

**I. General Information****A. Does This Action Apply to Me?**

This action applies to any facility handling Isophorone Diisocyanate.

**B. What Should I Consider as I Prepare My Comments for EPA?**

**Submitting CBI.** Do not submit this information to EPA through [www.regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

**Tips for Preparing Your Comments.** When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible.
- Make sure to submit your comments by the comment period deadline identified.

Dated: August 31, 2006.

**Stephen L. Johnson,**

*Administrator.*

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**BILLING CODE 6560-50-P**

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

**RIN 1018-AU52**

**Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Contiguous United States Distinct Population Segment of the Canada Lynx**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; reopening of public comment period, notice of availability of draft economic analysis and draft environmental assessment, and amended Required Determinations.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the proposal to designate critical habitat for the Contiguous United States Distinct Population Segment of the Canada lynx (*Lynx canadensis*), the availability of the draft economic analysis and draft environmental assessment of the proposed designation of critical habitat, and an amended Required Determinations section of the proposal. The draft economic analysis estimates the potential total future costs to range from \$175 million to \$889 million in undiscounted dollars over the next 20 years. Discounted future costs are estimated to be from \$125 million to \$411 million over 20 years (\$8.38 million to \$27.6 million annually) using a 3 percent discount rate, or \$99.9 million to \$259 million over 20 years (\$9.43 million to \$24.4 million annually) using a 7 percent discount rate. The amended Required Determinations section provides our determination concerning compliance with applicable statutes and Executive Orders that we have deferred until the information from the draft economic analysis of this proposal was available. We are reopening the comment period to allow all interested parties to comment simultaneously on the proposed rule, the associated draft economic analysis and draft environmental assessment, and the amended Required Determinations section.

**DATES:** We will accept public comments until October 11, 2006.

**ADDRESSES:** Written comments and materials may be submitted to us by any one of the following methods:

- (1) *E-mail:* You may send comments by electronic mail (e-mail) to [fw6\\_lynx@fws.gov](mailto:fw6_lynx@fws.gov). For directions on

how to submit e-mail comments, see the "Public Comments Solicited" section.

(2) *Mail or hand delivery/courier:* You may submit written comments and information to Field Supervisor, Montana Ecological Services Field Office, 585 Shepard Way, Helena, MT, 59601.

(3) *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Lori Nordstrom, Montana Ecological Services Field Office, at the address listed in **ADDRESSES** (telephone, 406-449-5225 extension 208).

**SUPPLEMENTARY INFORMATION:****Public Comments Solicited**

We will accept written comments and information during this reopened comment period. We solicit comments on the original proposed critical habitat designation for the Canada lynx (lynx), published in the **Federal Register** on November 9, 2005 (70 FR 68294), the clarification of the proposed critical habitat, published in the **Federal Register** on February 16, 2006 (71 FR 8258), on our draft economic analysis of the proposed designation, and on our draft environmental assessment of the proposed designation. We particularly seek comments concerning:

(1) The reasons any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether it is prudent to designate critical habitat;

(2) Specific information on the amount and distribution of lynx habitat in the contiguous United States, and what occupied habitat has features that are essential to the conservation of the species and why and what unoccupied habitat is essential to the conservation of the species and why;

(3) Comments or information that may assist us with identifying or clarifying the Primary Constituent Elements (PCEs);

(4) Land use designations and current or planned activities in areas proposed as critical habitat and their possible impacts on proposed critical habitat;

(5) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities in timber activities, residential and commercial development, recreation, and mining;

(6) As discussed in this proposed rule, we are considering whether some of the lands we have identified as having features essential to the conservation of the lynx should not be included in the final designation of critical habitat if,

prior to the final critical habitat designation, they are covered by final management plans that incorporate the conservation measures for the lynx (*i.e.*, the Lynx Conservation Assessment and Strategy (LCAS) (Ruediger *et al.* 2000), or comparable). In particular, seven National Forests and one Bureau of Land Management (BLM) district are in the process of revising or amending their Land and Resource Management Plans (LRMP) to provide measures for lynx conservation. It is anticipated that all of these plans will be complete prior to promulgation of the final critical habitat designation. As a result, all National Forest and BLM plans would have measures that provide for conservation of lynx, and consequently will not be in need of special management or protection.

