dispersers. The 2007 clarification addressed whether any significant portion of the range of the lynx exists in the contiguous United States.

The final rule designating critical habitat for lynx published in the **Federal Register** on November 9, 2006 (71 FR 66008). On July 20, 2007, the Service announced that we would review the November 9, 2006, final rule after questions were raised about the integrity of scientific information used and whether the decision made was consistent with the appropriate legal standards. Based on our review of the final critical habitat designation, we determined that it was necessary to revise critical habitat. On January 15, 2007, the U.S. District Court for the District of Columbia issued an order stating the Service’s deadline for a proposed rule for revised critical habitat was February 15, 2008, and for a final rule for revised critical habitat was February 15, 2009. We published a proposed rule to revise critical habitat for the lynx in the **Federal Register** on February 28, 2008 (73 FR 10860).

The special rule developed under section 4(d) of the Act (65 FR 16084, March 24, 2000) defines section 9 prohibitions to lynx, as provided for under 50 CFR 17.31. The special rule applies general take prohibitions for threatened wildlife to the wild population of lynx in the contiguous United States, and addresses captive lynx, and Convention on International Trade in Endangered Species (CITES) export requirements.

Species Information

Canada lynx are medium-sized cats, generally measuring 30 to 35 inches (75 to 90 centimeters) long and weighing 18 to 23 pounds (8 to 10.5 kilograms) (Quinn and Parker 1987, Table 1). They have large, well-furred feet and long legs for traversing snow; tufts on the ears; and short, black-tipped tails.

Lynx are highly specialized predators of snowshoe hare (*Lepus americanus*) (McCord and Cardoza 1982, p. 744; Quinn and Parker 1987, pp. 684–685; Aubry *et al.* 2000, pp. 375–378). Lynx and snowshoe hares are strongly associated with what is broadly described as boreal forest (Bittner and Rongstad 1982, p. 154; McCord and Cardoza 1982, p. 743; Quinn and Parker 1987, p. 684; Agee 2000, p. 39; Aubry *et al.* 2000, pp. 378–382; Hodges 2000a, pp. 136–140 and 2000b, pp. 183–191; McKelvey *et al.* 2000b, pp. 211–232). The predominant vegetation of boreal forest is conifer trees, primarily species

of spruce (*Picea* spp.) and fir (*Abies* spp.) (Elliot-Fisk 1988, pp. 34–35, 37–42). In the contiguous United States, the boreal forest types transition to deciduous temperate forest in the Northeast and Great Lakes and to subalpine forest in the west (Agee 2000, pp. 40–41). Lynx habitat can generally be described as moist boreal forests that have cold, snowy winters and a snowshoe hare prey base (Quinn and Parker 1987, p. 684–685; Agee 2000, pp. 39–47; Aubry *et al.* 2000, pp. 373–375; Buskirk *et al.* 2000b, pp. 397–405; Ruggiero *et al.* 2000, pp. 445–447). In mountainous areas, the boreal forests that lynx use are characterized by scattered moist forest types with high hare densities in a matrix of other habitats (e.g., hardwoods, dry forest, non-forest) with low hare densities. In these areas, lynx incorporate the matrix habitat (non-boreal forest habitat elements) into their home ranges and use it for traveling between patches of boreal forest that support high hare densities where most foraging occurs.

Snow conditions also determine the distribution of lynx (Ruggiero *et al.* 2000, pp. 445–449). Lynx are morphologically and physiologically adapted for hunting snowshoe hares and surviving in areas that have cold winters with deep, fluffy snow for extended periods. These adaptations provide lynx a competitive advantage over potential competitors, such as bobcats (*Lynx rufus*) or coyotes (*Canis latrans*) (McCord and Cardoza 1982, p. 748; Buskirk *et al.* 2000a, pp. 86–95; Ruediger *et al.* 2000, p. 1–11; Ruggiero *et al.* 2000, pp. 445, 450). Bobcats and coyotes have a higher foot load (more weight per surface area of foot), which causes them to sink into the snow more than lynx. Therefore, bobcats and coyotes cannot efficiently hunt in fluffy or deep snow and are at a competitive disadvantage to lynx. Long-term snow conditions presumably limit the winter distribution of potential lynx competitors such as bobcats (McCord and Cardoza 1982, p. 748) or coyotes.

