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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2024–0142; FXES1111090FEDR–256–FF09E21000]

RIN 1018–BH59

Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for the Contiguous U.S. Distinct Population Segment of the Canada Lynx

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to revise the critical habitat designation for the contiguous U.S. distinct population segment (DPS) of the Canada lynx (*Lynx canadensis*) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 19,112 square miles (49,500 square kilometers) in Colorado, Idaho, Montana, New Mexico, Washington, and Wyoming fall within the boundaries of the proposed revisions to the critical habitat designation. We also announce the availability of an economic analysis of the proposed revised designation of critical habitat for the Canada lynx DPS.

DATES: We will accept comments received or postmarked on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date. We must receive requests for a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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

(1) *Electronically*: Go to the Federal eRulemaking Portal: *https://www.regulations.gov*. In the Search box, enter FWS–R6–ES–2024–0142, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on "Comment."

(2) *By hard copy*: Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R6–ES–2024–0142, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *https://www.regulations.gov*. This generally means that we will post any personal information you provide us (see **Information Requested**, below, for more information).

Availability of supporting materials: Supporting materials, such as the species status assessment report addendum, are available on the Service's website at *https://ecos.fws.gov/ecp/species/A073?*, at *https://www.regulations.gov* at Docket No. FWS–R6–ES–2024–0142, or both. If we finalize the critical habitat designation, we will make the coordinates or plot points or both from which the maps are generated available at *https://www.regulations.gov* at Docket No. FWS–R6–ES–2024–0142 and on the Service's website at *https://www.fws.gov/species/canada-lynx-lynx-canadensis*.

FOR FURTHER INFORMATION CONTACT: Amity Bass, Field Supervisor, U.S. Fish and Wildlife Service, Montana Ecological Services Field Office, 585 Shepard Way, Suite 1, Helena, MT 59601; telephone 406–449–5225. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make

international calls to the point-of-contact in the United States. Please see Docket No. FWS–R6–ES–2024–0142 on *https://www.regulations.gov* for a document that summarizes this proposed rule.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Endangered Species Act (Act), any species that is determined to be threatened or endangered requires critical habitat to be designated to the maximum extent prudent and determinable. Designations and revisions of critical habitat can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process (5 U.S.C. 551 et seq.).

The contiguous U.S. distinct population segment (DPS) of the Canada lynx DPS was listed as a threatened species in 2000. We designated critical habitat for the Canada lynx DPS in 2006 and revised the designation in 2009 and 2014. In 2022, the Service committed in a settlement agreement to submit to the *Federal Register* a proposed rule on the revised designation of critical habitat for the Canada lynx DPS by November 21, 2024.

What this document does. This document proposes to revise the existing designation of critical habitat for the threatened contiguous U.S. DPS of the Canada lynx. Because the Western United States was the subject of a 2016 court order that found fault with our 2014 final critical habitat rule for not designating critical habitat in Colorado and in five National Forests in Idaho and Montana, and because we have new scientific information on lynx habitat in the Western United States, we are proposing to revise Canada lynx critical habitat in the Western United States only. We are not proposing any revisions to critical habitat in Maine and Minnesota.

The basis for our action. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary of the Interior (Secretary) that such areas are essential for the conservation of the species. Section 4(b)(2) of the Act states that the Secretary must make the designation on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impacts of specifying any particular area as critical habitat.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) Specific information on:

(a) The amount and distribution of Canada lynx habitat in the Western United States;

(b) Any additional areas occurring within the range of the species in the Western United States that should be included in the designation because they (i) were occupied at the time of listing and contain the physical or biological features that are essential to the conservation of the species and that may require special management considerations or

protection, or (ii) were unoccupied at the time of listing and are essential for the conservation of the species; and

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change.

(2) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(3) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation, and the related benefits of including or excluding specific areas.

(4) Information on the extent to which the description of probable economic impacts in the draft economic analysis is a reasonable estimate of the likely economic impacts and any additional information regarding probable economic impacts that we should consider.

(5) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act. In particular, we are considering excluding all Tribal lands (in Montana and New Mexico) as well as lands in (a) Montana, managed in accordance with the Montana Department of Natural Resources and Conservation (DNRC) Forested State Trust Lands Habitat Conservation Plan (Montana DNRC and U.S. Fish and Wildlife Service 2010, entire), and (b) Washington, managed in accordance with the Washington Department of Natural Resources (DNR) Lynx Habitat Management Plan for DNR-managed Lands (Washington DNR 2006, entire). If you think we should exclude any additional areas, please provide information supporting a benefit of exclusion.

(6) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, do not provide substantial information necessary to support a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made solely on the basis of the best scientific and commercial data available, and section 4(b)(2) of the Act directs that the Secretary shall designate critical habitat on the basis of the best scientific data available.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *https://www.regulations.gov*, your entire submission—including any personal identifying information—will be posted on the website. 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 *https://www.regulations.gov*.

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

Our final determination may differ from this proposal because we will consider all comments we receive during the comment period as well as any information that may become available after this proposal. Based on the new information we receive (and, if relevant, any comments on that new information), our final designation may not include all areas proposed, may include some additional areas that meet the definition of critical habitat, or may exclude some areas if we find the benefits of exclusion outweigh the benefits of inclusion and exclusion will not result in the extinction of the species. In our final rule, we will clearly explain our rationale and the basis for our final decision, including why we made changes, if any, that differ from this proposal.

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the *Federal Register* and local newspapers at least 15 days before the hearing. We may hold the public hearing in person or virtually via webinar. We will announce any public hearing on our website, in addition to the *Federal Register*. The use of virtual public hearings is consistent with our regulations at 50 CFR 424.16(c)(3).

Previous Federal Actions

The Service listed the Canada lynx DPS as a threatened species under the Act in 2000 (65 FR 16052, March 24, 2000). The Service first designated Canada lynx critical habitat in 2006 (71 FR 66008, November 9, 2006), revised the designation in 2009 (74 FR 8616, February 25, 2009), and revised critical habitat again in 2014 (79 FR 54782, September 12, 2014). The 2014 designation was challenged and in 2016 the District Court for the District of Montana held that the Service erred by excluding Colorado and

five National Forests in Montana and Idaho from the critical habitat designation, *WildEarth Guardians v. U.S. Department of the Interior*, 205 F. Supp.3d 1176 (D. Mont. 2016). The court remanded the critical habitat designation to the Service to reconsider. In 2017, we completed the species status assessment (SSA) report to summarize the best available scientific information on the status and likely future viability of the Canada lynx DPS (Service 2017a, entire). The SSA provided the scientific basis for a 5-year review completed on November 13, 2017, in which we recommended removing the Canada lynx DPS from the Federal List of Endangered and Threatened Wildlife (Service 2017b, entire). Given this recommendation, on December 20, 2017, we issued a memorandum on our section 4(f)(1) determination regarding recovery planning for the Canada lynx that found a recovery plan will not promote the conservation of the species (Service 2017c, entire).

In 2020, the Service was challenged for its failure to revise Canada lynx critical habitat in accordance with the 2016 court order. The Service reached a settlement agreement for the date it would comply with the 2016 court order. On April 25, 2022, the court ordered the Service to submit a proposed revised critical habitat rule for the Canada lynx DPS to the *Federal Register* by November 21, 2024, and a final critical habitat rule within the statutory timeframe in accordance with the settlement agreement.

On December 1, 2023, the Service completed and released an addendum to the SSA report (Service 2023a, entire), to inform recovery planning and critical habitat revision. We published a notice of availability of the draft recovery plan and made it available for public comment on December 1, 2023.

For more information on previous Federal actions concerning the Canada lynx DPS, refer to the final listing rule published in the *Federal Register* on March 24, 2000 (65 FR 16052); the clarification of findings published in the *Federal Register* on July 3, 2003 (68 FR 40076); the *Recovery Outline for the Contiguous United States DPS of*

Canada Lynx (recovery outline; Service 2005, entire); the final rule designating critical habitat for Canada lynx published in the *Federal Register* on November 9, 2006 (71 FR 66008); the final rule designating revised critical habitat published in the *Federal Register* on February 25, 2009 (74 FR 8616); the 12-month finding on a petition to change the final listing of the DPS of the Canada lynx to include New Mexico published in the *Federal Register* on December 17, 2009 (74 FR 66937); the proposed rule to revise the designation of critical habitat and the boundary for the Canada lynx DPS published in the *Federal Register* on September 26, 2013 (78 FR 59430); and the final rule designating revised critical habitat for Canada lynx published in the *Federal Register* on September 12, 2014 (79 FR 54782). These documents and others addressing the status and conservation of the Canada lynx in the contiguous United States may be viewed and downloaded from the Service's web site: *https://ecos.fws.gov/ecp/species/A073?*.

Peer Review

On December 1, 2023, a team of Service biologists, in consultation with recognized lynx and climate experts, completed an addendum to the 2017 SSA for the Canada lynx DPS. The SSA report and addendum represent a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species.

In accordance with our joint policy on peer review published in the *Federal Register* on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review in listing and recovery actions under the Act, we solicited independent scientific review of the information contained in the Canada lynx SSA report addendum. We sent the SSA report addendum to five independent peer reviewers and received five responses. Results of this structured peer review process can be found at *https://www.regulations.gov*. In preparing this proposed

rule, we incorporated the results of these reviews, as appropriate, into the SSA report addendum, which is the foundation for this proposed rule.

Summary of Peer Reviewer Comments

As discussed in **Peer Review** above, we received comments from five peer reviewers on the draft SSA report addendum. We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the contents of the SSA report addendum. The peer reviewers generally concurred with our methods and conclusions. The peer reviewers provided additional information, terminology clarifications, suggestions to explain uncertainties, clarifications to the explanation of our resiliency model, and other editorial suggestions. Peer reviewer comments and suggestions were incorporated as appropriate in the final version of the SSA report addendum (Service 2023a, entire).

Critical Habitat

Background

Critical habitat is defined in section 3(5)(A) of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (i.e., range). Such areas may include those areas used

throughout all or part of the species' life cycle, even if not used on a regular basis (e.g., migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that each Federal action agency ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of designated critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation also does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Rather, designation requires that, where a landowner requests Federal agency funding or authorization for an action that may affect an area designated as critical habitat, the Federal agency consult with the Service under section 7(a)(2) of the Act. If the action may affect the listed species itself (such as for occupied critical habitat), the Federal agency would have already been required to consult with the Service even absent the designation because of the requirement to ensure that the action is not likely to jeopardize the continued existence of the species. Even if the Service were to conclude after consultation that the

proposed activity is likely to result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement "reasonable and prudent alternatives" to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat).

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(b)(2) of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the *Federal Register* on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the

use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information compiled in the SSA report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions found in the 4(d) rule. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of the species. Similarly, critical habitat designations made on the basis of the best scientific data available at the time of designation will not control the direction and substance of future recovery plans, habitat

conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of those planning efforts calls for a different outcome.

Physical or Biological Features Essential to the Conservation of the Species

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas we will designate as critical habitat from within the geographical area occupied by the species at the time of listing, we consider the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. The regulations at 50 CFR 424.02 define "physical or biological features essential to the conservation of the species" as the features that occur in specific areas and that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. For example, physical features essential to the conservation of the species might include gravel of a particular size required for spawning, alkaline soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or absence of a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic essential to support the life history of the species.

In considering whether features are essential to the conservation of the species, we may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

Species Needs, Habitat, Ecological Requirements

A comprehensive review of the species description, biology, taxonomy, genetics, life history, ecology, distribution, species needs, habitat, and ecological requirements of the Canada lynx DPS is presented in the SSA report (Service 2017a, entire) and SSA report addendum (Service 2023a, entire). Here we present a summary of information relevant to the physical and biological features essential to the conservation of the species.

The Canada lynx (hereafter referred to as lynx) is a North American wild cat that is most strongly associated with northern-latitude boreal forests (taiga) of Canada and Alaska (McCord and Cardoza 1982, p. 729; Agee 2000, pp. 39–41; Aubry et al. 2000, pp. 373–374; Mowat et al. 2000, p. 272). The southern peripheries of the boreal forest and lynx range extend into the northern contiguous United States (Service 2017a, pp. 11–12). The Canada lynx is a medium-sized cat with long legs and large, well-furred paws, which make it well-adapted for traversing and hunting in deep, powdery snow. Its low foot-loading (weight per surface area of foot) is thought to provide a competitive advantage (Buskirk et al. 2000a, p. 90; Buskirk et al. 2000b, p. 400; Interagency Lynx Biology Team (ILBT) 2013, pp. 26, 36, 81) over other terrestrial predators of snowshoe hares, the lynx's primary prey.

