effective date of the final rule was the focus of VSC's petition.

In its petition, VSC asserted that the effect of the language relating to the effective date of the new regulation, as originally published on April 30, 2008, would ''force manufacturers to start their MY 2010 no later than with April 30, 2009 production.'' VSC indicated that manufacturers need flexibility to decide when to change over from MY 2009 production to MY 2010 production. VSC suggested detailed changes to the regulatory language originally published.

The agency believes that the May 16, 2008 correction notice adequately addressed the issues raised by VSC. The corrections make clear that model year 2010 and 2011 vehicles manufactured on or after October 27, 2008 must comply with the new rule. The agency believes the October 27, 2008 effective date provided sufficient lead time for manufacturers to plan for the manufacture of model year 2010 vehicles. It is the agency's intent that all model year 2010 vehicles comply with the new VIN rule.

The May 16, 2008 corrections also make clear that ''all motor vehicles identified as model year 2009 or earlier vehicles by their manufacturer'' must comply with the current 49 CFR Part 565, which is included in the final rule as Subpart C.

Because the May 16, 2008 correction notice addresses VSC's concerns, the agency is denying this petition for reconsideration.

B. Time Period Identifiers for Other Types of Vehicles

The April 30, 2008 final rule included a change in the 17 character VIN system for passenger cars, multipurpose passenger vehicles, and trucks with GVWRs of 10,000 lb (4,536 kg) or less, that effectively indicates whether the vehicle is from the first 30 year or second 30 year period of the VIN system's life. In its petition for reconsideration, the Highway Loss Data Institute (HLDI), an affiliate of the Insurance Institute for Highway Safety (IIHS), asked that changes be made to the VIN final rule so that the 30 year period in which motorcycles and pickup trucks greater than 10,000 lb GVWR were manufactured can be identified.

While not submitted as a petition for reconsideration, NHTSA also received a comment from Penton Media expressing a concern similar to HLDI's but relating to all vehicles other than passenger cars, multipurpose passenger vehicles, and trucks with a GVWR of 4536 kg (10,000 lb) or *less,* including trucks with a GVWR *greater than* 4536 kg (10,000 lb), buses, motorcycles, trailers, and low speed-vehicles.

For motorcycles, HLDI suggested two options for allowing one to determine the 30 year period in which a motorcycle was manufactured. The first would require motorcycles to use prescribed alphabetic characters in position 9 of the VIN as check digits, as opposed to the numeric characters now required for all vehicles including motorcycles. The second option would allow motorcycles to use an alphabetic character not now permitted to be used in VINs, specifically I, O, or Q, in VIN positions 4–8 to indicate that the motorcycle is a model year in the range 2010–39.

With regard to pickups, HLDI cited four different makes/series that include versions with GVWRs both above and below 10,000 lb. HLDI asked that manufacturers of ''any make/series with GVWRs both above and below the 10,000 pound threshold follow the new rules for all vehicles of that make/series—that is, to use alphabetic characters in VIN position 7 to indicate model years 2010–2039 and ensure the uniqueness of VINs for this group of vehicles.'' HLDI said its analysis of the VINs of the four makes/series of pickups it cited indicated that alphabetic characters have not been used in position 7 of the VINs of these vehicles.

While HLDI and Penton Media have identified a difference in the way vehicles under 10,000 lb GVWR and motorcycles and vehicles over 10,000 lb GVWR are treated in the final rule, the agency does not believe that it has a sufficient basis to change Part 565 per the petitioner's request. The issues raised were not raised in the rulemaking and are therefore outside the scope of the rulemaking and cannot be addressed in response to a petition for reconsideration. As such, we are denying HLDI's petition for reconsideration.

Our decision-making on the issues raised by HLDI would benefit from public comments on the issues. The agency believes that the changes suggested by HLDI could have a substantial impact on data systems that utilize VINs. Furthermore, it seems likely that some users of data systems may not derive any benefit from the changes they would be forced to make. The changes to the VIN system HLDI proposes would likely benefit HLDI's research activities, but we are uncertain as to what adverse effects making these changes might have on others with data systems that rely on the VIN. Any changes of the sort suggested by HLDI would benefit from notice and comment rulemaking to assure, among other things, that these changes would not have an adverse impact on manufacturers of the vehicles involved as well as on the many data systems that utilize the VIN, such as those maintained by State motor vehicle departments, insurance companies, and others. NHTSA believes that any proposed change to longstanding operating principles of the VIN system, such as allowing the use of the characters I, O, and Q, must be carefully and thoroughly reviewed to make sure that a solution in one context does not create problems in another. Again, public comments on the change would be beneficial.

With respect to HLDI's concern that certain makes and models of pickup trucks have vehicle versions that are above 10,000 lb GVWR and below 10,000 lb and might therefore use two different approaches to assigning VINs to these vehicles, NHTSA believes that for the vehicles mentioned by HLDI, the problem, at least for now, does not exist. NHTSA contacted the manufacturers of the pickups cited by HLDI. Each indicated that in the case of the pickup makes and models cited by HLDI, the manufacturer applies the VIN character scheme required of vehicles less than 10,000 lb GVWR to all versions of the vehicles.

Therefore, for the aforementioned reasons, we decline to make the changes suggested by HLDI. We note that we are continuing efforts to review the VIN system, so the suggested changes could be pursued if further revisions to the VIN system are proposed at a later time.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued: December 11, 2009.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E9–30030 Filed 12–16–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R6-ES-2008-0122]
[92210-1111-0000-B2]

Endangered and Threatened Wildlife and Plants; 12-month Finding on a Petition To Change the Final Listing of the Distinct Population Segment of the Canada Lynx To Include New Mexico

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12–month finding on a petition to expand the listing of the Canada lynx (*Lynx canadensis*) to include the State of New Mexico, under the Endangered Species Act of 1973, as amended (Act). After a review of the best available scientific and commercial information, we find that the petition to change the boundary of the listing of Canada lynx is warranted but precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. We have determined that Canada lynx are regularly and frequently crossing the State boundary between Colorado and New Mexico. When lynx cross the boundary, their status under the Act changes, leaving lynx in New Mexico without Federal protection. Upon publication of this 12–month petition finding, we will add lynx in New Mexico to our candidate species list with a listing priority number of 12. We will develop a proposed rule to amend the listing of lynx in the lower 48 States as our priorities allow (see section of Preclusion and Expeditious Progress).

DATES: This finding was made on December 17, 2009.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number [FWS-R6-ES-2008-0122]. Supporting documentation we used to prepare this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Montana Field Office, 585 Shepard Way, Helena, MT 59601; telephone (406) 449-5225. Please submit any new information, materials, comments, or questions concerning this finding to the above street address.

FOR FURTHER INFORMATION CONTACT: Mark Wilson, Field Supervisor, U.S. Fish and Wildlife Service, Montana Field Office (see **ADDRESSES**). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*) requires that, for any petition containing substantial scientific or commercial information indicating that listing the species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we determine whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but that immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are threatened or endangered, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12–month findings in the **Federal Register**.