Lynx Habitat Requirements

Because of the patchiness and temporal nature of high-quality snowshoe hare habitat, lynx populations require large boreal forest landscapes to ensure that sufficient high quality snowshoe hare habitat is available and to ensure that lynx may move freely among patches of suitable habitat and among subpopulations of lynx. Populations that are composed of a number of discrete subpopulations, connected by dispersal, are called metapopulations (McKelvey *et al.* 2000c, p. 25). Individual lynx maintain

large home ranges (reported as generally ranging between 12 to 83 miles² (31 to 216 kilometers²)) (Koehler 1990, p. 847; Aubry *et al.* 2000, pp. 382–386; Squires and Laurion 2000, pp. 342–347; Squires *et al.* 2004b, pp. 13–16, Table 6; Vashon *et al.* 2005a, pp. 7–11). The size of lynx home ranges varies depending on abundance of prey, the animal's gender and age, the season, and the density of lynx populations (Koehler 1990, p. 849; Poole 1994, pp. 612–616; Slough and Mowat 1996, pp. 951, 956; Aubry *et al.* 2000, pp. 382–386; Mowat *et al.* 2000, pp. 276–280; Vashon *et al.* 2005a, pp. 9–10). When densities of snowshoe hares decline, for example, lynx enlarge their home ranges to obtain sufficient amounts of food to survive and reproduce.

In the contiguous United States, the boreal forest landscape is naturally patchy and transitional because it is the southern edge of the distributional range of the boreal forest. This generally limits snowshoe hare populations in the contiguous United States from achieving densities similar to those of the expansive northern boreal forest in Canada (Wolff 1980, pp. 123–128; Buehler and Keith 1982, pp. 24, 28; Koehler 1990, p. 849; Koehler and Aubry 1994, p. 84). Additionally, the presence of more snowshoe hare predators and competitors at southern latitudes may inhibit the potential for high-density hare populations (Wolff 1980, p. 128). As a result, lynx generally occur at relatively low densities in the contiguous United States compared to the high lynx densities that occur in the northern boreal forest of Canada (Aubry *et al.* 2000, pp. 375, 393–394) or the densities of species such as the bobcat, which is a habitat and prey generalist.

Lynx are highly mobile and generally move long distances (greater than 60 miles (100 kilometers)) (Aubry *et al.* 2000, pp. 386–387; Mowat *et al.* 2000, pp. 290–294). Lynx disperse primarily when snowshoe hare populations decline (Ward and Krebs 1985, pp. 2821–2823; O'Donoghue *et al.* 1997, pp. 156, 159; Poole 1997, pp. 499–503). Subadult lynx disperse even when prey is abundant (Poole 1997, pp. 502–503), presumably to establish new home ranges. Lynx also make exploratory movements outside their home ranges (Aubry *et al.* 2000, p. 386; Squires *et al.* 2001, pp. 18–26).

The boreal forest landscape is naturally dynamic. Forest stands within the landscape change as they undergo succession after natural or human-caused disturbances such as fire, insect epidemics, wind, ice, disease, and forest management (Elliot-Fisk 1988, pp. 47–48; Agee 2000, pp. 47–69). As a result,

lynx habitat within the boreal forest landscape is typically patchy because the boreal forest contains stands of differing ages and conditions, some of which are suitable as lynx foraging or denning habitat (or will become suitable in the future due to forest succession) and some of which serve as travel routes for lynx moving between foraging and denning habitat (McKelvey *et al.* 2000a, pp. 427–434; Hoving *et al.* 2004, pp. 290–292).