Lynx rely heavily on snowshoe hare to support survival, reproduction, recruitment, and, therefore, population persistence (Ruggiero et al. 2000a, p. 110; Mowat et al. 2000, p. 270; Steury and Murray 2004, pp. 128, 136–138; Service 2005, p. 2; ILBT 2013, p. 30–34; 79 FR 54782, September 12, 2014). All aspects of lynx life history are inextricably tied to the snowshoe hare, which comprises most of the lynx diet throughout its range (Nellis et al. 1972, pp. 323–325; Brand et al. 1976, pp. 422–425; Koehler and Aubry 1994, pp. 75, 85; Apps 2000, pp. 358–359, 363; Aubry et al. 2000, pp. 375–378; Mowat et al. 2000, pp. 267–268), including the DPS (Koehler 1990, p. 848; von Kienast 2003, pp. 37–38; Squires et al. 2004, p. 15, table 8; Moen 2009, p. 7; Vashon et al. 2012, p. 11; Olson 2015, pp. 60–69; Ivan and Shenk 2016, p. 1053). Being highly specialized hare predators, lynx require landscapes that consistently support relatively high hare densities (McCord and Cardoza 1982, p. 744; Quinn and Parker 1987, pp. 684–685; Aubry et al. 2000, pp. 375–378).

The best available science, including recent research in the DPS' range, suggests that landscape-level hare densities consistently ≥ 0.5 hares/hectare (ha) (0.2 hares/acre (ac)) and favorable snow conditions (deep and persistent unconsolidated ("fluffy") snow) for about 4 months per year are needed to support lynx occupancy, reproduction, and recruitment (Hoving et al. 2005, p. 749; Gonzalez et al. 2007, p. 7; Squires and Ruggiero 2007, pp. 313–314; Moen et al. 2012, pp. 352–354; Simons-Legaard et al. 2013, pp. 567, 574–575). At the southern periphery of lynx distribution, some places, including within the range of the DPS, seem to be at minimum thresholds to meet these requirements or do so inconsistently.

Lynx and snowshoe hares are strongly associated with moist boreal forests, where winters are long, cold, and snowy (Bittner and Rongstad 1982, p. 154; McCord and Cardoza 1982, p. 743; Quinn and Parker 1987, pp. 684–685; Agee 2000, pp. 39–47; Aubry et al. 2000, pp. 373–382; Hodges 2000a, pp. 183–191; Hodges 2000b, pp. 136–

140; McKelvey et al. 2000a, 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). Snowshoe hares feed on conifers, deciduous trees, and shrubs (Hodges 2000a, pp. 181–183) and 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. 183–195; Hodges 2000b, pp. 136–140). Lynx population dynamics, survival, and reproduction are closely tied to snowshoe hare availability, making snowshoe hare habitat the primary component of lynx habitat.

Lynx distribution and population persistence are also influenced by snow conditions (Peers et al. 2012, pp. 4–9). The species is generally restricted to areas that receive deep and persistent unconsolidated ("fluffy") snow, which is thought to allow lynx, with their proportionately longer limbs and very large feet, to outcompete other terrestrial hare predators that are less efficient in such conditions (McCord and Cardoza 1982, pp. 748–749; Quinn and Parker 1987, p. 684; Buskirk et al. 2000a, pp. 89–94; Buskirk et al. 2000b, pp. 400–401; Ruggiero et al. 2000b, pp. 445–449; Hoving 2001, p. 75; Hoving et al. 2005, pp. 744–749; Carroll 2007, entire; Gonzalez et al. 2007, entire; ILBT 2013, pp. 25–26; 79 FR 54782, September 12, 2014). The lynx's physical adaptations are thought to provide the lynx a seasonal advantage over potential terrestrial competitors and predators, which generally have higher foot-loading, causing them to sink into the snow more than the lynx (McCord and Cardoza 1982, p. 748; Murray and Boutin 1991, entire; Buskirk et al. 2000a, pp. 86–95; Ruediger et al. 2000, pp. 1–11; Ruggiero et al. 2000b, pp. 445, 450).

Buskirk et al. (2000a, entire) described potential exploitation (for food) and interference (avoidance) competition between lynx and other terrestrial and avian predators of hares, several of which have also been documented to prey on lynx. Coyotes

(*Canis latrans*) were thought most likely to exert local or regionally important exploitation competition impacts to lynx (Buskirk et al. 2000a, p. 89). However, subsequent research showed little evidence of meaningful competition for hares between lynx and coyotes in winter (Kolbe et al. 2007, p. 1416; Dowd and Gese 2012, entire; Guillaumet et al. 2015, pp. 141–144), and evidence of competition with, and displacement of lynx by, bobcats (*Lynx rufus*) (Robinson 2006, pp. 120–129; Peers et al. 2012, pp. 4–9; Peers et al. 2013, entire; Sirén et al. 2021, p. 1768; Sirén et al. 2022, pp. 761–762). Coyotes, bobcats, and cougars (*Puma concolor*; also mountain lion) are capable of imparting interference competition (i.e., aggressive encounters) effects on lynx (Buskirk et al. 2000a, p. 89; Scully et al. 2018, pp. 765–766; King et al. 2020, p. 338). Interference would most likely be during summer but could also occur during winter in areas lacking deep, unconsolidated snow (ILBT 2013, p. 36).

Individual lynx require large landscapes with hare densities that maximize their chances of (1) surviving from birth to independence, (2) establishing and maintaining a home range, (3) breeding successfully, and (4) contributing genes to future generations (Breitenmoser et al. 1993, p. 552). These landscapes also must provide conditions that allow lynx to compete sufficiently for hares and minimize the likelihood of predation and other sources of lynx mortality.

Lynx populations need large (thousands of square kilometers) boreal forest landscapes with hare densities capable of supporting (1) multiple lynx home ranges, (2) reproduction and recruitment most years, and (3) at least some survival even during years when hare numbers are low. Lynx populations estimated at fewer than 25 individuals or occupying habitat areas too small (<483 mi^2 (1,250 km^2)) to support at least 25 individual lynx are considered “not resilient/functionally extirpated” because populations that small are unlikely to persist over time (Service 2023a, p. 50–51). Large boreal forest landscapes also must have snow conditions (consistency, depth, and duration) that allow lynx to

outcompete other terrestrial hare predators. To persist, lynx populations must exhibit recruitment and immigration rates that equal or exceed mortality and emigration rates on average over the long term. Immigration may be particularly important to the persistence and stability of lynx populations at the southern periphery of the range, including those within the DPS, where hare densities are generally low and hare populations are either non-cyclic or weakly-cyclic compared to northern populations. Low hare densities reduce the likelihood that lynx recruitment will consistently equal or exceed mortality. Non-cyclic or weakly-cyclic hare populations are unlikely to allow the rapid lynx population recovery observed in northern lynx populations outside of the DPS when hare numbers increase dramatically after cyclic population crashes. Conversely, more stable hare populations, even at lower landscape-level densities, likely provide stability (i.e., prevent periodic steep declines) among lynx populations on the periphery of the range in the DPS and in southern Canada. Although immigration rates for DPS populations are unknown, as is the rate and periodicity of immigration needed to provide demographic stability among them, connectivity with and immigration from lynx populations in Canada are believed to be important to the persistence of lynx populations in the DPS (McKelvey et al. 2000a, pp. 232–242; McKelvey et al. 2000b, pp. 32–34; Schwartz et al. 2002, entire; Service 2005, p. 2; ILBT 2013, pp. 34, 42, 47, 54, 60, 65; Squires et al. 2013, p. 187; 79 FR 54782, September 12, 2014).

Summary of Essential Physical or Biological Features

We derive the specific physical or biological features essential to the conservation of Canada lynx from studies of the species' habitat, ecology, and life history as described below. Additional information can be found in the 2014 final critical habitat rule (79 FR 54782, September 12, 2014), the 2017 SSA report (Service 2017a, entire), and the SSA report addendum (Service 2023a, entire); available on *https://www.regulations.gov* under Docket No. FWS–R6–ES–2024–0142.

We have determined that the following physical or biological features are essential to the conservation of the Canada lynx DPS:

(1) Snowshoe hare densities adequate to support lynx residency and reproduction over time, distributed across large landscapes.

(2) A mosaic of boreal/subalpine forest at variable forest structural stages, the majority of which provide year-round dense horizontal cover at ground or snow level.

(3) Winter conditions that provide and maintain deep fluffy snow for extended periods of time.

(4) Suitable habitat large enough (483 mi^2 (≥1,250 km^2)) to support breeding populations.

(5) Permeable landscapes conducive to within-unit lynx daily movements and dispersal.

We note here that the 2014 critical habitat rule included a discussion of primary constituent elements (PCEs) essential to the conservation of the species (79 FR 54782 at 54811, September 12, 2014). The Service no longer uses PCEs to define critical habitat; rather, we now evaluate and describe the physical or biological features that are essential to the conservation of the species in accordance with the definitions in the Act and our implementing regulations at 50 CFR 424.12(b). We have identified the physical or biological features in this revised proposed critical habitat rule for the Canada lynx DPS in the Western United States. The analysis provided in the 2014 critical habitat rule in support of critical habitat Units 1 (Maine) and 2 (Minnesota), including the description of PCEs, still applies to those units that are not subject to this revision. Even though the eastern critical habitat units are based on PCEs, those PCEs are biologically very similar to the physical and biological features used in this proposed rule.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection. The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: climate change; vegetation management; wildland fire management; and habitat loss/fragmentation through development, roads, and mining (ILBT 2013, pp. 68–78; Service 2017a, pp. 51–105). A detailed discussion of activities influencing the Canada lynx DPS and its habitat can be found in the SSA report (Service 2017a, pp. 51–105) and SSA report addendum (Service 2023a, pp. 31–46).

Since the DPS was listed in 2000, nearly all Federal forest plans and resource management plans throughout the DPS range have been revised in coordination with the Service and the lynx research community to include science-based measures and management practices consistent with lynx conservation, thereby greatly reducing the potential for population-scale habitat deterioration on Federal lands. These efforts have contributed significantly to addressing the threat for which the DPS was listed—the inadequacy, at that time, of regulatory mechanisms in U.S. Forest Service (USFS) and Bureau of Land Management (BLM) land and resource management plans. Additionally, Federal partners continue to incorporate the best available science into lynx habitat management practices on Federal lands. However, in the future, climate change-related impacts have the potential to reduce lynx and snowshoe hare habitat within the DPS. Special management considerations or protection that may be required within critical habitat areas to address these threats include (but are not limited to) the following: maintaining high-quality lynx habitat and potential climate refugia; maintaining boreal forest vegetation communities that support high densities of snowshoe hares and resident lynx breeding populations; supporting connectivity between DPS populations;

implementation of forest management practices that prevent or reduce risk of catastrophic wildfire; reducing indirect impacts to habitat from activities adjacent to critical habitat units; and minimizing habitat disturbance, fragmentation, and destruction through use of best management practices for vegetation management activities.

Conservation Strategy and Selection Criteria Used To Identify Critical Habitat

Conservation Strategy

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat. The occupied areas identified encompass the varying habitat types and distribution of the species and provide sufficient habitat to allow for maintaining the populations. We are not currently proposing to designate any areas outside the geographical area occupied by the species at the time of listing because we have not identified any unoccupied areas that meet the definition of critical habitat. Designating areas outside the geographical area occupied by the species at the time of listing would not improve the likelihood of recovery (the point at which the protections of the Act are no longer necessary and delisting the DPS would be appropriate). We do not find that the DPS can only be conserved and recovered if we were to designate areas not occupied at the time of listing. Because these areas are not essential for the conservation and recovery of the DPS, designating them would not comply with the Act.