Previous Federal Action

In the final listing rule for the Canada lynx, dated March 24, 2000, the Service defined a contiguous DPS of the Canada lynx based on the international boundary with Canada and State boundaries (65 FR 16052). The final rule included all States in the historic and current range of lynx, along with areas that lynx dispersed to frequently but had no history of reproduction or population maintenance. New Mexico was not included in the listed area due to a lack of any historic record of lynx in the State and lack of sufficient lynx habitat and prey. The 2000 listing of lynx contained a discussion of lynx dispersal behavior and our prediction that lynx would continue to disperse outside of currently occupied habitat and the current listed area. We determined that these attempted dispersal events would not constitute an expansion of lynx range or recolonization of previously occupied habitat. Subsequent to publication of the final rule in 2000, lynx dispersed out of the Southern Rockies reintroduction area with relatively high frequency (Shenk 2007, p. 16) to other States including New Mexico.

In 2003, we published a clarification of the 2000 listing rule in which we determined that lynx were not endangered throughout a significant portion of their range (68 FR 40076). We also determined that lynx in the contiguous United States exist either as resident populations or as dispersers, and that due to their proclivity for moving long distances, lynx are often found repeatedly in habitats that cannot sustain breeding populations. This repeated dispersal into habitats that ultimately cannot support the species (''sink'' habitats) often leads to confusion among scientists and the public about where lynx populations may be viable. At the time of the clarification, we considered sink habitats (those with lynx habitat characteristics but without the requisite habitat scale or prey densities to support reproducing populations of lynx) to be within the range of lynx, as a conservative approach to conservation. We believed that in sink habitats, there existed the possibility that lynx could establish small local or ephemeral populations, and contribute to the persistence of the DPS, although there was admittedly no evidence that this was the case.

In 2007, we published a Clarification of Findings for the 2000 listing rule in which we determined that the significant portion of the range of lynx in the contiguous States is the northern Rocky Mountains and the North Cascades (72 FR 1186); however, the listed entity (the 14-State DPS) did not change. This clarification also determined that much of the range of lynx consists of marginal habitat that cannot and never could support resident lynx populations, and so is not biologically significant to the conservation of the DPS.

On August 8, 2007, we received a petition from Forest Guardians, Sinapu, Center for Native Ecosystems, Animal Protection Institute, Animal Protection of New Mexico, Carson Forest Watch, and Sierra Club, Rio Grande Chapter, requesting that we amend the final listing rule for the lynx DPS to include New Mexico as part of the range of the listed entity. Included in the petition was supporting information regarding our interpretation of the Act, our DPS policy, and inconsistency with the preamble to the March 2000 listing rule, as well as scientific information the petitioners deemed important to the petitioned action. We acknowledged the receipt of the petition in a letter to Matthew K. Bishop, Western Environmental Law Center, dated August 24, 2007. In that letter we also stated that due to staff and budget limitations we anticipated beginning work on the finding in Fiscal Year (FY) 2009 and that we would process a finding on the petition as soon as funds became available. An evaluation of emergency listing was conducted. Based on the population status and alleged threats described in the petition, we found no evidence to support emergency listing in New Mexico at that time.

On April 17, 2008, we received a complaint for failure to complete a 90–day petition finding. A settlement agreement was finalized, in which we agreed to submit a 90–day finding by December 15, 2008. On December 18, 2008, we published a 90–day finding in which we determined that the

petitioners presented substantial information indicating that changing the listing rule to include New Mexico may be warranted (73 FR 76990). This notice constitutes the 12–month finding on the August 8, 2007, petition to amend the final listing rule for the lynx DPS to include New Mexico.

We published a final rule designating critical habitat for lynx in the **Federal Register** on November 9, 2006 (71 FR 66007). On July 20, 2007, we announced that we would review the November 9, 2006, final critical habitat rule after questions were raised about the integrity of scientific information used and whether the decision made was consistent with the appropriate legal standards. Based on our review of the previous final critical habitat designation, we determined that the critical habitat designation may not comport with the best available scientific and commercial information. On January 15, 2008, the U.S. District Court for the District of Columbia issued an order stating the Service's deadlines for a proposed rule for revised critical habitat by February 15, 2008, and a final rule for revised critical habitat by February 15, 2009. Consequently, our proposed rule was signed on February 13, 2008, and submitted to the **Federal Register**. The proposed rule was subsequently published in the **Federal Register** on February 28, 2008 (73 FR 10860), and a final rule was published in the **Federal Register** on February 25, 2009 (74 FR 8616).

Species Information

Biology

The biology of the species is comprehensively covered in the Previous Federal Actions, including the final rule listing the species (65 FR 16052), the two clarifications of that final rule (68 FR 40076; 72 FR 1186) and the 2009 final critical habitat rule (74 FR 8616).

Here, we provide a short summary of the relevant species biology. Canada lynx are medium-sized cats, generally measuring 30 to 35 inches (75 to 90 centimeters) long and weighing 18 to 23 pounds (8 to 10.5 kilograms) (Quinn and Parker 1987, Table 1). They have large, well-furred feet and long legs for traversing snow; tufts on the ears; and short, black-tipped tails. Lynx are specialized predators of snowshoe hare (*Lepus americanus*) (McCord and Cardoza 1982, p. 744; Quinn and Parker 1987, pp. 684-685; Aubry *et al.* 2000, pp. 375-378). Lynx are dependent on snowshoe hare populations for survival, so lynx habitat suitability is strongly correlated with snowshoe hare habitat quality. We consider adequate snowshoe hare densities to be the most important habitat component for lynx.

Lynx and snowshoe hares are strongly associated with what is broadly described as boreal forest (Bittner and Rongstad 1982, p. 154; McCord and Cardoza 1982, p. 743; Quinn and Parker 1987, p. 684; Agee 2000, p. 39; Aubry *et al.* 2000, pp. 378-382; Hodges 2000a, pp. 136-140 and 2000b, pp. 183-191; 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). In the contiguous United States, the boreal forest types transition to deciduous temperate forest in the Northeast and Great Lakes and to subalpine forest in the west (Agee 2000, pp. 40-41). Lynx habitat can generally be described as moist boreal forests that have cold, snowy winters and a high-density snowshoe hare prey base (Quinn and Parker 1987, pp. 684-685; Agee 2000, pp. 39-47; Aubry *et al.* 2000, pp. 373-375; Buskirk *et al.* 2000a, pp. 397-405; Ruggiero *et al.* 2000, pp. 445-447).

In mountainous areas, the boreal forests that lynx use are characterized by scattered moist forest types with high hare densities in a matrix of other habitats (e.g., hardwoods, dry forest, non-forest) with low hare densities. In these areas, lynx incorporate the matrix habitat (non-boreal forest habitat elements) into their home ranges and use it for traveling between patches of boreal forest that support high hare densities where most foraging occurs. In areas like the northern and southern Rockies where high-density hare habitat is fragmented by other habitat types, hare density must remain high at the landscape scale (i.e., averaged over all habitat types) for lynx to maintain residency and reproduction.

