

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17****RIN 1018-AF03****Endangered and Threatened Wildlife and Plants; Notice of Remanded Determination of Status for the Contiguous United States Distinct Population Segment of the Canada Lynx****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Clarification of findings.

**SUMMARY:** The Fish and Wildlife Service (Service), in response to the December 26, 2002, memorandum opinion and order of the United States District Court for the District of Columbia, in the case of *Defenders of Wildlife v. Norton* (Civil Action No. 00-2996 (GK)) and pursuant to the Endangered Species Act of 1973, as amended (ESA or Act), provides a clarification to the findings we made in support of the final rule that listed Canada lynx (*Lynx canadensis*) (lynx) as threatened. The lynx is currently listed as threatened in the contiguous United States as a Distinct Population Segment (DPS) that includes the States of Colorado, Idaho, Maine, Michigan, Minnesota, Montana, New Hampshire, New York, Oregon, Utah, Vermont, Washington, Wisconsin, and Wyoming. As a result of our reanalysis of the basis for that final rule, which was directed by the Court, we find that the lynx is not endangered throughout a significant portion of its range. This finding does not affect the status of the lynx as currently set forth in 50 CFR 17.11; the lynx continues to be listed as threatened in the States listed above. This finding also does not affect the special rule pursuant to section 4(d) of the Act for the Canada lynx set forth in 50 CFR 17.40(k).

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the Montana Field Office, U.S. Fish and Wildlife Service, 100 N. Park Avenue, Suite 320, Helena, Montana 59601.

**FOR FURTHER INFORMATION CONTACT:** Mark Wilson, Field Supervisor, Montana Field Office (see **ADDRESSES**), telephone 406-449-5225; facsimile 406-449-5339.

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

The Service listed the Canada lynx, hereafter referred to as lynx, as

threatened on March 24, 2000 (65 FR 16052). After listing the lynx as threatened, plaintiffs in the case of *Defenders of Wildlife v. Norton* (Civil Action No. 00-2996 (GK)) initiated action in Federal District Court, challenging the listing of the lynx as threatened and alleging violations of the Act and the Administrative Procedure Act (5 U.S.C. 551 *et seq.*). Plaintiffs argued that the Service acted arbitrarily and capriciously when it (1) did not treat the four lynx regions as separate DPSs, (2) determined that the lack of guidance for conservation of lynx in National Forest Land and Resource Management Plans and Bureau of Land Management (BLM) Resource Area Management Plans is the single factor threatening the contiguous United States DPS of lynx, (3) did not designate critical habitat for the lynx, and (4) determined that “[c]ollectively, the Northeast, Great Lakes and Southern Rockies do not constitute a significant portion of the range of the DPS.”

On December 26, 2002, the Court issued its memorandum opinion and order, deciding that the Service’s determination that “[c]ollectively, the Northeast, Great Lakes and Southern Rockies do not constitute a significant portion of the range of the DPS” must be set aside and remanded to the Service for further consideration of the lynx’s status under the ESA consistent with the Court’s memorandum opinion. The Court explained that the Service’s determination about the four regions was counterintuitive and contrary to the plain meaning of the ESA phrase “significant portion of its range.” The Court did not address the issues concerning the threats and the DPSs. The Court also ordered the Service to “undertake prompt rulemaking” in order to designate critical habitat for lynx, and ordered injunctive relief directed at section 7 consultation.

The Court ordered the determination concerning a “significant portion of its range” be remanded to the Service and completed within 180 days of the date of the order consistent with the Court’s memorandum opinion. With this document, the Service is providing its consideration of this issue. This document does not address critical habitat for the lynx, since our listing budget is currently insufficient to begin work on a rule for critical habitat. The Service will seek public comment in the future when it proposes critical habitat. This document also does not address the special rule for Canada lynx established in the March 24, 2000, final listing rule. That rule, which is found in 50 CFR 17.40(k), remains in effect.

As noted above, plaintiffs contend that our determination that “[c]ollectively, the Northeast, Great Lakes, and Southern Rockies do not constitute a significant portion of the range of the DPS,” was critical to our decision not to list the lynx as endangered. Plaintiffs maintain that, if those three regions are considered collectively to be a significant portion of the DPS, “then the Lynx’s highly imperilled status in those three areas would necessitate listing of the entire DPS as endangered.” Pls. Mot. for Summ. J. at 30 (emphasis in original). However, the Service would need to find that the lynx is endangered in these areas and that they were significant in order to list the entire DPS. Therefore, we first reviewed all of the threats to the lynx in these areas to determine whether it is in danger of extinction in each area. We identified two areas or parts of areas in which the lynx might be in danger of extinction. We then determined whether either of those areas (or parts of areas) constitutes a significant portion of the range of the lynx.

The remainder of this section describes some important concepts used throughout the following analysis. Later sections include background information on the natural history and range of the lynx, responses to public comments, an analysis of the quantity and quality of habitat throughout the range of the DPS, an analysis of the threats facing the species in the areas addressed by the remand, a finding as to the areas in which the lynx currently are in danger of extirpation, and a finding that those areas do not constitute a significant portion of the range of the lynx.

As a preliminary matter, we note that the Court suggested, but did not decide, that “significant” is appropriately defined in this context as “a noticeably or measurably large amount,” citing a dictionary definition. However, there are other definitions of significance that pertain to importance. Moreover, we believe this is more consistent with the intent of the Act in the context of the provision at issue. Otherwise, a severe threat to a small area within the range of a species would always require the species to be listed as endangered, no matter how inconsequential that area might be given the biology of the species. For example, building a large dam may make the area covered by the resulting artificial lake unsuitable for an aquatic species currently resident in the river to be dammed. The area covered by the lake would be a “measurably large” area, and therefore a measurably large portion of the range of the species.