Currently, National Forests that have not revised or amended their LRMPs operate under a Conservation Agreement with the Service in which the parties agree to take measures to reduce or eliminate adverse effects or risks to lynx and its occupied habitat pending amendments to LRMPs. The LCAS is a basis for implementing this Agreement.

In addition, we will be evaluating the adequacy of existing management plans to conserve lynx on lands that are designated wilderness areas or National Parks, as discussed in this proposed rule.

We specifically solicit comment on whether such areas meet the definition of critical habitat based on:

(A) Whether these areas contain features essential to the conservation of the lynx;

(B) The adequacy of these management plans or the Conservation Agreement to provide special management and protection to lynx habitat;

Any of these lands identified above may, if appropriate, be included in the final critical habitat designation, even if not proposed for designation in this notice.

(7) Our proposal to not include tribal lands in the Maine and Minnesota units under the Secretarial Order Number 3206. The size of the individual reservation lands in the Maine and Minnesota units is relatively small. As a result, we believe conservation of the lynx can be achieved by limiting the designation to the other lands in the proposed units.

(8) Whether lands in three areas are essential for the conservation of the species and the basis for why they might be essential. These areas are: (a) The Greater Yellowstone Ecosystem (Wyoming, Montana, and Idaho); (b) the

“Kettle Range” in Ferry County, Washington; and (c) the Southern Rocky Mountains,

(9) How the proposed boundaries of critical habitat units could be refined to more closely conform to the boreal forest types occupied by lynx. Maps that accurately depict the specific vegetation types on all land ownerships were not readily available. Additionally, even if accurate, detailed vegetation maps were available, we were unsure how to delineate and describe critical habitat boundaries that solely encompassed lands containing the features essential to the conservation of the lynx.

(10) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

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

(12) Whether the economic analysis identifies all State and local costs attributable to the proposed critical habitat, and information on costs that have been inadvertently overlooked;

(13) Whether the economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the designation of critical habitat;

(14) Whether the economic analysis correctly assesses the effect on regional costs associated with land- and water-use controls that derive from the designation;

(15) Whether the critical habitat designation will result in disproportionate economic impacts to specific areas that should be evaluated for possible exclusion from the final designation per our discretion under section 4(b)(2) of the Act. We are specifically seeking comment along with additional information on the estimated costs, how these estimated costs are distributed within such location, and whether we should exclude all or a portion of a unit;

(16) Whether the economic analysis appropriately identifies all costs that could result from the designation;

(17) As noted in the draft economic analysis, we did not estimate the potential economic impacts for several specific land-use categories for two reasons, first because we are unsure of how certain conservation guidelines for the lynx may be applied and second, because we are uncertain as to how we should assume development will occur. We believe that we have three options:

a. Apply potential economic impacts equally across all land-uses assuming all zoned development will occur. For example, the Lynx Conservation Assessment and Strategy allows no more than 10 percent of habitat be lost to the lynx, in which case, we would assume that 90 percent of the lands zoned for development would not be available for anything other than lynx habitat and identify any economic losses identified with those activities;

b. Assume that the 10 percent limitation on habitat loss will be calculated across the entire range of the lynx and that habitat losses will be concentrated in the highest economic value areas and that lower economic value areas will be preserved as habitat; or

c. Focus potential economic impacts in areas where major economic development is projected in order to maximize the amount of habitat protected for lynx. This approach results in the highest economic cost as most areas zoned for development would be unable to be developed.

Please provide comment on which approach is the most appropriate. Please reference page 3–12 of the draft economic analysis for further clarification of conservation guidelines.

(18) The Lynx Conservation Assessment and Strategy (LCAS) was developed for conservation of lynx and lynx habitat on Federal lands particularly for the U.S. Forest Service and Bureau of Land Management. Although developed for public lands, it represents the best available scientific information. Should the Service assume that the requirements of the LCAS management guidelines will be applied to private lands, and base the economic cost on that approach? If not, what standard should be used to measure the potential economic impacts of this designation on affected private landowners?