Snow conditions also determine the distribution of lynx (Ruggiero *et al.* 2000, pp. 445-449). Lynx are morphologically and physiologically adapted for hunting in deep snow and surviving in areas that have cold winters with deep, fluffy snow for extended periods. These adaptations provide lynx a competitive advantage over potential competitors, such as bobcats (*Lynx rufus*) or coyotes (*Canis latrans*) (McCord and Cardoza 1982, p. 748; Buskirk *et al.* 2000b, pp. 86-95; Ruediger *et al.* 2000, pp. 1-11; Ruggiero *et al.* 2000, pp. 445, 450). Bobcats and coyotes have a higher foot load (more weight per surface area of foot), which causes them to sink into the snow more than lynx. Therefore, bobcats and coyotes cannot efficiently hunt in fluffy or deep snow and are at a competitive disadvantage to lynx. Long-term snow conditions presumably limit the winter distribution of potential lynx competitors such as bobcats (McCord and Cardoza 1982, p. 748) or coyotes.

Lynx Habitat Requirements

Because of the patchy and temporal nature of high-quality snowshoe hare habitat, lynx populations require large boreal forest landscapes to ensure that sufficient high- quality snowshoe hare habitat is available and to ensure that lynx may move freely among patches of suitable habitat and among subpopulations of lynx. Populations that are composed of a number of discrete subpopulations, connected by dispersal, are called metapopulations (McKelvey *et al.* 2000b, p. 25). Individual lynx maintain large home ranges (reported as generally ranging between 12 to 83 square miles (mi^2) (31 to 216 square kilometers (km^2)) (Koehler 1990, p. 847; Aubry *et al.* 2000, pp. 382-386; Squires and Laurion 2000, pp. 342-347; Squires *et al.* 2004, pp. 13-16, Table 6; Vashon *et al.* 2005, pp. 7-11; Shenk 2009a, pp. 6-7). The size of lynx home ranges varies depending on abundance of prey, the animal's gender and age, the season, and the density of lynx populations (Koehler 1990, p. 849; Poole 1994, pp. 612-616; Slough and Mowat 1996, pp. 951, 956; Aubry *et al.* 2000, pp. 382-386; Mowat *et al.* 2000, pp. 276-280; Vashon *et al.* 2005, pp. 9-10). When densities of snowshoe hares decline, for example, lynx enlarge their home ranges to obtain sufficient amounts of food to survive and reproduce, or seek new habitats in which to establish a home range through dispersal.

In the contiguous United States, the boreal forest landscape is naturally patchy and transitional because it is the southern edge of the distributional range of boreal forest. This patchiness generally limits snowshoe hare populations in the contiguous United States from achieving densities similar to those of the expansive northern boreal forest in Canada (Wolff 1980, pp. 123-128; Buehler and Keith 1982, pp. 24, 28; Koehler 1990, p. 849; Koehler and Aubry 1994, p. 84). Additionally, the presence of more snowshoe hare predators and competitors at southern latitudes may inhibit the potential for high-density hare populations (Wolff 1980, p. 128). As a result, lynx generally occur at relatively low densities in the contiguous United States compared to the high lynx densities that occur in the northern boreal forest of Canada (Aubry *et al.* 2000, pp. 375, 393-394) or to the densities of species such as the bobcat, which is a habitat and prey generalist.

Lynx are highly mobile and often move long distances (greater than 60 miles (mi) (100 kilometers (km))) during dispersal attempts (Aubry *et al.* 2000, pp. 386-387; Mowat *et al.* 2000, pp. 290-294). Lynx disperse primarily when snowshoe hare populations decline (Ward and Krebs 1985, pp. 2821-2823; O'Donoghue *et al.* 1997, pp. 156, 159; Poole 1997, pp. 499-503). Sub-adult lynx disperse even when prey is abundant (Poole 1997, pp. 502-503) because local home ranges with abundant hares are generally occupied by established adult lynx and sub-adults must look elsewhere to establish new home ranges. Lynx also make exploratory movements outside their home ranges (Aubry *et al.* 2000, p. 386; Squires *et al.* 2001, pp. 18-26).

The boreal forest landscape is naturally dynamic. Forest stands within the landscape change as they undergo succession after natural or human-caused disturbances such as fire, insect epidemics, wind, ice, disease, and forest management (Elliot-Fisk 1988, pp. 47-48; Agee 2000, pp. 47-69). As a result, lynx habitat within the boreal forest landscape is typically patchy because the boreal forest contains stands of differing ages and conditions, some of which are suitable as lynx foraging or denning habitat (or will become suitable in the future due to forest succession) and some of which serve as travel routes for lynx moving between foraging and denning habitat (McKelvey *et al.* 2000c, pp. 427-434; Hoving *et al.* 2004, pp. 290-292).

Snowshoe hares comprise a majority of the lynx diet (Nellis *et al.* 1972, pp. 323-325; Brand *et al.* 1976, pp. 422-425; Koehler 1990, p. 848; Apps 2000, pp. 358-359, 363; Aubry *et al.* 2000, pp. 375-378; Mowat *et al.* 2000, pp. 267-268; von Kienast 2003, pp. 37-38; Squires *et al.* 2004, p. 15, Table 8). When snowshoe hare populations are low, female lynx produce few or no kittens that survive to independence (Nellis *et al.* 1972, pp. 326-328; Brand *et al.* 1976, pp. 420, 427; Brand and Keith 1979, pp. 837-838, 847; Poole 1994, pp. 612-616; Slough and Mowat 1996, pp. 953-958; O'Donoghue *et al.* 1997, pp. 158-159; Aubry *et al.* 2000, pp. 388-389; Mowat *et al.* 2000, pp. 285-287). Lynx prey opportunistically on other small mammals and birds, particularly during lows in snowshoe hare populations, but alternate prey species may not sufficiently compensate for low availability of snowshoe hares, resulting in reduced reproductive success and reduced lynx populations (Brand *et al.* 1976, pp. 422-425; Brand and Keith 1979, pp. 833-834; Koehler 1990, pp. 848-849; Mowat *et al.* 2000, pp. 267-268).

In northern Canada, lynx populations fluctuate in response to the cycling of snowshoe hare populations (Hodges 2000a, pp. 118-123; Mowat *et al.* 2000, pp. 270-272). Although snowshoe hare populations in the northern portion of their range show strong, regular population cycles, these fluctuations are generally much less pronounced in the southern portion of their range in the contiguous United States (Hodges 2000b, pp. 165-173). In the contiguous United States, the degree to which regional local lynx population fluctuations are influenced by local snowshoe hare population dynamics is unclear. However, researchers anticipated that, because of natural fluctuations in snowshoe hare populations, there will be periods when lynx densities are extremely low.