We developed a conservation strategy for the Canada lynx DPS to determine and select appropriate areas occupied at the time of listing that contain the physical or biological features essential to the conservation of the species. The goal of our

conservation strategy for lynx is to recover the DPS to the point where the protections of the Act are no longer necessary. The role of critical habitat in achieving this conservation goal is to identify the specific areas within the range of the Canada lynx DPS that provide the essential physical and biological features without which the species' range-wide resiliency, redundancy, and representation would be insufficient to achieve recovery. This, in turn, requires an understanding of the fundamental parameters of Canada lynx biology and ecology based on well-accepted conservation-biology and ecological principles for conserving species and their habitats, such as those described in the 2017 SSA report (Service 2017a, entire), the 2023 SSA report addendum (Service 2023a, entire), and the 2023 draft recovery plan for the Canada lynx (Service 2023b, entire).

The conservation strategy is the outline for the long-term viability of the Canada lynx DPS. In developing our conservation strategy, we focused on maintaining sufficient representation and redundancy within the DPS by maintaining or improving the resiliency of lynx populations and conserving their habitats. The conservation strategy includes the following:

(1) Maintenance or improvement of the current resiliency of the five breeding lynx populations (Maine, Minnesota, North Cascades, Northern Rocky Mountains, Southern Rocky Mountains) to preserve the redundancy and representation of the DPS.

(2) Identification and conservation of high-quality lynx habitat and potential climate refugia within the previously mentioned five areas and the Greater Yellowstone Area (GYA).

(3) Continued implementation and refinement of regulatory mechanisms and other conservation measures that incorporate the best available science to ensure the conservation of lynx habitats and populations.

(4) Populations distributed across the three large representative units in the DPS range (Northeast, Midwest, and West), and habitat that:

(a) Supports high or moderate-resiliency, resident lynx breeding populations.

(b) Supports connectivity between DPS populations and the core of the species' range in Canada.

(c) Provides the climatic conditions that support resident populations.

(d) Provides the boreal forest vegetation communities that support high densities of snowshoe hares and resident lynx breeding populations.

(e) Is potentially capable of providing climate refugia.

Criteria Used To Identify Critical Habitat

In previous critical habitat designations, we identified lynx habitat using expert judgement of vegetation and habitat types and elevation thresholds. For the Western United States, we now have new, state-of-the-art models of lynx habitat (Olson et al. 2021, entire; Squires et al., in review) based on the best empirical data of lynx locations across the Western United States. The models accurately map environmental covariates (abiotic and biotic features) found at lynx locations, as compared to a random sample of background locations, within and outside of known home ranges. These models were built using data from thousands of verified fine-scale global positioning system (GPS) locations of radio-marked resident lynx in Montana, Washington, Wyoming, and Colorado. Additionally the models were tested and verified using location data withheld from building the models and incidental lynx occurrence data that included locations within home ranges and locations outside of home ranges. The models cover the western extent of the Canada lynx DPS range and indicate the relative likelihood of lynx presence in Washington, Idaho, western Montana, northwestern and south-central Wyoming, northeastern Utah, western Colorado, and northern New Mexico.

These models and the use of them to identify high-quality lynx habitat were documented in the 2022 interagency Western Lynx Biology Team (WLBT) report (WLBT 2022, entire). The WLBT included species experts from the Service, USFS, and

BLM, as well as scientists from the U. S. Department of Agriculture Rocky Mountain Research Station who led the development of the new habitat models. The WLBT framework also underwent formal peer review. The interagency team used a science-based approach to identify key habitat areas from the models and developed a tiered approach to model outputs by evaluating the extent and proportion of modeled high-quality habitat.

The WLBT used the models to identify areas of high conservation value for lynx where high-quality habitat is abundant, and further assigned those areas into three tiers. Tier 1 polygons provide large and well-connected areas with high proportions of high-quality habitat, and support long-term lynx occupancy and reproduction. Tier 2 polygons contain lower proportions of high-quality habitat, and they provide habitat for expansion or redundant habitat areas. In tier 2, the objective is to provide habitat to support periodic to regular occupancy, which may include reproductively successful individuals at times. Tier 3 areas are generally smaller islands of habitat that may function as "stepping stones" for dispersing lynx; these areas may be important to maintain connectivity and facilitate dispersal across the landscape and among tiers.

The WLBT mapping effort and underlying species distribution models identify habitat with the climatic and vegetation characteristics necessary to support lynx residency and reproduction. This includes boreal and subalpine forested habitats with a mosaic of variable forest successional and structural stages, dense horizontal cover, persistent snow, and moderate to high snowshoe hare densities. To inform our delineation of revised critical habitat in the Western United States, the Service used the tier 1 habitat described by the WLBT. When designating critical habitat, we are not required to designate all areas where a species occurs. We chose to focus on tier 1 polygons because these are the areas that have at least 50 percent of the polygon in the highest quality habitat. Tier 1 habitat is the most valuable to long-term lynx occupancy and reproduction

and sufficient to provide for the conservation of the Canada lynx DPS. We did not use tier 2 or 3 polygons, as those areas have lower proportions of high-quality lynx habitat, such that they are not likely to support long-term occupancy and reproduction. We identified tier 1 polygons that exceeded or were in close proximity to other polygons that exceeded 1,250 contiguous km^2 (483 mi^2) of high-quality habitat as the areas on the landscape that contain the physical and biological features essential to the conservation of the Canada lynx DPS.

In summary, for areas within the geographical area occupied by the species at the time of listing, we delineated critical habitat unit boundaries using the following criteria and methodology. We mapped all WLBT tier 1 polygons in the Cascades, Northern Rocky Mountains, and Southern Rocky Mountains. These polygons were then reviewed by Service biologists, using the best available information, to ensure that all polygons have the physical and biological features essential to Canada lynx. These features include (1) snowshoe hare densities adequate to support lynx residency and reproduction over time, distributed across large landscapes; (2) a mosaic of boreal/subalpine forest at variable forest structural stages, the majority of which provide year-round dense horizontal cover at ground or snow level; (3) winter conditions that provide and maintain deep fluffy snow for extended periods of time; (4) suitable habitat large enough (483 mi^2 (≥1,250 km^2)) to support breeding populations; (5) permeable landscapes conducive to within-unit lynx daily movements and dispersal.

We then removed any isolated polygons not occupied at the time of listing and smaller than 483 mi^2 (≥1,250 km^2), which is the minimum area thought necessary to support a resilient lynx population as identified in the SSA report addendum (Service 2023a, pp. 50–51).

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other

structures because such lands lack physical or biological features necessary for lynx. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

The proposed critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document under **Proposed Regulation Promulgation**. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document.

Proposed Critical Habitat Designation

Critical habitat was last designated for the Canada lynx DPS in 2014 and included five units in the contiguous United States (79 FR 54782, September 12, 2014). We are proposing to revise critical habitat for the Canada lynx in the Western United States. Existing critical habitat units 1 (Maine) and 2 (Minnesota) are not included in this proposed revision to lynx critical habitat and remain in place as described in the 2014 critical habitat final rule. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for lynx in the Western United States. The four areas we propose as critical habitat are: (1) Unit 3: Northern Rockies; (2) Unit 4: North Cascades; (3) Unit 5: Greater Yellowstone Area (GYA); and (4) Unit 6: Southern Rockies. Table 1, below, shows the proposed critical habitat units and the approximate area of each unit. All units were occupied at the time of

listing in 2000. Table 1 lists the proposed critical habitat units and their approximate sizes broken down by major land ownership.

TABLE 1—PROPOSED WESTERN CRITICAL HABITAT UNITS FOR CANADA LYNX (MI^2 (KM^2))

[Area estimates reflect all land within critical habitat unit boundaries.]

Critical Habitat Unit	Federal	State	Private	Tribal	Other	Total
3. Northern Rockies	7,193 (18,630)	310 (803)	214 (554)	230 (596)	12 (30)	7,959 (20,613)
4. North Cascades	2,178 (5,641)	170 (441)	6 (15)	NA	NA	2,354 (6,097)
5. Greater Yellowstone Area	1,117 (2,892)	1 (3)	3 (7)	NA	NA	1,121 (2,902)
6. Southern Rockies	6,854 (17,752)	50 (129)	684 (1,771)	37 (97)	54 (140)	7,679 (19,889)
Total	17,342 (44,915)	531 (1,376)	906 (2,346)	267 (692)	66 (170)	19,112 (49,500)

Note: Area sizes may not sum due to rounding. Numbers are calculated using the U. S. Geological Survey's (USGS) Protected Areas Database for the United States 3.0 dataset supplemented with the BLM 2023 Surface Management Agency dataset.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the Canada lynx DPS below.

Unit 3: Northern Rockies

Unit 3 consists of 7,959 mi^2 (20,613 km^2) located in northwestern Montana in portions of Flathead, Glacier, Granite, Lake, Lewis and Clark, Lincoln, Mineral, Missoula, Pondera, Powell, Ravalli, and Teton Counties and northern and east-central Idaho in portions of Bonner, Boundary, Clearwater, and Idaho Counties. The current proposal represents a 1,808-mi^2 (4,683-km^2) reduction in the 2014 designation for this unit, although it includes new areas of proposed critical habitat in northern Idaho and along the central Idaho-Montana border. This unit was occupied by lynx at the time of listing and is currently occupied by the species. Lynx are known to be widely distributed throughout this unit and breeding has been documented in multiple locations. This unit supports a resident population thought by lynx researchers to number between 200 and 300 lynx (Lynx SSA Team 2016, p. 41). This unit is directly connected to lynx habitats

and populations in southwestern Alberta and southeastern British Columbia, Canada. Lynx in this unit represent the southern extent of a larger cross-border population, most of which occurs in Western Canada.

Land ownership within the unit is 90 percent Federal, 4 percent State, 3 percent Tribal, and 3 percent private. Federal lands in this unit include National Forest System lands within the Kootenai, Flathead, Lolo, and Helena-Lewis and Clark National Forests in Montana and the Idaho Panhandle National Forest and the Clearwater portion of the Nez Perce-Clearwater National Forest in Idaho; National Park Service lands in Glacier National Park; and BLM lands in the Garnet Resource Area. State lands in this unit include areas managed by the Montana Department of Natural Resources and Conservation; Montana Fish, Wildlife, and Parks; and the Idaho Department of Lands. Tribal lands within this unit include parts of the Confederated Salish and Kootenai Tribes Flathead Reservation and the Blackfeet Reservation, both in Montana. State and Tribal lands in this unit are included in the proposed critical habitat designation but will be considered for exclusion in accordance with section 4(b)(2) of the Act and some or all may be excluded from the final designation.

The physical or biological features essential to the conservation of the Canada lynx in this unit may require special management considerations or protection to address activities that may result in removal or reduction of boreal/subalpine forest conditions that support Canada lynx and snowshoe hares. Such activities may include, but are not limited to road construction and maintenance, and commercial, recreational, and energy/mineral development, when they remove or reduce boreal forest in a manner that impacts snowshoe hare densities, the size of suitable habitat patches to support breeding lynx populations, and permeability of landscapes for lynx daily movements and dispersal in this unit. Climate change is expected to negatively impact the duration of deep fluffy snow conditions favorable to lynx in this unit over time.

Unit 4: North Cascades

Unit 4 consists of 2,354 mi^2 (6,097 km^2) located in north-central Washington in portions of northern Chelan, Okanogan, and eastern Skagit and Whatcom Counties. The current proposal represents a 520-mi^2 (1,346-km^2) increase from the 2014 designation for this unit. This unit was occupied by lynx at the time of listing and is currently occupied by the species. Lynx are known to be distributed throughout much of this unit and breeding has been documented. The Service estimates that this unit is potentially capable of supporting a resident population of 90–120 lynx, but extensive large wildfires in roughly half of lynx habitat over the past 15–20 years are thought to have reduced its carrying capacity commensurately (but perhaps temporarily). Nonetheless, a systematic lynx DNA collection effort between 2018 to 2023 documented 73 individual lynx in north central Washington (Akins and Ransom 2024, pers. comm.). This unit is directly connected to lynx habitats and populations in southern British Columbia, Canada, and lynx in this unit represent the southern extent of a larger cross-border population, most of which occurs in Western Canada.