(19) Private timber companies may also be subject to consultation on critical habitat or face impacts from consultation or mitigation based on their interaction with Federal agencies. For these reasons, we are requesting comments from any potentially affected small businesses involved in timber activities about the impacts resulting from the proposed designation of critical habitat. How will your small business be affected by this critical habitat designation? What are the estimated cost impacts of this proposed designation to your small business? and

(20) Whether the benefits of exclusion in any particular area outweigh the benefits of inclusion under Section 4(b)(2) of the Act.

All previous comments and information submitted during the initial comment periods on the proposed rule need not be resubmitted. If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES** section). Our final designation of critical habitat for the lynx will take into consideration all comments and any additional information received during all comment periods. On the basis of public comment on the draft economic analysis, the critical habitat proposal, and the final economic analysis, 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 not appropriate for exclusion.

Please submit electronic comments in an ASCII file format and avoid the use of special characters and encryption. Please also include "Attn: RIN 1018-AU52" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. We will not consider anonymous comments and we will make all comments available for public inspection in their entirety. Comments and materials received, as well as supporting information used in preparation of the proposed critical habitat designation, will be available for public inspection, by appointment, during normal business hours at the Montana Ecological Services Field Office at the address listed under **ADDRESSES**.

You may obtain copies of the proposed rule, draft economic analysis, and draft environmental assessment by mail or by visiting our Web site at <http://mountain-prairie.fws.gov/species/mammals/lynx/criticalhabitat.htm>. In the event that our Internet connection is not functional, please obtain copies of documents directly from the Montana Ecological Services Field Office.

### Background

The lynx generally inhabits cold, moist boreal forests in the contiguous United States. On November 9, 2005, we published a proposed rule in the **Federal Register** (70 FR 68294) to designate approximately 18,031 square miles (mi<sup>2</sup>) (46,699 square kilometers (km<sup>2</sup>)) as critical habitat for the lynx. The proposed critical habitat includes

four units in the States of Idaho, Maine, Minnesota, Montana, and Washington. The original comment period on the proposed critical habitat rule closed on February 7, 2006. On February 16, 2006, we published a notice in the **Federal Register** (71 FR 8258) to reopen the public comment period and clarify the proposed designation; this second comment period closed on April 30, 2006.

Critical habitat is defined in section 3 of the Act 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 to 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.

### Draft Economic Analysis

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific 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 draft economic analysis of the November 9, 2005 (70 FR 68294), proposed designation of critical habitat for the lynx.

The draft economic analysis 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, and including those attributable to designating critical habitat. The draft analysis considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the "opportunity costs" associated with the commitment of resources to comply with habitat protection measures (e.g., lost economic opportunities associated with restrictions on land use).

The draft analysis also addresses how potential economic impacts are likely to be distributed, including an assessment

of any local or regional impacts of habitat conservation and the potential effects of conservation activities on small entities and the energy industry. This information can be used by decision-makers to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, the draft analysis looks retrospectively at costs that have been incurred since the date the lynx was listed as threatened in 2000, and considers those costs that may occur in the 20 years following a designation of critical habitat.

Costs related to conservation activities for the proposed designation of critical habitat for lynx pursuant to sections 4, 7, and 10 of the Act are estimated to be approximately \$175 to \$889 million over 20 years in undiscounted 2006 dollars. Discounted future costs are estimated to be from \$125 million to \$411 million over 20 years (\$8.38 million to \$27.6 million annually) using a 3 percent discount rate, or \$99.9 million to \$259 million over 20 years (\$9.43 million to \$24.4 million annually) using a 7 percent discount rate.

We solicit data and comments from the public on the draft economic analysis, as well as on all aspects of the proposal to designate critical habitat. We may revise the proposal, or its supporting documents, to incorporate or address new information received during the comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

### 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 (NEPA) as implemented by the Council on Environmental Quality regulations (40 CFR 1500 *et seq.*) and according to the Department of Interior NEPA procedures. The scope of the EA includes issues and resources within the contiguous United States range of the lynx in portions of Maine, Minnesota, Montana, Idaho, and Washington as well as areas with lynx habitat in Colorado and Wyoming not included in the proposed designation of critical habitat for the lynx.

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 further analyses are needed through preparation of an environmental impact statement (EIS). If the Proposed Action is selected as described, or with minimal changes, 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.