Because lynx population dynamics, survival, and reproduction are closely tied to snowshoe hare availability, lynx habitat suitability is directly tied to hare habitat quality. Lynx generally concentrate their foraging and hunting activities in habitat patches where snowshoe hare populations are high (Koehler *et al.* 1979, p. 442; Ward and Krebs 1985, pp. 2821-2823; Murray *et al.* 1994, p. 1450; O'Donoghue *et al.* 1997, pp. 155, 159-160 and 1998, pp. 178-181). Snowshoe hares are most abundant in forest stands 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. 136-140 and 2000b, pp. 183-195). Generally, hare densities are higher in regenerating, earlier successional forest stages because they have greater understory structure than mature forests (Buehler and Keith 1982, p. 24; Wolfe *et al.* 1982, pp. 665-669; Koehler 1990, pp. 847-848; Hodges 2000b, pp. 183-195; Homyack 2003, pp. 63, 141; Griffin 2004, pp. 84-88). However, snowshoe hares can be abundant in mature forests with dense understories (multi-storied stands) especially in the Rocky Mountains (Griffin 2004, pp. 53-54, Squires *et al.* 2006, p. 15).

Within the boreal forest, lynx den sites are located where coarse woody debris, such as downed logs and windfalls, provides security and thermal cover for lynx kittens (McCord and Cardoza 1982, pp. 743-744; Koehler 1990, pp. 847-849; Slough 1999, p. 607; Squires and Laurion 2000, pp. 346-347; Squires *et al.* 2008, p. 1503; Organ 2001). The amount of structure (e.g., downed, large, woody debris) appears to be more important than the age of the forest stand for lynx denning habitat (Mowat *et al.* 2000, pp. 10-11); however, proximity to forest stands with high horizontal cover (and presumably high snowshoe hare density) does contribute to overall suitability of denning sites (Squires *et al.* 2008, p. 1503).

The 14-State Canada Lynx DPS

The Service listed lynx in 2000 within what we determined to be the contiguous United States DPS, which included the known current and historical range of the lynx (68 FR 40080). In specifying where lynx was listed, we used State boundaries to circumscribe the outer limits in which the DPS was found at the time, using the best science available. This range included portions of the States of Colorado, Idaho, Maine, Minnesota, Montana, Washington, and Wyoming, and also areas that could support dispersers – portions of the above States along with portions of Michigan, New Hampshire, New York, Oregon, Utah, Vermont, and Wisconsin (68 FR 40099). We did not consider other areas outside of boreal forest, where dispersing lynx had only been sporadically documented in the past, to be within the range of the lynx, because we deemed these areas to be currently incapable of supporting dispersing lynx. These areas included Connecticut, Indiana, Iowa, Massachusetts, Nebraska, Nevada, North Dakota, Ohio, Pennsylvania, South Dakota, and Virginia (68 FR 40099).

We did not include New Mexico in this list of States because no lynx occurred there, and we had no information to indicate that lynx had ever been documented there, even sporadically. Therefore, we determined that the boundaries delineating the range of lynx did not include New Mexico because it was not within the current or historical range of the species (68 FR 40083). In addition, no review of potential habitat in New Mexico was conducted. We did not consider lynx recently released into Colorado that strayed into New Mexico as sufficient reason to include New Mexico within the range of lynx because there was no evidence that habitat in New Mexico historically supported lynx, or that lynx moving into New Mexico would support maintenance of the lynx DPS (68 FR 40083).

In 1998, when the Service proposed to list the lynx in the United States, no wild (or reintroduced) lynx were known to exist in Colorado, which represented the extreme southern edge of the species' range (65 FR 16059). Boreal forest habitat in Colorado and southeastern Wyoming, the Southern Rocky Mountain Region, is isolated

from boreal forest in Utah and northwestern Wyoming by intervening grassland and shrubland habitats, and is naturally highly fragmented (65 FR 16059).

It was uncertain whether lynx records from Colorado represented a small self-sustaining lynx population, or whether historical records represented dispersers that arrived during high population cycles of lynx and subsequently died out. Under the scenario whereby lynx in Colorado were not a self-sustaining population, some of the dispersers may have remained for a period of years if hare populations were high enough to support residents and reproduction, but eventually succumbed to a lack of consistent, high-quality habitat and food sources. We believe that this is the most likely historical scenario in the southern Rockies based on the small number of historic lynx records (McKelvey *et al.* 2000a, pp. 229-231), low snowshoe hare densities (Andersen *et al.* 1980, Table 5; Dolbeer and Clark 1975, p. 539; Hodges 2000b, Table 7.5; Malaney 2003, pp. 65, 87, 90; Zahratka and Shenk 2008, Table 4), and overall low reproductive output of the reintroduced population (Shenk 2007, pp. 11-13).

In 1999, the Colorado Division of Wildlife (CDOW) reintroduced 22 wild lynx from Canada and Alaska into southwestern Colorado (Shenk 2007, p. 20). By 2003, when we clarified the listing rule (68 FR 40076, July 3, 2003), no data indicated that the lynx released could be supported by the habitat available in Colorado. In their 2007 Wildlife Research Report, CDOW continued to conclude that ''what is yet to be determined is whether current conditions in Colorado can support the recruitment necessary to offset annual mortality in order to sustain the population'' (Shenk 2007, p. 18). Colorado was included in the 14-State DPS in 2000, because records indicated that lynx were documented there historically; however, it was not known whether the habitat occurred in the requisite quantity and quality to sustain lynx populations. Therefore, the 2000 listing represented a conservative approach, which included areas in the range of the species when evidence of long-term persistence was lacking, but enough evidence existed that it could not be discounted.

In 2000, when the final listing rule was published, we were not aware of any information to indicate that lynx existed in New Mexico, that it was ever occupied historically, or that it could sustain lynx. As a consequence, we did not include New Mexico in the listing rule or special rule concerning lynx in the contiguous 14-State DPS. We now have documentation that lynx reintroduced in Colorado have attempted to disperse in many directions, primarily into New Mexico, Utah, and Wyoming, but also into eight other States (Shenk 2007, pp. 6, 9). No reproduction has been documented in New Mexico or Utah, but one den was found in Wyoming (Shenk 2007, p. 15), and one den was found within 5.6 mi (9 km) of the Colorado-New Mexico State boundary (Shenk 2009b, entire).

We also point out that lynx dispersal away from the reintroduction area in southern Colorado is what would be predicted if lynx were reintroduced into an area that consisted mostly of unsuitable habitat, and dispersing animals were searching for habitats with the requisite prey densities that could support resident animals. Our review of the evidence indicates that this habitat is most likely found north of the southern Rockies.

We included an analysis in the final lynx listing rule (68 FR 40081) on whether lynx were both discrete and significant in each of the four regions of the contiguous United States where it exists (the Northeast, Great Lakes, Southern Rocky Mountains, and Northern Rocky Mountains/Cascades). We determined that none of the regions individually constitute significantly unique or unusual ecological settings and, therefore, did not individually meet the DPS criteria. Therefore, the lynx was listed as a single contiguous United States DPS defined by 14 States.