Land ownership within the unit is 93 percent Federal and 7 percent State, with small parcels of private lands that represent less than one-half of 1 percent of the unit. Federal lands include 1,732 mi^2 (4,485 km^2) within the Okanogan-Wenatchee National Forest and 117 mi^2 (303 km^2) of North Cascades National Park. It also includes 39 mi^2 (100 km^2) of State Forest lands within the Loomis Natural Resources Conservation Area, which is managed by the Washington Department of Natural Resources. We excluded these State Forest lands from previous critical habitat designations and will again consider them for exclusion under section 4(b)(2) of the Act.

The physical or biological features essential to the conservation of the Canada lynx in this unit may require special management considerations or protection to address activities that may result in removal or reduction of boreal/subalpine forest conditions

that support Canada lynx and snowshoe hares. Such activities may include, but are not limited to extensive, high-intensity wildfires, road construction and maintenance, and commercial, recreational, and energy/mineral development, when they remove or reduce boreal forest in a manner that impacts snowshoe hare densities, the size of suitable habitat patches to support breeding lynx populations, and permeability of landscapes for lynx daily movements and dispersal in this unit. Climate change is expected to negatively impact the duration of deep fluffy snow conditions favorable to lynx in this unit over time.

Unit 5: Greater Yellowstone Area

Unit 5 consists of 1,121 mi^2 (2,902 km^2) located in west-central and northwestern Wyoming in portions of Fremont, Lincoln, Sublette, and Teton Counties. The current proposal represents an 8,025-mi^2 (20,785-km^2) reduction from the 2014 designation for this unit. Previous research documented very low snowshoe hare densities throughout much of the Greater Yellowstone Area (GYA) (Hodges et al. 2009, entire), but with small pockets of habitat on the Bridger-Teton National Forest in the southern part of the GYA supporting high hare densities (Berg et al. 2012, p. 1483). Recent habitat modeling that is foundational to this critical habitat revision (Olson et al. 2021, entire) demonstrated that most of the GYA, including areas previously designated as lynx critical habitat, does not contain the physical and biological features necessary to support persistent lynx residency. This unit was occupied at the time of listing and occasional lynx occurrence has been documented since then. It is uncertain whether this unit historically supported a small resident population or if lynx presence and reproduction were and are naturally ephemeral and intermittent. The area currently does not appear to support a resident breeding population.

Based on home range sizes and lynx densities estimated elsewhere in the western part of the DPS range (Montana, Washington, Colorado), the Service estimates that this

unit could potentially support a population of 25–50 lynx if sufficient habitat conditions and hare densities could be achieved and maintained, and a resident lynx population is established via translocation. This unit is not directly connected to lynx habitats and populations elsewhere in the DPS range or in the core of the species' range in Western Canada. However, historical records suggest that dispersing lynx associated with cyclic irruptions of lynx from Canada into the northern contiguous United States occasionally reached the GYA (McKelvey et al. 2000a, pp. 229–230). Additionally, at least nine radio-marked lynx released in Colorado subsequently moved into or through the GYA unit in the period 1999–2010, with several establishing temporary residency in the area proposed for critical habitat designation (Ivan 2017, entire).

Land ownership within the unit is more than 99 percent Federal and includes small (less than 4 mi^2 (10 km^2) parcels of private and State lands; there are no Tribal lands. Most of this unit occurs within the Bridger-Teton National Forest, with a smaller area in the Shoshone National Forest and several small parcels of BLM lands managed by the Kemmerer and Pinedale Field Offices.

The physical or biological features essential to the conservation of the Canada lynx in this unit may require special management considerations or protection to address activities that may result in removal or reduction of boreal/subalpine forest conditions that support Canada lynx and snowshoe hares. Such activities may include, but are not limited to road construction and maintenance, and commercial, recreational, and energy/mineral development, when they remove or reduce boreal forest in a manner that impacts snowshoe hare densities, the size of suitable habitat patches to support breeding lynx populations, and permeability of landscapes for lynx daily movements and dispersal in this unit. Climate change is expected to negatively impact the duration of deep fluffy snow conditions favorable to lynx in this unit over time.

Unit 6: Southern Rockies

Unit 6 consists of 7,679 mi^2 (19,889 km^2) located in west-central and southwestern Colorado in portions of Archuleta, Boulder, Chaffee, Clear Creek, Conejos, Dolores, Eagle, Gilpin, Grand, Gunnison, Hinsdale, La Plata, Lake, Mineral, Montezuma, Montrose, Ouray, Park, Pitkin, Rio Grande, Saguache, San Juan, San Miguel, and Summit Counties, and northern New Mexico in portions of Rio Arriba County. Critical habitat was not previously designated in the Southern Rockies. At the time of listing, this unit was occupied by lynx translocated from Canada and Alaska and it is currently occupied by the descendants of those released lynx. It is uncertain whether this unit historically supported a resident population or if lynx presence was naturally ephemeral and intermittent.

The area currently supports a resident breeding population that is the result of the State of Colorado's Canada Lynx Reintroduction Program, which included the 1999–2006 translocations of 218 lynx from Canada and Alaska into the San Juan Mountains in southwestern Colorado, with continued lynx occurrence and reproduction documented annually since then. Lynx researchers with Colorado Parks and Wildlife estimate the current size of the population at 75–150 resident lynx. This unit is not directly connected to lynx habitats and populations elsewhere in the DPS range or in the core of the species' range in western Canada. However, historical records suggest that dispersing lynx associated with cyclic irruptions of lynx from Canada into the northern contiguous United States occasionally reached the Southern Rockies. Some of the lynx released into Colorado dispersed into surrounding States, with some traveling north into the GYA, Montana and Idaho.

Land ownership within the unit is almost 89 percent Federal, almost 9 percent private, 1 percent State, and less than 1 percent Tribal and local government. Most (96 percent of) Federal lands occur on national forests, including the Arapaho, Gunnison, Pike, Rio Grande, Roosevelt, San Isabel, San Juan, Uncompahgre, and White River

National Forests in Colorado, and the Carson National Forest in New Mexico. The remaining 4 percent of Federal lands occur on BLM lands, mostly those managed by the Gunnison Field Office with smaller parcels managed by the Kremmling, Royal Gorge, and Uncompahgre field offices, and smaller parcels of U.S. Fish and Wildlife Service and Bureau of Reclamation lands. Less than 1 percent of this unit includes Off-Reservation Tribal Trust lands of the Jicarilla Apache Nation in northern New Mexico. Tribal lands will be considered for exclusion in accordance with section 4(b)(2) of the Act and some or all may be excluded from the final designation. It also includes small parcels of State and local government lands which, combined, represent less than one-half of 1 percent of the proposed critical habitat designation.

The physical or biological features essential to the conservation of the Canada lynx in this unit may require special management considerations or protection to address activities that may result in removal or reduction of boreal/subalpine forest conditions that support Canada lynx and snowshoe hares. Such activities may include, but are not limited to road construction and maintenance, and commercial, recreational, and energy/mineral development, when they remove or reduce boreal forest in a manner that impacts snowshoe hare densities, the size of suitable habitat patches to support breeding lynx populations, and permeability of landscapes for lynx daily movements and dispersal in this unit. Climate change is expected to negatively impact the duration of deep fluffy snow conditions favorable to lynx in this unit over time.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In

addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species (50 CFR 402.02).

Compliance with the requirements of section 7(a)(2) is documented through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define “reasonable and prudent alternatives” (at 50 CFR 402.02) as alternative actions identified during formal consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency’s legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Service Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 set forth requirements for Federal agencies to reinitiate consultation. Reinitiation of consultation is required and shall be requested by the Federal agency, where discretionary Federal involvement or control over the action has been retained or is authorized by law and: (1) If the amount or extent of taking specified in the incidental take statement is exceeded; (2) if new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) if the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion or written concurrence; or (4) if a new species is listed or critical habitat designated that may be affected by the identified action. As provided in 50 CFR 402.16, the requirement to reinitiate consultations for new species listings or critical habitat designation does not apply to certain agency actions (e.g., land management plans issued by the BLM in certain circumstances).

Destruction or Adverse Modification of Critical Habitat

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires that our *Federal Register* documents "shall, to the maximum extent practicable also include a brief description and evaluation of those activities (whether public or private) which, in the opinion of the Secretary, if undertaken may adversely modify [critical] habitat, or may be affected by such designation." Activities that may be affected by designation of critical habitat for the Canada lynx include those that may affect the physical or biological features of the Canada lynx' critical habitat (see **Physical or Biological Features Essential to the Conservation of the Species)**.

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that the Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense (DoD), or designated for its use, that are subject to an integrated natural resources management plan (INRMP) prepared under section 101 of the Sikes Act Improvement Act of 1997 (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation. No DoD lands with a completed INRMP are within the proposed critical habitat designation.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if the benefits of exclusion outweigh those of inclusion, so long as exclusion will not result in extinction of the species concerned. Exclusion decisions are governed by the regulations at 50 CFR 424.19 and the Policy Regarding

Implementation of Section 4(b)(2) of the Endangered Species Act (hereafter, the "2016 Policy"; 81 FR 7226, February 11, 2016), both of which were developed jointly with the National Marine Fisheries Service (NMFS). We also refer to a 2008 Department of the Interior Solicitor's opinion entitled "The Secretary's Authority to Exclude Areas from a Critical Habitat Designation under Section 4(b)(2) of the Endangered Species Act" (M-37016).

In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise discretion to exclude the area only if such exclusion would not result in the extinction of the species. In making the determination to exclude a particular area, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor. In our final rules, we explain any decision to exclude areas, as well as decisions not to exclude, to make clear the rational basis for our decision. We describe below the process that we use for taking into consideration each category of impacts and any initial analyses of the relevant impacts.

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be

the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios both "with critical habitat" and "without critical habitat."

The "without critical habitat" scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (e.g., under the Federal listing as well as other Federal, State, and local regulations). Therefore, the baseline represents the costs of all efforts attributable to the listing of the species under the Act (i.e., conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The "with critical habitat" scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct a discretionary 4(b)(2) exclusion analysis.

Executive Order (E.O.) 12866 and E.O. 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with these E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess to the extent practicable the probable impacts to both directly and indirectly affected entities. To determine whether the designation of

critical habitat may have an economic effect of $200 million or more in any given year (which would trigger section 3(f)(1) of E.O. 12866, as amended by E.O. 14094), we used a screening analysis to assess whether a revised designation of critical habitat for the Canada lynx DPS is likely to exceed this threshold.

For this particular designation, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from this proposed designation of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for the Canada lynx DPS (Industrial Economics, Inc. (IEc) 2024, entire). We began by conducting a screening analysis of the proposed designation of critical habitat in order to focus our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out particular geographical areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. In particular, the screening analysis considers baseline costs (i.e., absent critical habitat designation) and includes any probable incremental economic impacts where land and water use may already be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation.

The presence of the listed species in occupied areas of critical habitat means that any destruction or adverse modification of those areas is also likely to jeopardize the continued existence of the species. Therefore, designating occupied areas as critical habitat typically causes little if any incremental impacts above and beyond the impacts of listing the species. As a result, we generally focus the screening analysis on areas of

unoccupied critical habitat (unoccupied units or unoccupied areas within occupied units).

Overall, the screening analysis assesses whether designation of critical habitat is likely to result in any additional management or conservation efforts that may incur incremental economic impacts. This screening analysis combined with the information contained in our IEM constitute what we consider to be our economic analysis of the proposed critical habitat designation for the Canada lynx DPS and is summarized in the narrative below.

As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the proposed critical habitat designations. In our evaluation of the probable incremental economic impacts that may result from the proposed designation of critical habitat for the Canada lynx, first we identified, in the IEM dated May 31, 2024, probable incremental economic impacts associated with the following categories of activities: (1) timber harvest; (2) silviculture; (3) wildfire response and management; (4) fuels reduction; (5) recreation management; (6) domestic livestock grazing; (7) infrastructure/facilities maintenance/development; and (8) residential development/construction. We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the Act, designation of critical habitat affects only activities conducted, funded, permitted, or authorized by Federal agencies. Because the species is listed, in areas where the Canada lynx is present, Federal agencies are required to consult with the Service under section 7 of the Act on activities they authorize, fund, or carry out that may affect the species. If when we finalize this proposed critical habitat designation, Federal agencies would be required to consider the effects of their actions on the designated habitat, and if the Federal action may affect critical habitat, our

consultations would include an evaluation of measures to avoid the destruction or adverse modification of critical habitat.