#### Required Determinations—Amended

In our November 9, 2005, proposed rule (70 FR 68294), we indicated that we would be deferring 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 was available in the draft economic analysis. Those data are now available for our use in making these determinations. In this notice we are affirming the information contained in the proposed rule concerning Executive Order 13132 and Executive Order 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). Based on the information made available to us in the draft economic analysis, we are amending our Required Determinations, as provided below, concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Order 13211, Executive Order 12630, and the Unfunded Mandates Reform Act.

#### Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule because it may raise novel legal and policy issues. Based on our draft economic analysis of the proposed designation of critical habitat for the lynx, costs related to conservation activities for lynx pursuant to sections 4, 7, and 10 of the Act are estimated to be approximately \$175 to \$889 million over 20 years in undiscounted 2006 dollars. Discounted future costs are estimated to be from \$125 million to \$411 million over 20 years (\$8.38 million to \$27.6 million annually) using a 3 percent discount rate, or \$99.9 million to \$259 million over 20 years (\$9.43 million to \$24.4 million annually) using a 7 percent discount rate. Therefore, based on our draft economic analysis, it is not anticipated

that the proposed designation of critical habitat for the lynx would result in an annual effect on the economy of \$100 million or more or affect the economy in a material way. Due to the timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed the proposed rule or accompanying economic analysis.

Further, Executive Order 12866 directs Federal Agencies promulgating regulations to evaluate regulatory alternatives (OMB, Circular A-4, September 17, 2003). Pursuant to Circular A-4, once it has been determined that the Federal regulatory action is appropriate, the agency will need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement pursuant to the Act, we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts under section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat, provided that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or combination thereof, in a designation constitutes our regulatory alternative analysis.

#### 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 an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

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, as well as 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 this proposed designation of critical habitat for lynx would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (*e.g.*, timber, recreation, public and conservation land management, transportation, and mining). 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. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies; other activities are not affected by the designation.

If this proposed critical habitat designation is made final, Federal agencies must consult with us if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process. Private companies may also be subject to consultation or mitigation impacts.

Several of the activities potentially affected by lynx conservation efforts within the study area (timber, recreation, grazing) involve small businesses. Given the rural nature of the proposed designation, most of the potentially affected businesses in the affected regions are small.

Our draft economic analysis of this proposed designation evaluated the

potential economic effects on small business entities and small governments resulting from conservation actions related to the listing of this species and proposed designation of its critical habitat. We evaluated small business entities in the following categories: Timber activities; residential and commercial development; recreation; public lands management and conservation planning; transportation, utilities, and municipal activities; and mining operations. Based on our analysis, impacts associated with small entities are anticipated to occur to timber activities, recreation, public lands management, conservation planning, transportation, and mining. Because no information was available regarding how residential and commercial development may be affected by lynx conservation, the analysis does not quantify specific impacts to residential and commercial development but rather provides the full option value for development within the study area. Thus, residential and commercial development impacts to small entities are not addressed in the SBREFA screening analysis. We are seeking comments from potentially affected small entities involved in timber activities, residential and commercial development, recreation, and mining. The following is a summary of the information contained in the draft economic analysis:

*(a) Timber Activities*

According to the draft economic analysis, impacts on timberlands have historically resulted from implementation of lynx management plans and project modifications. The majority of forecast impacts on timber relate to potential restrictions on pre-commercial thinning, with nearly half of these impacts occurring on private timberland in Maine. The economic analysis applied two scenarios to bound the impacts resulting from potential changes to timber activities. Under Scenario 2, the upper bound, timber impacts range from \$15.6 million (discounted at 7 percent) to \$33.3 million (discounted at 3 percent) over 20 years. When compared to forestry-related earning across counties in the study area (\$454 million in 2003), these potential losses are approximately 3 to 7 percent of total forestry-related earnings. Total forecast impacts to timber activities range from \$117 million to \$808 million over 20 years. Exhibits C-1 through C-4 of the economic analysis quantify the small timber companies that may be affected by the proposed rule. However, the draft economic analysis states that it is

uncertain whether private timber companies will be affected by the designation of critical habitat. Government agencies, such as the U.S. Forest Service, are subject to critical habitat consultations.