Lynx in the Southern Rockies

Lynx reintroduction into the southern Rocky Mountains in southern Colorado occurred between 1999 and 2006 with a total of 218 animals released (Shenk 2008, p. 1). Reintroduced lynx were captured from the wild in Alaska and Canada. Also in 1999, the CDOW began a post-release monitoring program that tracked reintroduced animals (and, opportunistically, their wild-born progeny). The purpose of the monitoring program was to determine whether the reintroduced population was reproducing and to collect habitat use and other ecological data. Prior to beginning reintroductions, CDOW reviewed the historic evidence of lynx occupation and concluded that the Southern Rockies in Colorado represent the extreme southern edge of the range of lynx. At that time, lynx were either extirpated or at such low densities that the extant population was no longer viable (Seidel *et al.* 1998, p. 4). Throughout the post-release monitoring program, CDOW has maintained that the reintroduction is experimental in nature and that it remains to be determined whether the southern Rockies can support enough lynx reproduction to offset mortality (Shenk 2007, p. 18)

At the time of the lynx listing in 2000, the CDOW reintroduction program was in its beginning stages and without post-release data or analysis to evaluate its effectiveness. Consequently, when lynx were listed, lynx released into Colorado, prior to and after the listing, received the full protection of the Act as a threatened species. At that time, it was our determination that habitat in Colorado represented the southernmost extension of lynx range (65 FR 16052, p. 16059), based on the lack of historic lynx records in New Mexico. Therefore, when the line demarcating the range of lynx (and consequently the regulatory reach of the final listing rule) was placed at the border of Colorado and New Mexico, it was thought that this boundary placement conservatively encompassed all of the lynx range in the southern Rocky Mountains, and that while lynx may occasionally wander south of that line, such occurrences would be rare (68 FR 40076, p. 40077).

Habitat in New Mexico that may support all or a portion of lynx life-history needs is limited to the San Juan and Sangre de Cristo mountains in the northern part of the State. Both of these ranges are contiguous with mountains in Colorado where reintroduced lynx are residing and have reproduced. Both of these mountain ranges have snowshoe hares (Malaney and Frey 2006, p. 879); however, densities at the landscape scale (i.e., the scale of a lynx home range) are low (0.13 hares/ha (0.32 hares/ac) before seasonal recruitment) and are likely not high enough to support resident lynx (Malaney 2003, pp. 65, 87, 90).

Most of the habitat in question is managed by the Carson and Santa Fe National Forests of the U.S. Forest Service (USFS). Approximately 596,000 ac (241,193 ha) of spruce-fir forest types lie within this area, 440,000 ac of which are on National Forest system lands (USFS 2009, pp. 5-6). On the Carson and Santa Fe National Forests, approximately 536,400 ac (217,073 ha) have characteristics of potential lynx habitat (spruce fir and other cold, wet conifer forest types), about 45 percent of which occurs in designated wilderness (USFS 2009, p. 7). As a reference, in the reintroduced Colorado lynx population the average lynx home range size is 108,109 ac (43,750 ha) (calculated from data in Shenk 2007, p. 11). Other small patches of isolated spruce-fir and mixed conifer habitats occur in northern New Mexico, but due to their small size, they are not considered to have any value as lynx habitats (USFS 2009, p. 7). In their

information submitted for this finding, the USFS concluded that due to the lack of historic record, lack of reproduction in reintroduced lynx, low prey densities, high densities of competitor species and relatively low snow levels for this area, New Mexico is likely to function as a ''sink'' habitat for the reintroduced lynx population in the southern Rockies meaning that mortality would exceed recruitment in this area (USFS 2009, p. 17).

As explained in our 2007 clarification of the 2000 listing rule (72 FR 1186, p. 1189), the presence of snowshoe hares at high population densities is a prerequisite for lynx residency in any area. However, neither the presence of snowshoe hare populations nor contiguity with a lynx population are sufficient to assure that lynx will reside in an area that lacks a high density of snowshoe hares at a scale large enough to support a lynx home range (landscape scale). Snowshoe hare habitat is of varying quality, and in the lower-48 States only the highest quality habitat (i.e., that with the highest snowshoe hare densities) is capable of supporting lynx populations and contributing to the maintenance of the DPS. Since long-term studies of snowshoe hare densities across the range of the DPS have not occurred, we believe that historic and recent data about where lynx have or do reside and reproduce, provide the best available scientific data concerning which areas have the requisite high hare densities and amount of habitat required to support lynx.

The best source of lynx presence data for the historic period is McKelvey *et al.* (2000b entire). McKelvey *et al.* (2000b, entire) focus on the use of ''verifiable records'' as the most appropriate locality records for lynx. Verifiable records are those for which there is verifiable evidence that the animal in question was a lynx, such as a museum specimen, a diagnostic photograph, or an expert that had the animal ''in hand'' at the time of identification. We believe that the need for accurate identification of lynx necessitates that only verifiable records be used, and we refer readers to McKelvey *et al.* (2008, entire) for a discussion of evidentiary standards. Others have attempted to determine the historic range of lynx through the use of other types of evidence. Frey (2006, entire) used a combination of habitat associations, biogeography, and habitat contiguity with known populations to infer lynx historic range to areas without historic records.

While this method may point to areas that were potentially in the range of the species, it presumes that we understand the species' life-history needs and the habitat condition well enough to know if the habitat in question would support the species. In the case of lynx, we know that lynx are dependent on high-density snowshoe hare populations, in the sense that we know of no lynx population that occurs in an area without a high density of hares. Conversely, we do know of habitats with low-density hare populations that have no lynx populations, such as the Olympic Peninsula in Washington, southwestern Montana/central Idaho, and much of Appalachia (Hall 1981, p. 317). We do not know what the threshold landscape-scale hare density is that will allow lynx to persist, or precisely what habitat characteristics allow persistence of reproducing populations.

Many depictions of lynx geographic range simply draw lines around peripheral occurrence records without reference to habitat (e.g., Hall 1981). These depictions are likely to overestimate the extent of lynx range due to the animal's tendency to move long distances across unsuitable habitats while attempting to disperse. Attempted dispersal forays also bring lynx into human-dominated landscapes where they are disproportionately likely to experience mortality in a way that leads to discovery by humans and thus these animals are disproportionately likely to become locality records. We believe that the best available scientific information to inform determinations about historic range is verifiable occurrence records due to their high level of reliability. Verifiable species records, put in the context of suitable habitat distribution, are crucial to determining what the historic distribution of a species was, especially when there is some doubt about the habitat characteristics that are sufficient to support the species. By using verifiable occurrence records, we essentially give lynx a vote in the process, where scientific uncertainty does not permit us to determine precisely where suitable habitat exists. For these reasons, we believe that lynx geographic range is best depicted through a combination of reliable occurrence records and suitable habitat. Because lynx have a tendency to move long distances during unsuccessful dispersal attempts, the actual range of the species is much smaller than what is depicted on range maps that simply draw lines around peripheral occurrence records and do not consider habitat type and quality. For examples of analyses that use both occurrence records and suitable habitat to determine where a species may have occurred in the past, see McKelvey *et al.* (2000b, entire) and Aubry *et al.* (2007, entire).