In our IEM, we attempted to clarify the distinction between the effects that would result from the species being listed and those attributable to the critical habitat designation (i.e., difference between the jeopardy and adverse modification standards) for the Canada lynx's critical habitat. Because this species has been listed since 2000 and critical habitat has been designated since 2006, we have a long consultation history to inform this distinction. The following specific circumstances in this case help to inform our evaluation: (1) The essential physical or biological features identified for critical habitat are the same features essential for the life requisites of the species, and (2) any actions that would likely adversely affect the essential physical or biological features of occupied critical habitat are also likely to adversely affect the species itself. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the revision and designation of critical habitat for this species. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of this proposed designation of critical habitat.

The proposed revised critical habitat designation for the Canada lynx DPS in the Western United States includes approximately 19,112 mi^2 (49,500 km^2) in four occupied critical habitat units in Colorado, Idaho, Montana, New Mexico, Washington, and Wyoming. This proposed revision results in an approximately 1,650-mi^2 (4,274-km^2) reduction from the 2014 critical habitat designation in the Western United States. Land ownership is approximately 91 percent Federal, 5 percent private, 3 percent State, 1 percent Tribal, and less than 1 percent other. This rule makes no updates to existing critical habitat in Maine and Minnesota; therefore, the economic analysis does not consider the effects of critical habitat in those States.

The incremental effects of revising critical habitat for the Canada lynx are likely to be limited to changes in administrative effort to evaluate the potential for adverse modification of Canda lynx critical habitat. The entities most likely to incur incremental costs are parties to section 7 consultations, including Federal action agencies and, in some cases, third parties, most frequently State agencies or municipalities. This analysis finds that administrative costs and cost savings are on the order of $66,000 and $47,000 respectively, in a given year (2024 dollars). The expected net effect of revising critical habitat for the Canada lynx is a $19,000 increase in administrative costs per year. Thus, this analysis finds that despite a net reduction in the size of critical habitat for the species, the costs of critical habitat are expected to increase given the geographic representation of consultations across the new and removed areas. Incremental economic benefits and forgone benefits are not anticipated. Therefore, the rule is unlikely to meet the threshold for a significant rule as defined in section 3(f)(1) of E.O. 12866, as amended by E.O. 14094.

This finding is based on several factors, including:

- No change in costs of complying with critical habitat in existing critical habitat that is included in the proposed revised critical habitat.
- The proposed units are considered occupied by the Canada lynx, and occupied units are afforded significant baseline protection under the Act due to the presence of the listed species.
- All projects with a Federal nexus would be subject to section 7 consultation regardless of the designation of critical habitat due to the presence of the listed species.
- Critical habitat is not likely to change the Service's recommendation for project modifications as part of future consultations considering the Canada lynx.

- The Canada lynx receives additional baseline protection from co-occurring listed species, which include species with overlapping critical habitat and similar resource and habitat needs.

Our analysis finds that the proposed revised critical habitat for the Canada lynx is unlikely to result in economic impacts that exceed $200 million in any single year; therefore, they would not be significant. The incremental effects resulting from the proposed critical habitat for the Canada lynx are subject to uncertainty due to limited information on what future projects may require section 7 consultation that considers Canada lynx habitat. However, the focus of the screening analysis is on the likelihood that this proposed rule is economically significant. It is unlikely that additional data gathering and analysis to address uncertainty would change the findings of this analysis.

We are soliciting data and comments from the public on the economic analysis discussed above. During the development of a final designation, we will consider the information presented in the economic analysis and any additional information on economic impacts we receive during the public comment period to determine whether any specific areas should be excluded from the final critical habitat designation under authority of section 4(b)(2), our implementing regulations at 50 CFR 424.19, and the 2016 Policy. 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, provided the exclusion will not result in the extinction of this species.

Consideration of National Security Impacts

Section 4(a)(3)(B)(i) of the Act may not cover all DoD lands or areas that pose potential national-security concerns (e.g., a DoD installation that is in the process of revising its INRMP for a newly listed species or a species previously not covered). If a particular area is not covered under section 4(a)(3)(B)(i), then national-security or homeland-security concerns are not a factor in the process of determining what areas

meet the definition of "critical habitat." However, we must still consider impacts on national security, including homeland security, on those lands or areas not covered by section 4(a)(3)(B)(i) because section 4(b)(2) requires us to consider those impacts whenever it designates critical habitat. Accordingly, if DoD, Department of Homeland Security (DHS), or another Federal agency has requested exclusion based on an assertion of national-security or homeland-security concerns, or we have otherwise identified national-security or homeland-security impacts from designating particular areas as critical habitat, we generally have reason to consider excluding those areas.

However, we cannot automatically exclude requested areas. When DoD, DHS, or another Federal agency requests exclusion from critical habitat on the basis of national-security or homeland-security impacts, we must conduct an exclusion analysis if the Federal requester provides information, including a reasonably specific justification of an incremental impact on national security that would result from the designation of that specific area as critical habitat. That justification could include demonstration of probable impacts, such as impacts to ongoing border-security patrols and surveillance activities, or a delay in training or facility construction, as a result of compliance with section 7(a)(2) of the Act. If the agency requesting the exclusion does not provide us with a reasonably specific justification, we will contact the agency to recommend that it provide a specific justification or clarification of its concerns relative to the probable incremental impact that could result from the designation. If we conduct an exclusion analysis because the agency provides a reasonably specific justification or because we decide to exercise the discretion to conduct an exclusion analysis, we will defer to the expert judgment of DoD, DHS, or another Federal agency as to: (1) Whether activities on its lands or waters, or its activities on other lands or waters, have national-security or homeland-security implications; (2) the importance of those implications; and (3) the degree to which the cited implications would be adversely affected in the absence of an exclusion. In that

circumstance, in conducting a discretionary section 4(b)(2) exclusion analysis, we will give great weight to national-security and homeland-security concerns in analyzing the benefits of exclusion.

In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for the Canada lynx DPS are not owned or managed by the DoD or DHS, and, therefore, we anticipate no impact on national security or homeland security.

Consideration of Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security discussed above. To identify other relevant impacts that may affect the exclusion analysis, we consider a number of factors, including whether there are approved and permitted conservation agreements or plans covering the species in the area—such as safe harbor agreements (SHAs), candidate conservation agreements with assurances (CCAAs) or "conservation benefit agreement" or "conservation agreement" (CBAs) (CBAs are a new type of agreement replacing SHAs and CCAAs in use after April 2024 (89 FR 26070; April 12, 2024)) or HCPs, or whether there are non-permitted conservation agreements and partnerships that may be impaired by designation of, or exclusion from, critical habitat. In addition, we look at whether Tribal conservation plans or partnerships, Tribal resources, or government-to-government relationships of the United States with Tribal entities may be affected by the designation. We also consider any State, local, social, or other impacts that might occur because of the designation.

When analyzing other relevant impacts of including a particular area in a designation of critical habitat, we weigh those impacts relative to the conservation value of the particular area. To determine the conservation value of designating a particular area, we consider a number of factors, including, but not limited to, the additional

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

In the case of the Canada lynx, the benefits of critical habitat include public awareness of the presence of Canada lynx and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for Canada lynx due to protection from destruction or adverse modification of critical habitat. Continued implementation of an ongoing management plan that provides conservation equal to or more than the protections that result from a critical habitat designation would reduce those benefits of including that specific area in the critical habitat designation.

After identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction of the species. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

Private or Other Non-Federal Conservation Plans or Agreements Associated with Permits Under Section 10 of the Act

As mentioned above, as part of our section 4(b)(2) analysis, we consider whether there are approved and permitted conservation agreements or plans covering the species in the area such as SHAs, CCAAs, CBAs or HCPs. Under sections 10(a)(1)(A) and 10(a)(1)(B) of the Act, non-Federal entities may develop these agreements or plans when they seek authorization for take that may otherwise be prohibited under section 9 through an enhancement of survival (EOS) or incidental take permit (ITP), respectively.

Property owners seeking an EOS permit collaborate with the Service to develop a

CBA to support the application. The EOS permit authorizes take associated with implementing the agreement and ongoing land management activities that provide a net conservation benefit to the covered species. The CBA replaces two previous types of voluntary agreements (SHAs and CCAAs) going forward for new agreements after May 2024. However, permitted SHAs and CCAAs or those noticed in the *Federal Register* prior to May 2024 remain in effect.

For incidental take permits issued under section 10(a)(1)(B) of the Act, applicants are required to develop a conservation plan, more commonly known as an HCP, to support their application. ITPs authorize take that is incidental to, but not the purpose of, carrying out otherwise lawful activities provided that the impact of the taking is minimized and mitigated to the maximum extent practicable.

For both section 10(a)(1)(A) and 10(a)(1)(B) permits, we provide permittees with assurances. In the case of section 10(a)(1)(A) permits, we may not require additional or different conservation measures to be undertaken by a permittee without the consent of the permittee. In the case of section 10(a)(1)(B), we will not impose further land-, water-, or resource-use restrictions, or require additional commitments of land, water, or finances, beyond those agreed to in the HCP.

We place great value on the partnerships that are developed during the preparation and implementation of conservation plans and agreements. In some cases, permittees agree to do more for the conservation of the species and their habitats on private lands than designation of critical habitat would provide alone.

When we undertake a discretionary section 4(b)(2) exclusion analysis based on conservation plans or agreements, we anticipate consistently excluding such areas if incidental take caused by the activities in those areas is covered by the permit under section 10 of the Act and the plan meets all of the following three factors:

a. The permittee is properly implementing the CCAA/SHA/HCP and is expected

to continue to do so for the term of the agreement. A CCAA/SHA/HCP is properly implemented if the permittee is and has been fully implementing the commitments and provisions in the CCAA/SHA/HCP, implementing agreement, and permit.

b. The species for which critical habitat is being designated is a covered species in the CCAA/SHA/HCP, or very similar in its habitat requirements to a covered species. The recognition that the Services extend to such an agreement depends on the degree to which the conservation measures undertaken in the CCAA/SHA/HCP would also protect the habitat features of the similar species.

c. The CCAA/SHA/HCP specifically addresses that species' habitat and meets the conservation needs of the species in the planning area.

See the 2016 Policy for additional details. Because combining types of agreements such as SHAs and CCAAs into the term "CBAs" is a recent development (89 FR 26070; April 12, 2024), the 2016 Policy did not expressly reference CBAs. However, because CBAs replace CCAAs and SHAs moving forward we treat CBAs similarly to how we treat CCAAs/SHAs/HCPs described above.

The proposed critical habitat designation includes areas that are covered by the following permitted plan providing for the conservation of the Canada lynx: Montana Department of Natural Resources and Conservation (DNRC) Forested State Trust Lands Habitat Conservation Plan. After considering the factors described above, we have identified 159 mi^2 (413 km^2) that we have reason to consider excluding because of this permitted plan. We describe below our reasons for considering these areas for potential exclusion.

State of Montana Department of Natural Resources and Conservation Forested State Trust Lands Habitat Conservation Plan (DNRC HCP)

The Montana DNRC multi-species HCP includes a lynx conservation strategy that minimizes impacts of forest management activities on lynx, complements lynx

conservation objectives set forth in the States' comprehensive fish and wildlife conservation strategy (Montana Department of Fish, Wildlife and Parks 2005, entire), and describes conservation commitments that are based on recent information from lynx research in Montana (Montana DNRC and U.S. Fish and Wildlife Service 2010, pp. 2-45–2-61). It also commits to active lynx monitoring and adaptive management programs (Montana DNRC and U.S. Fish and Wildlife Service 2010, pp. 4-27–4-37). The Montana DNRC worked closely with the Service in developing and completing a National Environmental Policy Act (NEPA) analysis on this multi-species HCP (Montana DNRC and U.S. Fish and Wildlife Service 2010, entire).

In our biological opinion regarding potential impacts to lynx of implementation of this HCP, the Service concluded that the HCP promotes the conservation of lynx and their habitat through increased conservation commitments by [Montana] DNRC for forest management practices, maintenance of the habitat mosaic, structure, and components required to support lynx and their primary prey, the snowshoe hare, monitoring, and adaptive management (Service 2011, p. III-94). We determined that the proposed action is not likely to jeopardize the continued existence of Canada lynx within the contiguous U.S. DPS and that forest management activities managed under the conservation commitments of the DNRC HCP would not appreciably reduce the likelihood of survival and recovery of Canada lynx (Service 2011, p. III-94).