*(b) Residential and Commercial Development*

Because specific information on how residential and commercial development projects would mitigate for impacts to lynx and its habitat is unknown, the draft economic analysis does not attempt to quantify the economic impacts of mitigating development activities. Instead, it presents the full value that may be derived from potential future development within the potential critical habitat. The total projected future development value of areas proposed for designation as critical habitat for the lynx is approximately \$2.26 billion. Approximately 69.1 percent (\$1.56 billion) of this is the value of future development in Minnesota (Unit 2); 25.7 percent (\$579 million) of this is the value of future development in Maine (Unit 1), of which \$1.57 million is proposed for exclusion; and 5.2 percent (\$117 million) of this is the value of future development in Montana. Lands proposed for critical habitat in Washington are characterized by public lands managed for timber and recreation. As such, residential and commercial development is not considered to be a future land use, and the value of these lands for future development is considered to be negligible. Recognizing that approximately 80 percent of the projected value of potential future residential and commercial development within the area proposed as critical habitat consist of lands within Minnesota and recognizing the potential effects on landowners and development companies, we will consider this information pursuant to section 4(b)(2) during the development of the final designation.

No North American Industry Classification System (NAICS) code exists for landowners, and the Small Business Administration does not provide a definition of a small landowner. However, recognizing that it is possible that some of the landowners may be small businesses, this analysis provides information concerning the number of landowners potentially affected: An upward estimate of 38 in Maine, 53 in Minnesota, and 110 in Montana. It is possible that a portion of these affected landowners could be small businesses in the residential or

commercial land development industry or could be associated businesses, such as builders and developers. Actual conservation requirements undertaken by an individual landowner will depend on how much of a parcel lies within or affects proposed critical habitat. Individual single-family home development has not historically been subject to consultation or habitat conservation requirements for lynx, although consultation could be required if Federal permits from the Army Corps of Engineers, Environmental Protection Agency, or Federal Emergency Management Agency are required.

For these reasons, we are requesting comments from any potentially affected small businesses involved in residential and commercial development activities, about the impacts resulting from the proposed designation of critical habitat. How will small businesses, such as landowners, builders or developers be affected by this critical habitat designation? The economic analysis presents the full potential development value of impacted lands within the potential critical habitat as a baseline, but does not provide a cost estimate. How could this estimate be refined to demonstrate how small businesses in the residential and commercial development field will be affected by this critical habitat designation? What would you suggest as another measure of these costs?

*(c) Recreation*

Recreational activities that have the potential to affect the lynx and its habitat include over-the-snow trails for snowmobiling and cross-country skiing, accidental trapping or shooting, and recreation area expansions such as ski resorts, campgrounds, or snowmobile areas. Total forecast costs to all recreation activities in areas proposed for designation are \$1.05 to \$3.46 million, or an annualized estimate of \$57,600 to \$178,000 (applying a 7 percent discount rate) or \$54,500 to \$175,000 (applying a 3 percent discount rate). Impacts to recreation activity forecast in the draft analysis include welfare impacts to individual snowmobilers; however, the level of participation is not expected to change. As no decrease in the level of snowmobiling activity is forecast, impacts to small businesses that support the recreation sector are not anticipated.

We are requesting comments from any potentially affected small businesses involved in recreation activities, about the impacts resulting from the proposed designation of critical habitat. What are the estimated cost impacts of this

proposed designation to your small business?

*(d) Public lands management and conservation planning*

The draft economic analysis estimates that total post-designation costs of lynx conservation efforts associated with public and conservation lands management in areas proposed for designation to be approximately \$12.8 million over the next 20 years, or an annualized cost of \$940,000 (present value applying a 7 percent discount rate) or \$767,000 (applying a 3 percent discount rate). The majority of public lands are managed by Federal and State entities that do not qualify as small businesses. As such, designation of critical habitat for lynx is not anticipated to have a significant impact on a substantial number of small businesses involved in public lands management or conservation planning.

*(e) Transportation, Utilities, and Municipal Activities*

The draft economic analysis estimates that total post-designation costs resulting from lynx conservation efforts associated with transportation, utilities, and municipal activities for areas proposed for designation will range from \$34.9 million to \$55.1 million over the next 20 years, or an annualized value of \$1.9 to 2.9 million (present value applying a 7 percent discount rate) or \$1.8 to \$2.8 million (present value applying a 3 percent discount rate). Of the total post-designation costs, approximately 71 percent are attributed to transportation activities, and 29 percent are attributed to utility and municipal activities. Impacts to transportation and municipal projects are expected to be borne by the Federal and State agencies undertaking lynx-related modifications to these types of projects, including the Federal Highway Administration, the Federal Emergency Management Agency, the U.S. Army Corps of Engineers, and State transportation departments. Since Federal and State entities do not qualify as small businesses, the designation of critical habitat for the lynx is not anticipated to have a significant impact on a substantial number of small businesses associated with transportation, utilities, and municipal activities.