In our 2007 clarification of the 2000 listing rule, we further determined that the northern Rockies and North Cascades formed a significant portion of the DPS' range because this geographic area and its constituents (e.g., habitat) was the primary region necessary to support the long-term existence of the contiguous U.S. DPS (72 FR 1186, p. 1189). This finding was based on the remaining portions of the DPS range being composed of marginal habitat where lynx presence was tied more directly to immigration of lynx from Canada. In that document we emphasized that, just because habitat is marginal, it does not mean that lynx can no longer live there. Instead, marginal habitat means that such areas cannot and may never have supported resident lynx populations (72 FR 1186, p. 1188).

Data collected by CDOW during their post-release monitoring also are valuable in determining where lynx may find snowshoe hare densities that may (at least occasionally) support reproduction. Between September 1999 and March 2007, 60 individual lynx (37 females, 23 males) crossed into New Mexico (Shenk 2007, p. 10). Many of these lynx passed back into Colorado after short forays into New Mexico, 14 mortalities occurred, and some lynx may have resided in New Mexico year-round, although that has not been documented (Shenk 2007, pp. 10-26). From September 1999 through March 2007, CDOW found no evidence that any of the 37 female lynx that have moved into New Mexico reproduced or attempted to reproduce (Shenk 2007, p. 15). However, CDOW does not monitor lynx that leave the State of Colorado as intensively as it does in Colorado. Based on the large number of female lynx that have moved into New Mexico over the period of the reintroduction program without evidence of any reproduction, we cannot conclude that New Mexico lynx habitat is of high enough quality to support a resident population. Indeed, we share CDOW's concern that the southern Rockies in their entirety may not be able to sustain a lynx population.

Lynx suffer proportionally higher mortality in New Mexico than in other States (Shenk 2001, p. 14). However, statistical tests to determine whether this difference was significantly different than what might be expected by chance were not reported. In addition, lynx mortality due to deliberate killing (shooting) was higher as a proportion of all mortalities in Colorado (53.8 percent) (where all lynx are protected by the Act) than they were outside Colorado (46.2 percent) (where

lynx have Act protections in some States but not New Mexico and others) (Shenk 2007, Table 9). Therefore, the evidence presented by Shenk does not indicate that lack of the Act's protections in New Mexico is a significant contributor to lynx mortality. Rather, lynx mortality is high for lynx that disperse outside of high-quality lynx habitat whether they remain under the protection of the Act or not. This result is to be expected, because dispersal outside of quality habitat is usually only done under stress, such as inability to find food or displacement by another lynx. Dispersal outside of lynx habitat is likely to place lynx in human-dominated landscapes such as agricultural areas, settlements, and transportation corridors, where lynx mortalities are more likely to occur.

It is our determination, based on the historic lack of evidence of lynx occurrence in New Mexico (McKelvey *et al.* 2000a, Table 8.1) and the recent evidence of lynx dispersal attempts into northern New Mexico (Shenk 2007, pp. 29-31), that lynx in New Mexico represent attempted dispersers, rather than lynx establishing residency in suitable habitat as defined in our clarification of findings (68 FR 40076, p. 40077). We also believe that the habitat in New Mexico is a population ''sink'', in that it is unlikely to support lynx reproduction to the extent that recruitment will ever be able to offset population mortality, even absent any human-caused mortality. However, as we stated in 2003, at the time of listing we considered lynx found in population sinks such as New Mexico to be dispersers but we included these areas within the range of lynx (68 FR 40076, p. 40080).

Finding

We have carefully assessed the information in the petition along with the best scientific and commercial data available. This 12–month finding reflects and incorporates information that we received during the public comment period or that we obtained through consultation, literature research, and field visits.

On the basis of this review, we have determined that revising the boundaries of the DPS as identified in the 2000 final listing rule for Canada lynx to include New Mexico is warranted. This finding is based on the fact that the information that we used to describe the southern boundary of the DPS at the time of listing is out of date. Lynx that attempt to disperse outside of areas that support populations should be protected from direct or indirect mortality that may occur due to the lack of protections under the Act.

We are assigning a listing priority number (LPN) of 12 to amending the listing of lynx to include New Mexico in the listed DPS. We assign an LPN of 1 to 12 (higher number being of lower priority), depending on the magnitude of threats (high vs. moderate to low), immediacy of threats (imminent or nonimminent), and taxonomic status of the species (in order of priority: monotypic genus (a species that is the sole member of a genus); species; or part of a species (subspecies, DPS, or significant portion of the range)). We are assigning an LPN of 12 based on nonimminent threats of a low magnitude to the lynx DPS occurring from human-caused mortality to lynx dispersing to New Mexico and the lack of protection under the Act for these lynx. Human-caused mortality is a factor affecting lynx in New Mexico; however, this impact does not occur at a level such that it creates a significant threat to lynx in the contiguous United States and to the DPS as a whole. The magnitude of threats to the lynx DPS, inclusive of those lynx in New Mexico, is low. The threats occur infrequently and are nonimminent. Furthermore, as described above, the amount of suitable habitat for lynx in New Mexico is considered negligible relative to the amount of habitat within the listed range. Potential impacts to the habitat have not been documented to threaten lynx, either in New Mexico or outside of it. The majority of lynx and its habitats within the DPS are already protected by the Act. Because lynx in the lower 48 States are listed as a DPS, the appropriate LPN for this level of magnitude and immediacy of threats is a 12.

Emergency Listing

We may list a species effective immediately under Section 4 of the Act if there is any emergency posing a significant risk to the well-being of the species. Because threats identified to lynx in New Mexico are determined to be nonimminent and of low magnitude for the species in the lower 48 States (DPS) as a whole, the Secretary has determined not to exercise his discretion to invoke the provisions to immediately put the protections of the Act in place for the Canada lynx in New Mexico.

Importance of Habitat in New Mexico for the Lynx DPS

The information gathered in the process of preparing this finding does not indicate that New Mexico can support reproducing lynx. We still find no evidence that New Mexico can support a lynx population or that habitat in New Mexico may play a supporting role in conservation of the DPS. We believe that the only role that habitat in New Mexico may play in lynx conservation is to allow individuals to survive long enough to move north back into more suitable habitat. Managing to increase habitat suitability for lynx in New Mexico would be counter-productive to this end, because it is unlikely that habitat in New Mexico can be made to support lynx, and the important goal is that lynx return to the population further north. Therefore, we do not recommend that habitat in New Mexico be managed to support residency and reproduction, as are habitats further north in Colorado and the northern Rockies. For example, we do not think it would be appropriate for the USFS to implement management based on the Lynx Conservation Assessment and Strategy such as that found in the Southern Rocky Mountain Lynx Amendment (USFS 2008).