In the previous final revised critical habitat designation, published in the *Federal Register* on September 12, 2014 (79 FR 54782), we determined that the benefits of excluding lands managed in accordance with the DNRC HCP outweighed the benefits of including them in the designation, and that doing so would not result in extinction of the species. We, therefore, again consider excluding 159 mi^2 (413 km^2) of forested State Trust lands managed in accordance with the DNRC HCP from the revised lynx critical habitat designation in Unit 3. However, in the final rule, we will again weigh the benefits

of inclusion versus exclusion of these lands in the final critical habitat designation.

Non-Permitted Conservation Plans, Agreements, or Partnerships

We sometimes exclude specific areas from critical habitat designations based in part on the existence of private or other non-Federal conservation plans or agreements and their attendant partnerships. A conservation plan or agreement describes actions that are designed to provide for the conservation needs of a species and its habitat, and may include actions to reduce or mitigate negative effects on the species caused by activities on or adjacent to the area covered by the plan. Conservation plans or agreements can be developed by private entities with no Service involvement, or in partnership with the Service.

Shown below is a non-exhaustive list of factors that we consider in evaluating how non-permitted plans or agreements affect the benefits of inclusion or exclusion. These are not required elements of plans or agreements. Rather, they are some of the factors we may consider, and not all of these factors apply to every plan or agreement.

(i) The degree to which the record of the plan, or information provided by proponents of an exclusion, supports a conclusion that a critical habitat designation would impair the realization of the benefits expected from the plan, agreement, or partnership.

(ii) The extent of public participation in the development of the conservation plan.

(iii) The degree to which agency review and required determinations (e.g., State regulatory requirements) have been completed, as necessary and appropriate.

(iv) Whether National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.) compliance was required.

(v) The demonstrated implementation and success of the chosen mechanism.

(vi) The degree to which the plan or agreement provides for the conservation of the essential physical or biological features for the species.

(vii) Whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan or agreement will be implemented.

(viii) Whether the plan or agreement contains a monitoring program and adaptive management to ensure that the conservation measures are effective and can be modified in the future in response to new information.

The proposed critical habitat designation includes areas that are covered by the following non-permitted plan providing for the conservation of the Canada lynx: State of Washington Department of Natural Resources (WDNR) Lynx Habitat Management Plan for DNR-managed Lands (WDNR LHMP). After considering the factors described above, we have identified 168 mi^2 (435 km^2) that we have reason to consider excluding because of this plan. We describe below our reasons for considering these areas for potential exclusion.

State of Washington Department of Natural Resources Lynx Habitat Management Plan for DNR-managed Lands (WDNR LHMP)

The WDNR LHMP encompasses 197 mi^2 (510 km^2) of WDNR-managed lands distributed throughout north-central and northeastern Washington in areas delineated as Lynx Management Zones in the Washington State Lynx Recovery Plan (Stinson 2001, p. 39; Washington DNR 2006, pp. 5–13). Of the area covered by the plan, 168 mi^2 (435 km^2) overlaps the area proposed for designation as critical habitat. The WDNR LHMP was finalized in 2006 and is a revision of the lynx plan that WDNR began implementing in 1996. The 1996 plan was developed as a substitute for a species-specific critical habitat designation required by Washington Forest Practices rules in response to the lynx being State-listed as threatened (Washington DNR 2006, p. 5). The 2006 WDNR LHMP provided further provisions to avoid the incidental take of lynx (Washington DNR 2006, p. 6). WDNR is committed to following the LHMP until 2076, or until the lynx is delisted (Washington DNR 2006, p. 6). WDNR requested that lands subject to the plan be

excluded from previous critical habitat designation in 2014.

The WDNR LHMP contains measures to guide WDNR in creating and preserving quality lynx habitat through its forest management activities. The objectives and strategies of the LHMP are developed for multiple planning scales (ecoprovince and ecodivision, lynx management zone, lynx analysis unit (LAU), and ecological community), and include:

(1) Encouraging genetic integrity at the species level by preventing bottlenecks between British Columbia and Washington by limiting size and shape of temporary non-habitat along the border and maintaining major routes of dispersal between British Columbia and Washington;

(2) Maintaining connectivity between subpopulations by maintaining dispersal routes between and within zones and arranging timber harvest activities that result in temporary non-habitat patches among watersheds so that connectivity is maintained within each zone;

(3) Maintaining the integrity of requisite habitat types within individual home ranges by maintaining connectivity between and integrity within home ranges used by individuals and/or family groups; and

(4) Providing a diversity of successional stages within each LAU and connecting denning sites and foraging sites with forested cover without isolating them with open areas by prolonging the persistence of snowshoe hare habitat and retaining coarse woody debris for denning sites (Washington DNR 2006, p. 29).

The LHMP identifies specific guidelines to achieve the objectives and strategies at each scale; it also describes how WDNR will monitor and evaluate the implementation and effectiveness of the LHMP by providing implementation monitoring reports to the Service and Washington Department of Fish and Wildlife every 2 years (Washington DNR 2006, pp. 29–63).

In both of the previous final revised critical habitat designations for lynx, published in the *Federal Register* on February 25, 2009 (74 FR 8616) and September 12, 2014 (79 FR 54782), we determined that the benefits of excluding lands managed in accordance with the WDNR LHMP outweighed the benefits of including them in the designation, and that doing so would not result in extinction of the species. We again consider excluding 168 mi^2 (435 km^2) of lands managed in accordance with the WDNR LHMP from the revised lynx critical habitat designation. However, in the final rule, we will again weigh the benefits of inclusion versus exclusion of these lands in the final critical habitat designation.

Tribal Lands

Several Executive Orders, Secretary's Orders, and policies concern working with Tribes. These guidance documents generally confirm our trust responsibilities to Tribes, recognize that Tribes have sovereign authority to control Tribal lands, emphasize the importance of developing partnerships with Tribal governments, and direct the Service to consult with Tribes on a government-to-government basis.

A joint Secretary's Order that applies to both the Service and the National Marine Fisheries Service (NMFS)— Secretary's Order 3206, *American Indian Tribal Rights, Federal–Tribal Trust Responsibilities, and the Endangered Species Act* (June 5, 1997) (S.O. 3206)—is the most comprehensive of the various guidance documents related to Tribal relationships and Act implementation, and it provides the most detail directly relevant to the designation of critical habitat. In addition to the general direction discussed above, the Appendix to S.O. 3206 explicitly recognizes the right of Tribes to participate fully in any listing process that may affect Tribal rights or Tribal trust resources; this includes the designation of critical habitat. Section 3(B)(4) of the Appendix requires the Service to consult with affected Tribes when considering the designation of critical habitat in an area that may impact Tribal trust resources, Tribally

owned fee lands, or the exercise of Tribal rights. That provision also instructs the Service to avoid including Tribal lands within a critical habitat designation unless the area is essential to conserve a listed species, and it requires the Service to evaluate and document the extent to which the conservation needs of the listed species can be achieved by limiting the designation to other lands.

Our implementing regulations at 50 CFR 424.19 and the 2016 Policy are consistent with S.O. 3206. When we undertake a discretionary exclusion analysis under section 4(b)(2) of the Act, in accordance with S.O. 3206, we consult with any Tribe whose Tribal trust resources, Tribally owned fee lands, or Tribal rights may be affected by including any particular areas in the designation. We evaluate the extent to which the conservation needs of the species can be achieved by limiting the designation to other areas and give great weight to Tribal concerns in analyzing the benefits of exclusion.

However, S.O. 3206 does not override the Act's statutory requirement of designation of critical habitat. As stated above, we must consult with any Tribe when a designation of critical habitat may affect Tribal lands or resources. The Act requires us to identify areas that meet the definition of "critical habitat" (i.e., areas occupied at the time of listing that contain the essential physical or biological features that may require special management considerations or protection and unoccupied areas that are essential to the conservation of a species), without regard to land ownership. While S.O. 3206 provides important direction, it expressly states that it does not modify the Secretaries' statutory authority under the Act or other statutes.

The proposed critical habitat designation includes the following Tribal lands or resources: the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation in Montana (Unit 3), the Blackfeet Indian Reservation in Montana (Unit 3), and Jicarilla Apache Tribal Trust Lands in New Mexico (Unit 6).

Flathead Indian Reservation Lands

In the previous final rules designating revised critical habitat for lynx, published in the *Federal Register* on February 25, 2009 (74 FR 8616) and September 12, 2014 (79 FR 54782), we determined that the benefits of excluding Flathead Indian Reservation Lands outweighed the benefits of including them. We determined that exclusion of these Tribal lands from the designation of critical habitat for the lynx will not result in the extinction of the species because the Confederated Salish and Kootenai Tribes of the Flathead Nation implement programs for the conservation of the species, and physical and biological features essential to it, in occupied areas. The protections afforded to the lynx under the jeopardy standard will remain in place for the areas considered for exclusion from revised critical habitat. Therefore, and in light of Secretary's Order 3206 and Tribal management of lynx and their habitat, we are considering excluding 186 mi^2 (482 km^2) of Flathead Indian Reservation Lands from the revised lynx critical habitat designation. However, in the final rule, we will again weigh the benefits of inclusion versus exclusion of these lands in the final critical habitat designation.

Blackfeet Indian Reservation Lands & Jicarilla Apache Tribal Trust Lands

Approximately 44 mi^2 (114 km^2) of Blackfeet Indian Reservation Lands and 37 mi^2 (97 km^2) of Jicarilla Apache Tribal Trust lands overlaps the area proposed for designation as critical habitat for the Canada lynx in the Western United States. In light of Secretary's Order 3206, we will consider these lands for exclusion from the final critical habitat designation. We will coordinate with these Tribes to evaluate any programs that are implemented for the conservation of the species, and physical and biological features essential to it, in occupied areas on Tribal lands. We will weigh the benefits of inclusion versus exclusion of these lands in the final critical habitat designation.

Summary of Exclusions Considered Under 4(b)(2) of the Act

We have reason to consider excluding the following areas under section 4(b)(2) of the Act from the final critical habitat designation for the Canada lynx DPS in the Western United States. Table 2 below provides approximate areas (mi^2, km^2) of lands that meet the definition of critical habitat, but for which we are considering possible exclusion under section 4(b)(2) of the Act from the final critical habitat rule.

TABLE 2—AREAS CONSIDERED FOR EXCLUSION BY UNIT FOR CANADA LYNX CRITICAL HABITAT

Unit	Specific area	Areas meeting the definition of critical habitat considered for exclusion, in mi^2 (km^2)	Reasons for considering exclusion
3. Northern Rockies	Tribal Lands: Flathead Reservation, MT	186 (482)	Confederated Salish and Kootenai Tribes of the Flathead Nation land management plan with considerations for conserving lynx habitat on Tribal lands within the Reservation
3. Northern Rockies	Tribal Lands: Blackfeet Reservation, MT	44 (114)	Existing land management
3. Northern Rockies	Montana DNRC Multi-species Habitat Conservation Plan	159 (413)	Existing Habitat Conservation Plan (HCP) with protections for lynx habitat on all DNRC State Trust lands
4. North Cascades	Washington DNR Lynx Habitat Management Plan	168 (435)	Existing management plan that includes considerations for conserving lynx habitat
6. Southern Rockies	Tribal Lands: Jicarilla Apache Tribal Trust Lands, NM	37 (97)	Existing land management

In conclusion, for this proposed rule, we have reason to consider excluding the areas identified above from the final designation based on other relevant impacts. We specifically solicit comments on the inclusion or exclusion of such areas. We also solicit

comments on whether there are potential economic, national security, or other relevant impacts from designating any other particular areas as critical habitat. As part of developing the final designation of critical habitat, we will evaluate the information we receive regarding potential impacts from designating the areas described above or any other particular areas, and we may conduct a discretionary exclusion analysis to determine whether to exclude those areas under authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19. If we receive a request for exclusion of a particular area and after evaluation of supporting information we do not exclude, we will fully describe our decision in the final rule for this action.

