

We conducted peer review of the proposed rule to list the contiguous United States population of lynx during the open public comment period in 1998. For this court-ordered reanalysis of the 2000 final rule listing the lynx, we did not have time to conduct additional peer review.

*Issue 1:* Technical information was provided based on recent research on lynx and snowshoe hares in Maine and Montana. Additional technical information on lynx populations and lynx habitat quality and quantity was provided by the State of Maine, the State of Vermont, the State of Colorado, the State of Wisconsin, the State of Wyoming, the State of Minnesota, research by the University of Maine and the University of Montana, the U.S. Forest Service, the BLM, the National Park Service, a number of environmental and industry groups, and individuals.

*Response:* We incorporated this information into this document.

*Issue 2:* Several commenters expressed support or concern for the Service's determination considering the significant portion of the range of the lynx. Specifically, commenters explained their concerns about whether or not the Northeast, Great Lakes, or the Southern Rockies constitute a significant portion of the range of the lynx.

*Response:* The Act defines "endangered species" as any species which is in danger of extinction throughout all or a significant portion of its range. A "threatened species" is any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The District Court found our determination that the Northeast, Great Lakes, and the Southern Rockies do not constitute a significant portion of the range of the lynx was arbitrary and capricious, and as a result of that finding, directed us to reevaluate it. Based on our reanalysis, we have determined that lynx is not in danger of extinction throughout a significant portion of its range in the contiguous United States DPS.

*Issue 3:* Several commenters opposed combining the Cascades in general, or specific locations within Washington, with the Northern Rocky Mountain region for our analysis.

*Response:* We combine the Cascades with the Northern Rocky Mountain region for our analysis and for convenience only because the issues in both regions are similar and frequently the best information available addressed both regions. The two areas are separated by the Okanogan River valley

in northern Washington, which lynx can cross, although we believe most movement of lynx to be north-south within contiguous habitat with Canada and less likely that lynx would move between habitat patches within Washington. Furthermore, the Cascades alone supports the smallest amount of lynx habitat of any region within the contiguous United States. The relative size and close proximity of the lynx habitat in the Cascades to that in the Northern Rocky Mountains further supports considering both areas as one. Combining these two regions has not in any way diminished or obscured our analysis of the status of lynx or the threats to the species.

*Issue 4:* Several commenters suggested the Cascades, the Cascades/Northern Rocky Mountains, the Southern Rockies, the Great Lakes, and the Northeast Lynx populations should each be designated as individual DPSs. Other commenters believed the contiguous United States as a whole does not fulfill the criteria to be a DPS for lynx.

*Response:* Reevaluation of DPS issues is outside of the scope of the remand in this case. However, because the plaintiffs' claims regarding application of the Service's authority to list DPSs have not yet been addressed by the court, we are responding to these comments to update and elaborate on our analysis in the final rule. The Act gives us the authority to list fish, wildlife and plants by species, subspecies, or by DPS of any species of vertebrate fish or wildlife which interbreeds when mature. However, Congress directed that we use our authority to list by DPS sparingly (see Senate Report 151, 96th Congress, 1st Session). The Service and National Marine Fisheries Service DPS policy (61 FR 4721) identifies criteria that must be met for a vertebrate group to qualify as a DPS, but it does not require that we designate a DPS in all cases where a vertebrate group meets the DPS criteria. The Service lists, reclassifies, or delists at the level we believe to be most appropriate to carry out the conservation provisions of the Act.

In this document we reaffirm our determination in the final rule to list the lynx in the contiguous United States as a single DPS. There has been no new information since the final rule was published in 2000 that compels us to change our original determination. Subsequent to issuing the proposal to list the lynx in 1998, we evaluated whether any of the four regions individually fulfilled the criteria to be listed as a DPS. As described in the final rule, we recognize that within the

contiguous United States the lynx occurs in four regions—the Northeast, Great Lakes, Southern Rocky Mountains, and Northern Rocky Mountains/Cascades. As described elsewhere in this document, we combine the Northern Rocky Mountains and Cascades in our analysis because the two regions are only separated by the Okanogan River valley, which lynx can cross, and forest types and land ownership are similar. Furthermore, the Cascades alone support the least amount of lynx habitat of any region in the contiguous United States. In evaluating whether a region qualified as a separate DPS, we analyzed whether lynx in each region were both discrete and significant, as required by our DPS policy. We concluded that within the contiguous United States these regions are geographically isolated from each other and, therefore, are discrete. Since the final rule, we are less certain that the Southern Rocky Mountains regions were historically as isolated as described by some authors. We believe it is likely that lynx in the Southern Rocky Mountains region may have been dispersers that arrived during extremely high population cycles, as indicated by the fact that the last verified record of lynx in the region is from 1973, which correlates to an extreme cyclic population high documented throughout the contiguous United States and in Canada. As a result, our original conclusion that the Southern Rocky Mountains supported an isolated resident lynx population may not be correct, and the region should perhaps be considered connected to the Northern Rocky Mountains/Cascades region.

When evaluating the status of a potential DPS, the DPS policy requires that we evaluate the significance of the population segment in relation to the taxon. A taxon is the taxonomic group of animals to which the population belongs—in this case the species *Lynx canadensis*. The DPS policy identifies elements that may be considered in determining the discrete population segment's importance to the taxon to which it belongs. These include: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon, (2) evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon, (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon, and (4) evidence that the discrete population segment differs markedly from other populations