Snowshoe hares comprise a majority of the lynx diet (Nellis *et al.* 1972, pp. 323–325; Brand *et al.* 1976, pp. 422–425; Koehler 1990, p. 848; Apps 2000, pp. 358–359, 363; Aubry *et al.* 2000, pp. 375–378; Mowat *et al.* 2000, pp. 267–268; von Kienast 2003, pp. 37–38; Squires *et al.* 2004b, p. 15, Table 8). When snowshoe hare populations are low, female lynx produce few or no kittens that survive to independence (Nellis *et al.* 1972, pp. 326–328; Brand *et al.* 1976, pp. 420, 427; Brand and Keith 1979, pp. 837–838, 847; Poole 1994, pp. 612–616; Slough and Mowat 1996, pp. 953–958; O'Donoghue *et al.* 1997, pp. 158–159; Aubry *et al.* 2000, pp. 388–389; Mowat *et al.* 2000, pp. 285–287). Lynx prey opportunistically on other small mammals and birds, particularly during lows in snowshoe hare populations, but alternate prey species may not sufficiently compensate for low availability of snowshoe hares, resulting in reduced lynx populations (Brand *et al.* 1976, pp. 422–425; Brand and Keith 1979, pp. 833–834; Koehler 1990, pp. 848–849; Mowat *et al.* 2000, pp. 267–268).

In northern Canada, lynx populations fluctuate in response to the cycling of snowshoe hare populations (Hodges 2000a, pp. 118–123; Mowat *et al.* 2000, pp. 270–272). Although snowshoe hare populations in the northern portion of their range show strong, regular population cycles, these fluctuations are generally much less pronounced in the southern portion of their range in the contiguous United States (Hodges 2000b, pp. 165–173). In the contiguous United States, the degree to which regional local lynx population fluctuations are influenced by local snowshoe hare population dynamics is unclear. However, it is anticipated that because of natural fluctuations in snowshoe hare populations, there will be periods when lynx densities are extremely low.

Because lynx population dynamics, survival, and reproduction are closely tied to snowshoe hare availability, snowshoe hare habitat is a component of lynx habitat. Lynx generally concentrate their foraging and hunting activities in areas where snowshoe hare

populations are high (Koehler *et al.* 1979, p. 442; Ward and Krebs 1985, pp. 2821–2823; Murray *et al.* 1994, p. 1450; O'Donoghue *et al.* 1997, pp. 155, 159–160 and 1998, pp. 178–181). Snowshoe hares are most abundant in forests with dense understories that provide forage, cover to escape from predators, and protection during extreme weather (Wolfe *et al.* 1982, pp. 665–669; Litvaitis *et al.* 1985, pp. 869–872; Hodges 2000a, pp. 136–140 and 2000b, pp. 183–195). Generally, hare densities are higher in regenerating, earlier successional forest stages because they have greater understory structure than mature forests (Buehler and Keith 1982, p. 24; Wolfe *et al.* 1982, pp. 665–669; Koehler 1990, pp. 847–848; Hodges 2000b, pp. 183–195; Homyack 2003, p. 63, 141; Griffin 2004, pp. 84–88). However, snowshoe hares can be abundant in mature forests with dense understories (Griffin 2004, pp. 53–54).

Within the boreal forest, lynx den sites are located where coarse woody debris, such as downed logs and windfalls, provides security and thermal cover for lynx kittens (McCord and Cardoza 1982, pp. 743–744; Koehler 1990, pp. 847–849; Slough 1999, p. 607; Squires and Laurion 2000, pp. 346–347; Organ 2001). The amount of structure (e.g., downed, large, woody debris) appears to be more important than the age of the forest stand for lynx denning habitat (Mowat *et al.* 2000, pp. 10–11).

The 14-State Canada Lynx DPS

Lynx were listed in 2000 within what was determined to be the contiguous United States DPS, which included the known current and historical range of the lynx (68 FR 40080). This range included the States of Colorado, Idaho, Maine, Minnesota, Montana, New Hampshire, New York, and Washington, and also areas that could support dispersers—portions of Michigan, Oregon, Utah, Vermont, Wisconsin, and Wyoming (68 FR 40099). Other areas outside of boreal forest, where dispersing lynx had only been sporadically documented, were not considered to be within the range of the lynx, because they were deemed incapable of supporting lynx; these areas included Connecticut, Indiana, Iowa, Massachusetts, Nebraska, Nevada, North Dakota, Ohio, Pennsylvania, South Dakota, and Virginia (68 FR 40099). New Mexico was not included in this list of States because no lynx occurred there, and no lynx had ever been documented there, even sporadically, and it therefore was not considered in the then current or historical range of the species (68 FR 40083). In addition, no review of

potential habitat in New Mexico was conducted; we did not consider lynx recently released into Colorado that strayed into New Mexico as sufficient reason to include New Mexico within the range of lynx because there was no evidence that habitat in New Mexico historically supported lynx (68 FR 40083, July 3, 2003).