Required Determinations

Clarity of the Rule

We are required by E.O.s 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Regulatory Planning and Review (Executive Orders 12866, 13563 and 14094)

Executive Order (E.O.) 14094 amends and reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with E.O.s 12866 and 13563. Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

Executive Order 12866, as reaffirmed by E.O. 13563 and amended and reaffirmed by E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is significant.

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 of 1996 (SBREFA; title II of Pub. L. 104–121, March 29, 1996), 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 effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine whether 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.

Under the RFA, as amended, and as understood in light of recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, only Federal action agencies would be directly regulated if we adopt the proposed critical habitat designation. The RFA does not require evaluation of the potential impacts to

entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities would be directly regulated by this rulemaking, the Service certifies that, if made final as proposed, the proposed critical habitat designation will not have a significant economic impact on a substantial number of small entities.

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

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare statements of energy effects "to the extent permitted by law" when undertaking actions identified as significant energy actions (66 FR 28355; May 22, 2001). E.O. 13211 defines a "significant energy action" as an action that (i) is a significant regulatory action under E.O. 12866 or E.O. 14094 (88 FR 21879; April 11, 2023)); and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy. This rule is a significant regulatory action under E.O. 12866. In our economic analysis, we did not find that this proposed critical habitat designation revision would significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and there is no requirement to prepare a statement of energy effects for this action.

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

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

(1) This proposed rule would 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 mandates" include a regulation that "would impose an enforceable duty upon State, local, or Tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or Tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children 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 are not likely to destroy or adversely modify critical habitat under section 7. While 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, 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 onto State governments.

(2) We do not believe that this rule would significantly or uniquely affect small governments, because much of the proposed designation (91 percent) occurs on Federal lands. Furthermore, based on an analysis conducted for the previous designation of critical habitat in 2014 and extrapolated to this designation, we do not expect this rule to significantly or uniquely affect small governments. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. Therefore, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the Canada lynx in a takings implications assessment. The Act does not authorize the Services to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal

funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed for the proposed designation of critical habitat for the Canada lynx, and it concludes that, if adopted, this designation of critical habitat does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this proposed critical habitat designation with, the appropriate State resource agencies. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the proposed rule does not have substantial direct effects either on the States, or on the relationship between the Federal government and the States, or on the distribution of powers and responsibilities among the various levels of government. The proposed designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat essential to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist State and local governments in long-range planning because they no longer have to wait for case-by-case section 7 consultations to occur.

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section

7(a)(2) of the Act would be required. While 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, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, this proposed rule identifies the physical or biological features essential to the conservation of the species. The proposed areas of critical habitat are presented on maps, and the proposed rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

Regulations adopted pursuant to section 4(a) of the Act are exempt from the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.) and do not require an environmental analysis under NEPA. We published a notice outlining our reasons for this determination in the *Federal Register* on October 25, 1983 (48 FR 49244). This includes listing, delisting, and reclassification rules, as well as critical habitat designations and

species-specific protective regulations promulgated concurrently with a decision to list or reclassify a species as threatened. The courts have upheld this position (e.g., *Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995) (critical habitat); *Center for Biological Diversity* v. *U.S. Fish and Wildlife Service*, 2005 WL 2000928 (N.D. Cal. Aug. 19, 2005) (concurrent 4(d) rule)).

However, when we designate as "critical habitat" any of the areas that fall within the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, including this designation proposed for the Canada lynx, we undertake a NEPA analysis for that critical habitat designation consistent with the Tenth Circuit's ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service*, 75 F.3d 1429 (10th Cir. 1996). We invite the public to comment on the extent to which this proposed critical habitat designation may have a significant impact on the human environment, or fall within one of the categorical exclusions for actions that have no individual or cumulative effect on the quality of the human environment. We will complete our analysis, in compliance with NEPA, before finalizing this proposed rule.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951, May 4, 1994), E.O. 13175 (Consultation and Coordination with Indian Tribal Governments), the President's memorandum of November 30, 2022 (Uniform Standards for Tribal Consultation; 87 FR 74479, December 5, 2022), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes and Alaska Native Corporations (ANCs) on a government-to-government basis. In accordance with joint Secretary's Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work

directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes.

On October 13, 2022, the Service sent a letter to Tribal partners across the range of the Canada lynx in the Western United States, indicating that we would be updating the SSA, explaining why it was necessary to revise the SSA to inform this critical habitat revision, and requesting additional information. We will coordinate with Tribes that have lands within the boundary of this proposed critical habitat revision to determine eligibility for exclusion of those lands from the final designation of critical habitat. We will continue to work with Tribal entities during the development of a final rule for the designation of critical habitat for the Canada lynx.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *https://www.regulations.gov* and upon request from the Montana Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Montana Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Signing Authority

Martha Williams, Director of the U.S. Fish and Wildlife Service, approved this action on November 18, 2024, for publication. On November 21, 2024, Martha Williams authorized the undersigned to sign the document electronically and submit it to the Office

of the Federal Register for publication as an official document of the U.S. Fish and Wildlife Service.

Proposed Regulation Promulgation

Accordingly, the U.S. Fish and Wildlife Services proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

1. The authority citation for part 17 continues to read as follows:

AUTHORITY: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

2. In § 17.95, in paragraph (a), amend the entry for "Canada Lynx *(Lynx canadensis)"* by:

a. Revising paragraphs (1) through (5);

b. Adding headings to the figures in paragraphs (6) and (7);

c. Revising paragraphs (8) through (10); and

d. Adding paragraph (11).

The revisions and additions read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(a) *Mammals.*

* * * * *

Canada Lynx *(Lynx canadensis)*

(1) Critical habitat units are depicted for States and Counties on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of Canada lynx consist of the following components:

(i) Snowshoe hare densities adequate to support lynx residency and reproduction over time, distributed across large landscapes.

(ii) A mosaic of boreal/subalpine forest at variable forest structural stages, the majority of which provide year-round dense horizontal cover at ground or snow level.

(iii) Winter conditions that provide and maintain deep fluffy snow for extended periods of time.

(iv) Spatial and temporal arrangements of habitat large enough (483 square miles (mi^2) (≥1,250 square kilometers (km^2))) to support breeding populations.

(v) Permeable landscapes conducive to within-unit lynx daily movements and dispersal.

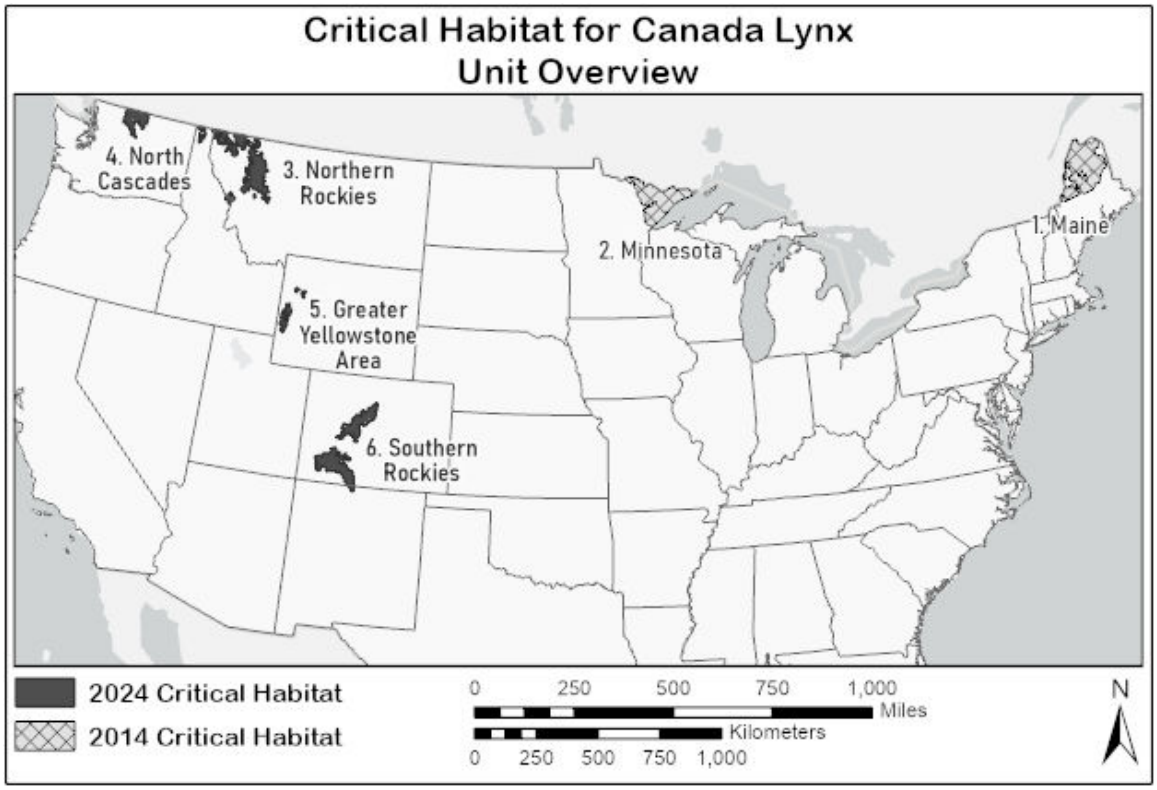
(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of the final rule.

(4) Data layers defining map units were created using the Interagency Western Lynx Bio Team tier 1 polygons. These are based on spatial distribution models that capture 95 percent of withheld and 90 percent of independent lynx GPS (Global Positioning System) locations while accounting for minimum patch size necessary to support multiple home ranges and high-quality habitat metrics. These areas were then verified by species experts to contain the physical and biological features essential to the conservation of the species. Critical habitat units were mapped and analyzed using Environmental Systems Research Institute (ESRI) ArcGIS Pro 2.9.11 Geographic Information System (GIS) program. Area calculations were done in ArcGIS Pro using the North American Datum (NAD) 1983 USA Contiguous Albers Equal Area Conic USGS projection. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet

site, *https://www.fws.gov/species/canada-lynx-lynx-canadensis*, at *https://www.regulations.gov* at Docket No. FWS–R6–ES–2024–0142 and Docket No. FWS–R6–ES–2013–0101, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Index map follows:

Figure 1 to Canada Lynx (*Lynx canadensis*) paragraph (5)



(6) * * *

Figure 2 to Canada Lynx (*Lynx canadensis*) paragraph (6)

* * * * *

(7) * * *

Figure 3 to Canada Lynx (*Lynx canadensis*) paragraph (7)