Impacts to dam projects, including costs of remote monitoring for lynx that could be required for relicensing of dams, could be borne by the companies that own the dams. In particular, 14 dams in Minnesota and two in Maine are expected to consider lynx conservation at the time of relicensing.

The economic analysis estimated costs of \$13,000 to \$18,000 to each of these 16 dam projects in 2025. Based on these small costs, we do not anticipate that this would be a significant impact to dam operators.

*(f) Mining Operations*

The draft economic analysis estimates total post-designation costs resulting from lynx conservation efforts associated with mining projects of approximately \$430,000, or an annualized rate of \$38,000 (present value applying a 7 percent discount rate) or \$28,100 (present value applying a 3 percent discount rate). Unit 2 (Minnesota) is the only area of potential critical habitat for which future surface mining expansion and development projects have been identified; specifically, three new or expanded mining projects are forecast to occur on leased lands of Superior National Forest. The greatest impact estimated is \$375,000 or an annualized impact of \$33,100 for the East Reserve Mine, which has a total value of \$819 million, which equates to less than a 1 percent annual impact to the mine relative to its total value. There is an uncertainty for realized impacts on the mining industry from lynx conservation activities.

We are requesting comments from any potentially affected small businesses involved in the mining industry, about the impacts resulting from the proposed designation of critical habitat. What are the estimated cost impacts of this proposed designation to your small business?

We evaluated small business entities relative to the proposed designation of critical habitat for the lynx to determine potential effects to these business entities and the scale of any potential impact. Based on our analysis, there are potential projected impacts associated with small entities in the areas of timber activities, recreation, public lands management, conservation planning, transportation, and mining. There is also a possibility of potential projected impacts to development activities. Due to the lack of information, the economic analysis for this critical habitat does not attempt to assign development impacts to specific small entities, rather leaving open the question of whether any small entities will be affected. We have outlined above potential projected future impacts to these entities resulting from conservation-related activities for the lynx, and asked potential affected small entities for input as to what the likely impacts will be for their industry sectors. We do, however, recognize that there may be disproportionate impact to certain sectors and geographic areas

within lands proposed for designation. As such, we will more fully evaluate these potential impacts during the development of the final designation, and may, if appropriate, consider such lands for exclusion pursuant to section 4(b)(2) of the Act.

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

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed designation of critical habitat for the Canada lynx is considered a significant regulatory action under Executive Order 12866 due to it potentially raising novel legal and policy issues. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute “a significant adverse effect” when compared without the regulatory action under consideration. The draft economic analysis finds that none of these criteria are relevant to this analysis (refer to Appendix C of the draft economic analysis). Thus, based on the information in the draft economic analysis, energy-related impacts associated with lynx conservation activities within proposed critical habitat are not expected. 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), the Service makes 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” and “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. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "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."

The designation of critical habitat 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. Non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat. 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) The draft economic analysis discusses potential impacts of critical habitat designation for lynx on timber activities, development, recreation, public lands management and conservation planning, transportation, utilities, and municipal activities, and mining operations. The analysis estimates that annual costs of the rule could range from \$175 million to \$889 million in constant dollars over 20 years. Impacts are largely anticipated to affect timber management, with some effects on residential and commercial development, recreation, and transportation. Impacts on small governments are either not anticipated, or they are anticipated to be passed through to consumers. Consequently, for the reasons discussed above, we do not believe that the designation of critical habitat for 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 Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of proposing critical habitat for the lynx in a takings implications assessment. The takings implications assessment concludes that this proposed designation of critical habitat for the lynx does not pose significant takings implications.

### Author

The primary authors of this notice are the staff of the Montana Ecological Services Field Office (see **ADDRESSES** section).

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

Dated: August 29, 2006.

**David M. Verhey,**

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

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