Significant Portion of the Range

Under the Act and our implementing regulations, a species may warrant listing if it is threatened or endangered in a significant portion of its range. Because this 12–month finding to amend the listing of the Canada lynx DPS is warranted but precluded, we do not need to perform a ''significant portion of the range'' analysis for the species at this time.

Preclusion and Expeditious Progress

Preclusion is a function of the listing priority of a species in relation to the resources that are available and competing demands for those resources. Thus, in any given FY, multiple factors dictate whether it will be possible to undertake work on a proposed listing regulation or whether promulgation of such a proposal is warranted but precluded by higher-priority listing actions.

The resources available for listing actions are determined through the annual Congressional appropriations process. The appropriation for the Listing Program is available to support work involving the following listing actions: Proposed and final listing rules; 90–day and 12–month findings on petitions to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists) or to change the status of a species from threatened to endangered; annual determinations on prior ''warranted but precluded'' petition findings as required under section 4(b)(3)(C)(i) of the Act; critical habitat petition findings; proposed and

final rules designating critical habitat; and litigation-related, administrative, and program-management functions (including preparing and allocating budgets, responding to Congressional and public inquiries, and conducting public outreach regarding listing and critical habitat). The work involved in preparing various listing documents can be extensive and may include, but is not limited to: gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis for our decisions; writing and publishing documents; and obtaining, reviewing, and evaluating public and peer review comments on proposed rules and incorporating relevant information into final rules. The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions; that is, more complex actions generally are more costly. For example, during the past several years, the cost (excluding publication costs) for preparing a 12–month finding, without a proposed rule, has ranged from approximately $11,000 for one species with a restricted range and involving a relatively uncomplicated analysis, to $305,000 for another species that is wide-ranging and involved a complex analysis.

We cannot spend more than is appropriated for the Listing Program without violating the Anti-Deficiency Act (see 31 U.S.C. § 1341(a)(1)(A)). In addition, in FY 1998 and for each FY since then, Congress has placed a statutory cap on funds that may be expended for the Listing Program, equal to the amount expressly appropriated for that purpose in that FY. This cap was designed to prevent funds appropriated for other functions under the Act (for example, recovery funds for removing species from the Lists), or for other Service programs, from being used for Listing Program actions (see House Report 105-163, 105th Congress, 1st Session, July 1, 1997).

Recognizing that designation of critical habitat for species already listed would consume most of the overall Listing Program appropriation, Congress also put a critical habitat subcap in place in FY 2002, and has retained it each subsequent year to ensure that some funds are available for other work in the Listing Program: ''The critical habitat designation subcap will ensure that some funding is available to address other listing activities'' (House Report No. 107-103, 107th Congress, 1st Session, June 19, 2001). In FY 2002 and each year until FY 2006, the Service has had to use virtually the entire critical habitat subcap to address court-mandated designations of critical habitat. Consequently, none of the critical habitat subcap funds have been available for other listing activities. In FY 2007, we were able to use some of the critical habitat subcap funds to fund proposed listing determinations for high-priority candidate species. In FY 2008 and 2009, while we were unable to use any of the critical habitat subcap funds to fund proposed listing determinations, we did use some of this money to fund the critical habitat portion of some proposed listing determinations, so that the proposed listing determination and proposed critical habitat designation could be combined into one rule, thereby being more efficient in our work. In FY 2010, we anticipate being able to do the same.

Thus, through the listing cap, the critical habitat subcap, and the amount of funds needed to address court-mandated critical habitat designations, Congress and the courts have in effect determined the amount of money available for other listing activities. Therefore, the funds in the listing cap, other than those needed to address court-mandated critical habitat for already-listed species, set the limits on our determinations of preclusion and expeditious progress.

Congress also recognized that the availability of resources was the key element in deciding, when making a 12–month petition finding, whether we would prepare and issue a listing proposal or instead make a ''warranted but precluded'' finding for a given species. The Conference Report accompanying Public Law 97-304, which established the current statutory deadlines for listing and the warranted-but-precluded finding requirements that are currently contained in the Act, states (in a discussion on 90–day petition findings that by its own terms also covers 12–month findings) that the deadlines were ''not intended to allow the Secretary to delay commencing the rulemaking process for any reason other than that the existence of pending or imminent proposals to list species subject to a greater degree of threat would make allocation of resources to such a petition [i.e., for a lower-ranking species] unwise.''

In FY 2010, expeditious progress is that amount of work that can be achieved with $10,471,000, which is the amount of money that Congress appropriated for the Listing Program (that is, the portion of the Listing Program funding not related to critical habitat designations for species that are already listed). Our process is to make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis. The $10,471,000 will be used to fund work in the following categories: compliance with court orders and court-approved settlement agreements requiring that petition findings or listing determinations be completed by a specific date; section 4 (of the Act) listing actions with absolute statutory deadlines; essential litigation-related, administrative, and listing program-management functions; and high-priority listing actions for some of our candidate species. The allocations for each specific listing action are identified in the Service's FY 2009 Allocation Table (part of our administrative record). For FY 2010, Congress recently passed an appropriations bill. We are working on finalizing our allocation of money for specific listing actions.

In FY 2007, we had more than 120 species with an LPN of 2, based on our September 21, 1983, guidance for assigning an LPN for each candidate species (48 FR 43098). Using this guidance, we assign each candidate an LPN of 1 to 12, depending on the magnitude of threats (high vs. moderate to low), immediacy of threats (imminent or nonimminent), and taxonomic status of the species (in order of priority: monotypic genus (a species that is the sole member of a genus); species; or part of a species (subspecies, DPS, or significant portion of the range)). The lower the listing priority number, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority). Because of the large number of high-priority species, we further ranked the candidate species with an LPN of 2 by using the following extinction-risk type criteria: International Union for the Conservation of Nature and Natural Resources (IUCN) Red list status/rank, Heritage rank (provided by NatureServe), Heritage threat rank (provided by NatureServe), and species currently with fewer than 50 individuals, or 4 or fewer populations. Those species with the highest IUCN rank (critically endangered), the highest Heritage rank (G1), the highest Heritage threat rank (substantial, imminent threats), and currently with fewer than 50 individuals, or fewer than 4 populations, comprised a group of approximately 40 candidate species (''Top 40''). These 40 candidate species have had the highest priority to receive funding to work on a proposed listing determination. As we work on proposed and final listing rules for these 40

candidates, we are applying the ranking criteria to the next group of candidates with LPNs of 2 and 3 to determine the next set of highest priority candidate species. In FY 2008-2009, we funded work on proposed listing determinations for 61 candidate species, most of which have an LPN of 2, although these have not been published to date. There are currently 56 candidate species with an LPN of 2 that nave not received funding for preparation of proposed listing rules.

To be more efficient in our listing process, as we work on proposed rules for these species in the next several years, we are preparing multi-species proposals when appropriate, and these may include species with lower priority if they overlap geographically or have the same threats as a species with an LPN of 2. In addition, available staff resources also are a factor in determining high-priority species provided with funding. Finally, proposed rules for reclassification of threatened species to endangered are lower priority, since as listed species, they are already afforded the protection of the Act and implementing regulations.