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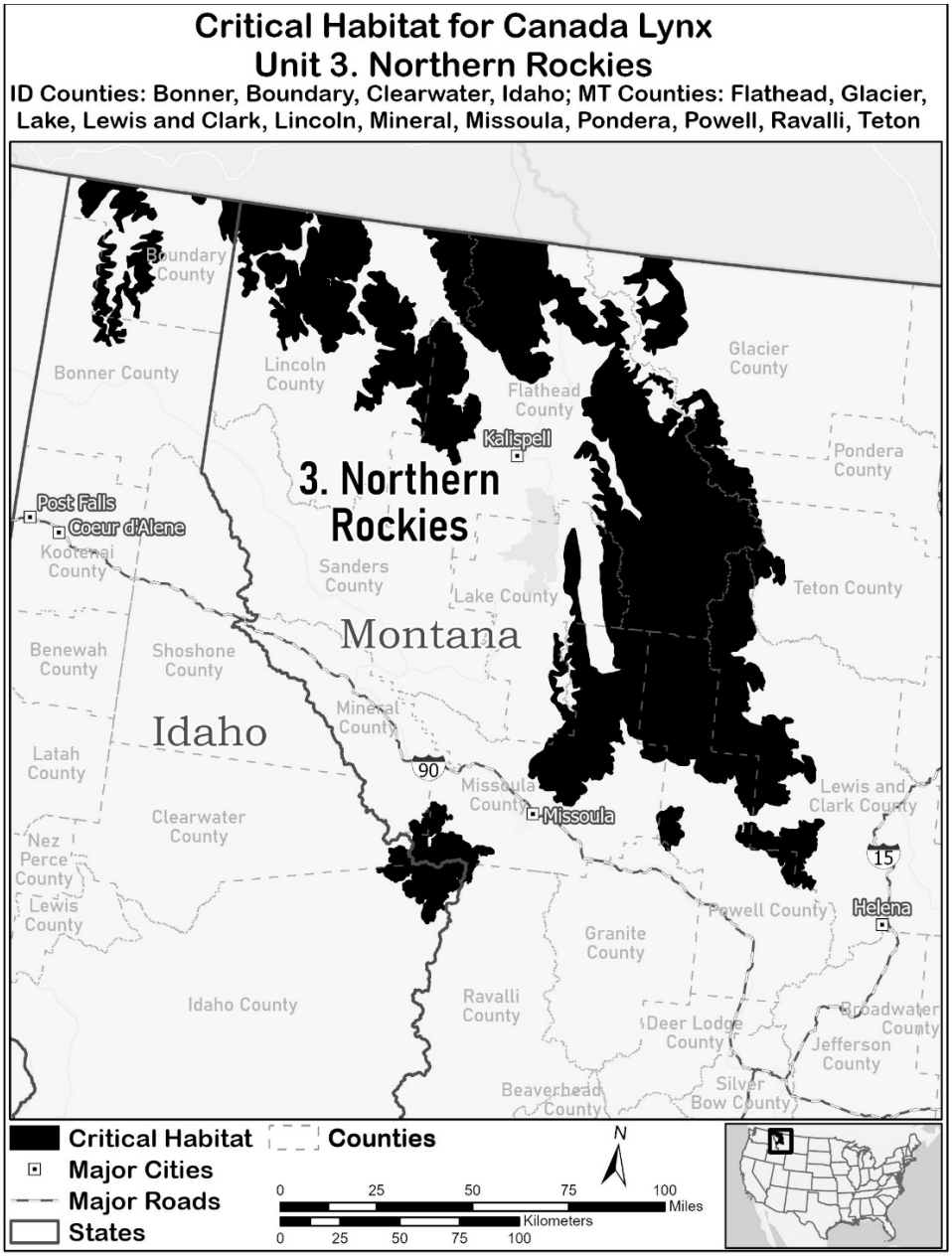
(8) Unit 3: Northern Rockies—The entirety or portions of Bonner, Boundary, Clearwater, and Idaho Counties, ID, and Flathead, Glacier, Granite, Lake, Lewis and Clark, Lincoln, Mineral, Missoula, Pondera, Powell, Ravalli, and Teton Counties, MT.

(i) Unit 3 consists of 7,959 mi^2 (20,613 km^2) located in northwestern Montana and northern and east-central Idaho. Land ownership within the unit is 90 percent Federal, 4 percent State, 3 percent Tribal, and 3 percent private.

(ii) Map of Unit 3 follows:

Figure 4 to Canada Lynx (*Lynx canadensis*) paragraph (8)(ii)



(9) Unit 4: North Cascades—The entirety or portions of Chelan, Okanogan, Skagit, and Whatcom Counties, WA.

(i) Unit 4 consists of 2,354 mi^2 (6,097 km^2) located in north-central Washington. Land ownership within the unit is 93 percent Federal and 7 percent State, with small parcels of private lands that represent less than one-half of 1 percent of the unit.

(ii) Map of Unit 4 follows:

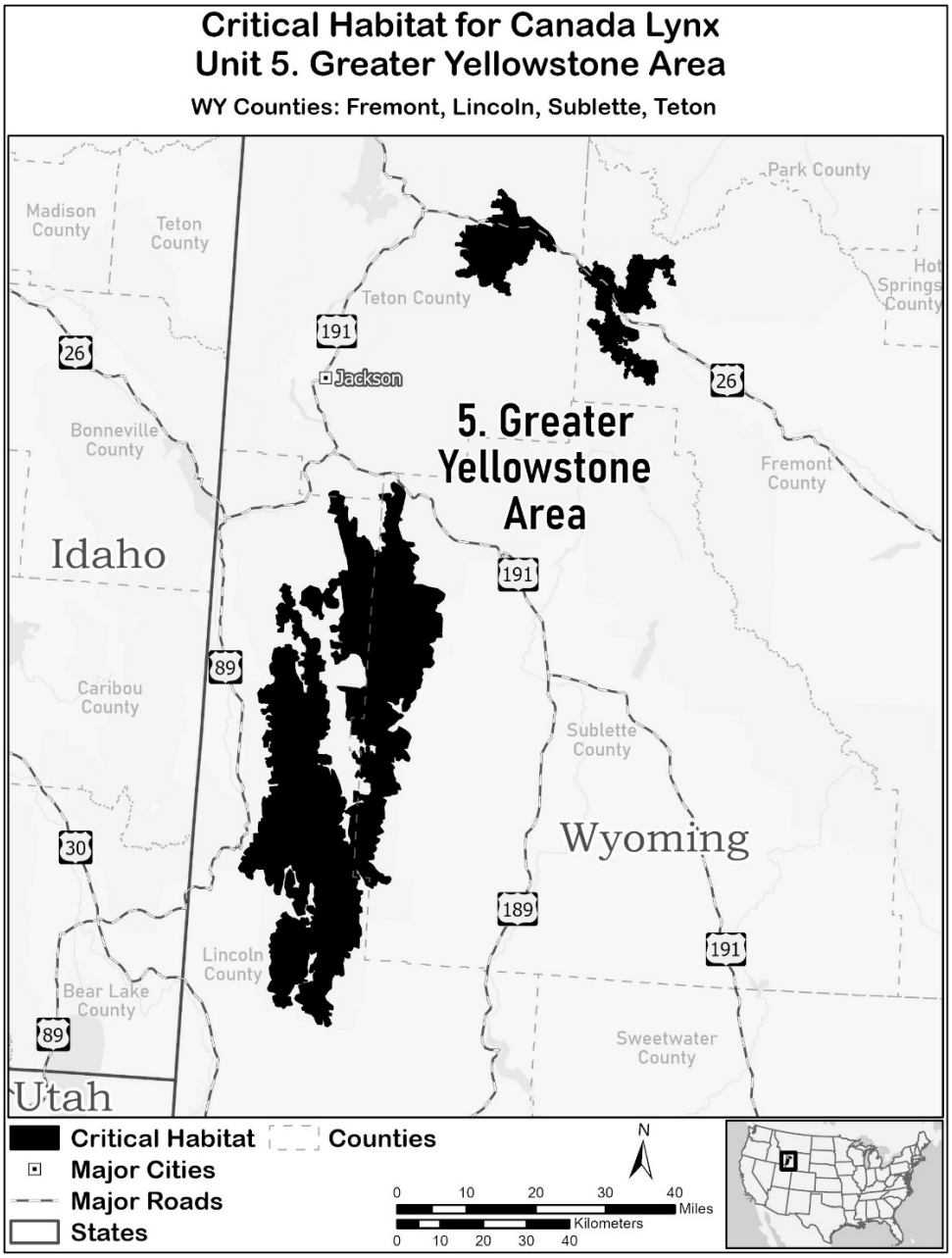
Figure 5 to Canada Lynx (*Lynx canadensis*) paragraph (9)(ii)

(10) Unit 5: Greater Yellowstone Area—The entirety or portions of Fremont, Lincoln, Sublette, and Teton Counties, WY.

(i) Unit 5 consists of 1,121 mi^2 (2,902 km^2) located in west-central and northwestern Wyoming. Land ownership within the unit is over 99 percent Federal and includes small (less than 4 mi^2 (10 km^2)) parcels of private and State lands.

(ii) Map of Unit 5 follows:

Figure 6 to Canada Lynx (*Lynx canadensis*) paragraph (10)(ii)



(11) Unit 6: Southern Rockies—The entirety or portions of Archuleta, Boulder, Chaffee, Clear Creek, Conejos, Dolores, Eagle, Gilpin, Grand, Gunnison, Hinsdale, La Plata, Lake, Mineral, Montezuma, Montrose, Ouray, Park, Pitkin, Rio Grande, Saguache, San Juan, San Miguel, and Summit Counties, CO, and Rio Arriba County, NM.

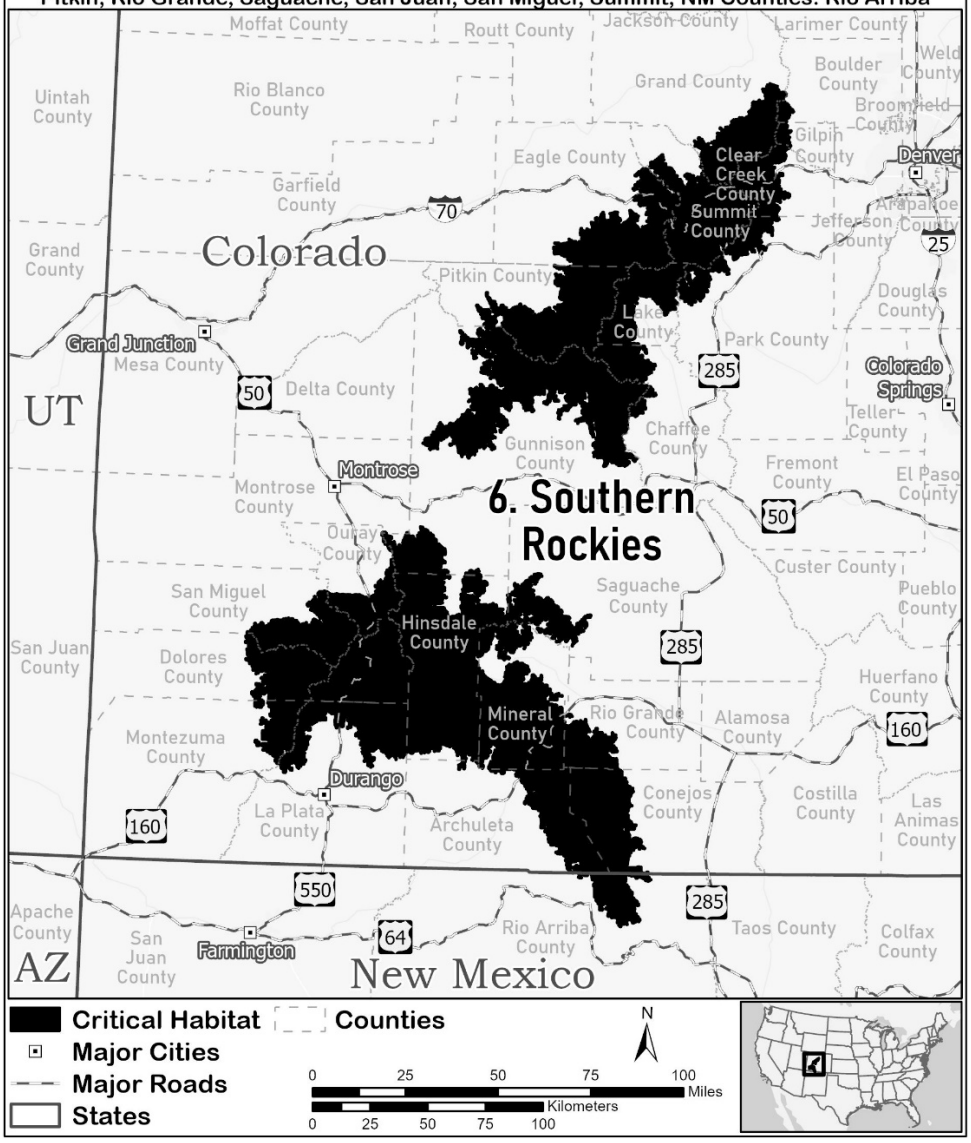
(i) Unit 6 consists of 7,679 mi^2 (19,889 km^2) located in west-central and southwestern Colorado and northern New Mexico. Land ownership within the unit is almost 89 percent Federal, almost 9 percent private, 1 percent State, and less than 1 percent Tribal and local government.

(ii) Map of Unit 6 follows:

Figure 7 to Canada Lynx (*Lynx canadensis*) paragraph (11)(ii)

Critical Habitat for Canada Lynx
Unit 6. Southern Rockies

CO Counties: Archuleta, Boulder, Chaffee, Clear Creek, Conejos, Dolores, Eagle, Gilpin, Grand, Gunnison, Hinsdale, La Plata, Lake, Mineral, Montezuma, Montrose, Ouray, Park, Pitkin, Rio Grande, Saguache, San Juan, San Miguel, Summit; NM Counties: Rio Arriba



* * * * *

Madonna Baucum,
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[FR Doc. 2024-27767 Filed: 11/27/2024 8:45 am; Publication Date: 11/29/2024]