In 1998, when the Service proposed to list the lynx in the United States, no wild (or reintroduced) lynx were known to exist in Colorado, which represented the extreme southern edge of the species' range (65 FR 16059, March 24, 2000). Boreal forest habitat in Colorado and southeastern Wyoming, the Southern Rocky Mountain Region, is isolated from boreal forest in Utah and northwestern Wyoming, and is naturally highly fragmented (65 FR 16059, March 24, 2000). It was uncertain whether Colorado had ever supported a small self-sustaining lynx population, or whether historical records were of dispersers that arrived during high population cycles of lynx. Some of these dispersers may have remained for a period of years if hare populations were high enough to support residents and reproduction, but eventually succumbed to a lack of consistent, high quality habitat and food sources.

In 1999, the Colorado Department of Wildlife reintroduced 22 wild lynx from Canada and Alaska into southwestern Colorado (Shenk 2007, p. 20). By 2003, when we clarified the listing rule (68 FR 40076, July 3, 2003), no data indicated that the lynx released could be supported by the habitat available in Colorado. In her 2007 Wildlife Research Report, Shenk continued to conclude that “what is yet to be determined is whether current conditions in Colorado can support the recruitment necessary to offset annual mortality in order to sustain the population” (Shenk 2007, p. 18). Colorado was included in the 14-state DPS in 2000, because records indicated that lynx habitat occurred there historically; however, it was not known to sustain lynx populations. No information existed in 2000 when the final rule was published to indicate that lynx existed in New Mexico, that it was ever occupied historically, or that it could sustain lynx, therefore it was not included in the listing rule or special rule concerning lynx in the contiguous 14-State DPS. We now have documentation that lynx reintroduced in Colorado have dispersed in many directions, primarily into New Mexico, Utah, and Wyoming, but also into eight other States (Shenk 2007, pp. 6, 9). No reproduction has been documented in New Mexico or Utah, but one den was found in Wyoming (Shenk 2007, p. 15).

We included an analysis in the final lynx listing rule (68 FR 40081) on whether lynx were both discrete and significant in each of the four regions of the contiguous United States where it exists (the Northeast, Great Lakes, Southern Rocky Mountains, and Northern Rocky Mountains/Cascades). We determined that none of the regions individually constitute significantly unique or unusual ecological setting and, therefore, did not individually meet the DPS criteria. Therefore, the lynx was listed as a single contiguous United States DPS defined by 14 States.

The Petition

The August 1, 2007, petition requests that we “update and amend the lynx's listing status to include the mountains of north-central New Mexico.” Their petition presents information with respect to three topic areas: (A) Compliance with the ESA, our 1996 “Policy Regarding the Recognition of Distinct Vertebrate Population Segments under the Endangered Species Act” (DPS Policy, 61 FR 4722), and the special listing rule and preamble to the final listing rule; (B) use of best scientific and commercial data available; and (C) the necessity for lynx in New Mexico to be listed to ensure the survival and recovery of lynx in the southern Rockies.

The petition seeks modification of the currently listed 14-state DPS in light of the following factors:

1. The petitioners indicate that the Service:

(a) Listed a single contiguous United States DPS;

(b) Determined that, as a Federal agency, it is responsible for coordinating recovery for a species that crosses State boundaries;

(c) Discussed 14 individual States only in the context of describing lynx historical range, and not as a limitation on the species' listing status; and

(d) Developed language in the special listing rule for lynx (50 CFR 17.40(k)) applying prohibitions to all lynx found in the contiguous United States.

