

lynx; however, on the non-Federal lands in this region timber harvest regimes and fire suppression could cause local impacts to lynx and snowshoe hare habitat.

(13) Until Federal land management plans are amended or revised to address lynx, we conclude that the threat to lynx because of the inadequacy of existing regulatory mechanisms is moderate, albeit at a lower level than that described in the final rule.

(14) We conclude there is a threat to the contiguous United States lynx population from incidental catch by trapping, snaring, or hunting. We conclude this threat is low, although there may be an increased risk to small, local populations from incidental catch depending on when it occurs in the population cycle; however, we have no information regarding how frequently incidental trapping, snaring, or hunting of lynx occurs.

(15) We conclude that existing regulatory mechanisms do not ameliorate all of the threats contained in Factors A, B, and E. However, some regulatory mechanisms do minimize the impact some activities may have on lynx, such as regulations that prohibit the trapping and hunting of lynx in most States. While Federal land management plans have yet to be amended to adequately address lynx, Federal land managers have taken significant steps to minimize the impacts projects may have on lynx and manage habitat to conserve lynx until land management plans are amended.

(16) We conclude lynx are impacted by high traffic volume on roads that bisect suitable lynx habitat and by associated suburban developments. However, we conclude this impact is low because this situation rarely occurs throughout the range of lynx except in the Southern Rocky Mountains; however there is currently no native lynx population in this area.

Lynx in the Northeast are not in danger of extinction. As it has historically, the boreal forest of the Northeast exists primarily in Maine. Lynx habitat in Maine is currently optimal and a resident, breeding population of lynx continues to exist. Maine's lynx population is currently much larger than we knew at the time of the final rule in 2000 and lynx habitat in Maine is directly connected to substantial lynx populations and habitat in southeastern Quebec and New Brunswick. Future timber harvest regimes in Maine have the potential to reduce the amount of snowshoe hare habitat, which in turn would reduce the size of the lynx population. There are no barriers to the movement of lynx across

the Canada-U.S. border. Coyote snaring in Maine poses a risk of incidental mortality to local lynx populations. The potential exists for lynx to occur in New Hampshire because of its direct connectivity with Maine and we presume they currently occur there. Lynx in Vermont have always existed solely as dispersers because Vermont naturally supports very little lynx habitat.

Lynx in the Great Lakes are not in danger of extinction. Northeastern Minnesota has historically supported, and currently supports, a resident lynx population. Boreal forest in Minnesota is contiguous with occupied habitat in Ontario. Currently, there are many more lynx in northeastern Minnesota than we knew of at the time of the final rule in 2000. The majority of lynx habitat in the Great Lakes area is located in Minnesota and is managed as Federal lands. Threats to lynx on these lands are alleviated because these Federal agencies use the LCAS to guide activities in lynx habitat. Amendment or revision of Federal land management plans to adequately address lynx is necessary to provide long-term lynx conservation. On non-Federal lands there is a low threat to lynx because of the potential for certain forms of timber management and fire suppression to reduce snowshoe hare habitat. Wisconsin and Michigan naturally support only dispersing animals. We base this assessment on the lack of evidence of reproduction, lack of direct connectivity with suitable habitat, and limited amount of habitat in these States.

We conclude that the only portion of the range where the lynx faces possible extirpation includes the Southern Rocky Mountains (primarily Colorado) and New York, to the extent that either of these areas historically supported resident populations. We believe the loss of these resident populations was a natural process because these areas are naturally isolated from source lynx populations and habitats; therefore, the immigration necessary to augment and maintain local lynx populations was naturally precluded. However, the State of Colorado is currently undertaking an intense effort to restore lynx to Colorado. If lynx in these areas historically consisted only of dispersers that arrived during extremely high population cycles, we have no evidence that anything would prevent further such dispersal into these areas in the future. In addition, to use the words of another court quoted with approval of the court in this case, to the extent that these areas never supported a resident population (as opposed to dispersers),

these areas are not "areas in which [the lynx] is no longer viable but once was," because the lynx was never viable there. *Defenders of Wildlife v. Norton*, 258 F.3d 1136, 1145 (9th Cir. 2001) (quoted at 239 F.Supp.2d at 20). However, if we presume that both Colorado and New York historically supported resident populations, we find these areas do not constitute a significant portion of the range of lynx for the following reasons:

(1) Both areas constitute a comparatively small amount of the contiguous United States range of the lynx. Based on rough estimates, the Southern Rockies (primarily Colorado) supported only 8 percent of lynx habitat in the contiguous United States (U.S. Forest Service and Bureau of Land Management 1999); however, we know this proportion was somewhat underestimated because lynx habitat was overestimated in other regions. New York supports slightly more than 1 percent of lynx habitat just within the Northeast based on a current habitat model, and therefore only a small fraction of a percent of the habitat nationwide.

(2) The fact that historic records do not clearly demonstrate that these areas supported resident, breeding lynx populations indicates that these areas are of more marginal quality. Where habitat is abundant and of higher quality, there is evidence that resident, breeding lynx populations persist as indicated by high numbers of reliable lynx records over many years and evidence of reproduction. We do not have such information for either New York or the Southern Rocky Mountains. In fact, an effort to establish a lynx population in New York during 1989–1991 failed, potentially an indication that the habitat was not adequate to support a lynx population. Reproduction has recently been documented in an intensive lynx reestablishment effort currently underway in Colorado but it remains to be seen if the habitat is adequate to support a lynx population for the long-term without such intensive human intervention.

(3) Habitat appears marginal in the Southern Rocky Mountains and New York. In the Southern Rocky Mountains lynx habitat occurs at high elevations and, therefore, is naturally highly fragmented by topography and drier south- and west-facing slopes into island-like patches rather than expansive, contiguous blocks. The amount of potential lynx habitat in New York is estimated to be an area only slightly larger than the average home range of a single male lynx. Additionally, the boreal forest in New