2. The petitioners indicate that:

(a) The DPS Policy prohibits the Service from using political boundaries below the international level when listing DPSs;

(b) The Service cannot use the boundary between States to subdivide a single biological population; and

(c) Use of a species' known historical range to define its listing status is inconsistent with the policy because it deems portions of the current range to be markedly separate without actual discreteness analysis.

3. The petitioners present information that the Act authorizes the listing of a species, subspecies, or DPS; the Service listed a United States DPS based on the international boundary with Canada, and no further distinctions (*e.g.*, limiting to specific States) can be made.

4. The petitioners discuss and provide information to support their assessment that the lynx should be listed in New Mexico (Ruediger *et al.* 2000; Frey 2006; Frey 2003; Malaney 2003; Malaney and Frey 2005; BISON 2003; Checklist 2003; and Shenk 2001, 2005a, 2005b, 2006, 2007). The petitioners indicate that the Southern Rockies include high elevation, mountainous habitat that extends into north-central New Mexico. They indicate that, although no known historical occurrence records of lynx in New Mexico exist (Frey 2006, p. 20), we should carefully review the forest zones in New Mexico to ascertain whether suitable habitat exists.

5. The petitioners discuss why the lynx final listing rule is not logical and is contrary to the purpose and goals of the Act that include conserving ecosystems upon which species depend. The petitioners indicate that lynx traveling into New Mexico could be legally shot and hunted, and that this is contrary to the purpose of the Act, which is to provide a means whereby the ecosystems upon which threatened and endangered species depend may be conserved.

Finding

We reviewed the petition, supporting information provided by the petitioners, and information in our files.

We find that the petition presents substantial scientific or commercial information indicating that changing the listing status of Canada lynx to include New Mexico in the threatened contiguous United States Distinct Population Segment may be warranted. Therefore, we will initiate a review of the specific points raised by the petitioners and the best available information, and present our analysis and determination in our 12-month finding.

It is important to note that the "substantial information" standard for a 90-day finding is in contrast to the Act's "best scientific and commercial data" standard that applies to a 12-month finding as to whether a petitioned action is warranted. A 90-day finding is not a status assessment of the species and does not constitute a status review under the Act. Our final determination as to whether a petitioned action is warranted is not made until we have completed a thorough review of issues raised in the petition that are

substantial, which is conducted following a substantial 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, as described above, a substantial 90-day finding does not mean that the 12-month finding will result in a warranted finding.

References Cited

A complete list of all references cited herein is available upon request from the Montana Ecological Services Field Office (see the **FOR FURTHER INFORMATION CONTACT** section).

Author

The primary authors of this document are staff from the Montana Ecological Services Field Office (see the **FOR FURTHER INFORMATION CONTACT** section).

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 12, 2008.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. E8-30110 Filed 12-17-08; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 92

[FWS-R7-MB-2008-0099; 91200-1231-9BPP L2]

RIN 1018-AW29

Migratory Bird Subsistence Harvest in Alaska; Harvest Regulations for Migratory Birds in Alaska During the 2009 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) proposes migratory bird subsistence harvest regulations in Alaska for the 2009 season. The proposed regulations would enable the continuation of customary and traditional subsistence uses of migratory birds in Alaska and prescribe regional information on when and where the harvesting of birds may occur. These proposed regulations were developed under a co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives. The

rulemaking is necessary because the regulations governing the subsistence harvest of migratory birds in Alaska are subject to annual review. This rulemaking proposes region-specific regulations that would go into effect on April 2, 2009, and expire on August 31, 2009.

DATES: We will accept comments received or postmarked on or before January 20, 2009. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by February 2, 2009.

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: RIN 1018-AW29, Division of Policy and Directives Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 222, Arlington, VA 22203.

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: Fred Armstrong, (907) 786-3887, or Donna Dewhurst, (907) 786-3499, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Mail Stop 201, Anchorage, AK 99503.

SUPPLEMENTARY INFORMATION:

Public Comments

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** section.

We will post your entire comment—including your personal identifying information—on <http://www.regulations.gov>. If you provide personal identifying information in your comment, 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.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by