Our decision that a proposed rule to revise the boundaries of the Canada lynx DPS under the Act is warranted but precluded is based on the low magnitude and non-imminence of threats to the Canada lynx in the lower 48-contiguous States (i.e., the DPS). As we have already determined that the potential threats are of low magnitude and are not imminent, we conclude that this action should receive the lowest listing priority. We consider the priority for amending the Canada lynx DPS to be lower than for other candidate species in need of protection under the Act. As described in the ''Finding'' section above, we have assigned an LPN of 12 to this amendment. In accordance with guidance we published on September 21, 1983, we assign an LPN to each candidate species (48 FR 43098). Such a priority ranking guidance system is required under section 4(h)(3) of the Act (16 U.S.C. 1533(h)(3)). Using this guidance, we assign each candidate an LPN of 1 to 12, depending on the magnitude of threats, imminence of threats, and taxonomic status; the lower the listing priority number, the higher the listing priority, i.e., a species with an LPN of 1 would have the highest listing priority. We currently have 56 species with an LPN of 2 that have not received funding yet (see Table 1 of the November 9, 2009, Notice of Review; 74 FR 57866). For the next 2 years, we have funded proposed listings for several species with an LPN of 2. We consider amending the Canada lynx DPS to be precluded by these high-priority candidate species.

As explained above, a determination that listing is warranted but precluded also must demonstrate that expeditious progress is being made to add or remove qualified species to and from the Lists of Endangered and Threatened Wildlife and Plants. (Although we do not discuss it in detail here, we also are making expeditious progress in removing species from the list under the Recovery Program, which is funded by a separate line item in the budget of the Endangered Species Program. As explained above in our description of the statutory cap on Listing Program funds, the Recovery Program funds and actions supported by them cannot be considered in determining expeditious progress made in the Listing Program.) As with our ''precluded'' finding, expeditious progress in adding qualified species to the Lists is a function of the resources available and the competing demands for those funds. Given that limitation, we find that we made progress in FY 2009 in the Listing Program and will continue to make progress in FY 2010. This progress included preparing and publishing the following determinations:

FISCAL YEAR 2009 AND FISCAL YEAR 2010 COMPLETED LISTING ACTIONS

Publication Date	Title	Actions	FR Pages
10/15/2008	90-Day Finding on a Petition To List the Least Chub	Notice of 90–day Petition Finding, Substantial	73 FR 61007 61015
10/21/2008	Listing 48 Species on Kauai as Endangered & Designating Critical Habitat	Proposed Listing, Endangered; Proposed Critical Habitat	73 FR 62591 62742
10/24/2008	90-Day Finding on a Petition to List the Sacramento Valley Tiger Beetle as Endangered	Notice of 90–day Petition Finding, Not substantial	73 FR 63421 63424
10/28/2008	90-Day Finding on a Petition To List the Dusky Tree Vole *(Arborimus longicaudus silvicola)* as Threatened or Endangered	Notice of 90–day Petition Finding, Substantial	73 FR 63919 63926
11/25/2008	12-Month Finding on a Petition To List the Northern Mexican Gartersnake *(Thamnophis eques megalops)* as Threatened or Endangered With Critical Habitat	Notice of 12–month petition finding, Warranted but precluded	73 FR 71787 71826
12/02/2008	90-Day Finding on a Petition To List the Black-tailed Prairie Dog as Threatened or Endangered	Notice of 90–day Petition Finding, Substantial	73 FR 73211 73219
12/05/2008	90-Day Finding on a Petition To List the Sacramento Mountains Checkerspot Butterfly *(Euphydryas anicia cloudcrofti)* as Endangered with Critical Habitat	Notice of 90–day Petition Finding, Substantial	73 FR 74123 74129

FISCAL YEAR 2009 AND FISCAL YEAR 2010 COMPLETED LISTING ACTIONS—Continued

Publication Date	Title	Actions	FR Pages
12/18/2008	90-Day Finding on a Petition to Change the Listing Status of the Canada Lynx	Notice of 90–day Petition Finding, Substantial	73 FR 76990 76994
01/06/2009	Partial 90-Day Finding on a Petition To List 475 Species in the Southwestern United States as Threatened or Endangered With Critical Habitat	Notice of 90–day Petition Finding, Not substantial	74 FR 419 427
02/05/2009	Partial 90-Day Finding on a Petition To List 206 Species in the Midwest & Western United States as Threatened or Endangered With Critical Habitat	Notice of 90–day Petition Finding, Not substantial	74 FR 6122 6128
02/10/2009	90-Day Finding on a Petition To List the Wyoming Pocket Gopher as Threatened or Endangered With Critical Habitat	Notice of 90–day Petition Finding, Substantial	74 FR 6558 6563
03/17/2009	Listing *Phyllostegiahispida* (No Common Name) as Endangered Throughout Its Range	Final Listing Endangered	74 FR 11319 11327
03/25/2009	12-Month Finding on a Petition to List the Yellow-Billed Loon as Threatened or Endangered	Notice of 12–month petition finding, Warranted but precluded	74 FR 12931 12968
04/09/2009	12-Month Finding on a Petition to List the San Francisco Bay-Delta Population of the Longfin Smelt *(Spirinchus thaleichthys*) as Endangered	Notice of 12–month petition finding, Not warranted	74 FR 16169 16175
04/22/2009	90-Day Finding on a Petition To List the Tehachapi Slender Salamander *(Batrachosepsstebbinsi)* as Threatened or Endangered	Notice of 90–day Petition Finding, Substantial	74 FR 18336 18341
05/07/2009	90-Day Finding on a Petition To List the American Pika as Threatened or Endangered with Critical Habitat	Notice of 90–day Petition Finding, Substantial	74 FR 21301 21310
05/19/2009	12-Month Finding on a Petition to List the Coaster Brook Trout as Endangered	Notice of 12–month petition finding, Not warranted	74 FR 23376 23388
06/09/2009	90-Day Finding on a Petition To List *Oenothera acutissima* (Narrowleaf Evening-primrose) as Threatened or Endangered	Notice of 90–day Petition Finding, Not substantial	74 FR 27266 27271
06/29/2009	Proposed Endangered Status for the Georgia Pigtoe Mussel, Interrupted Rocksnail, & Rough Hornsnail with Critical Habitat	Proposed Listing, Endangered; Proposed Critical Habitat	74 FR 31113 31151
07/01/2009	90-Day Finding on a Petition to List the Northern Leopard Frog *(Lithobates* [=Rana] *pipiens*) in the Western United States as Threatened	Notice of 90–day Petition Finding, Substantial	74 FR 31389 31401
07/07/2009	12-Month Finding on a Petition To List a Distinct Population Segment of the Roundtail Chub *(Gila robusta*) in the Lower Colorado River Basin	Notice of 12–month petition finding, Warranted but precluded	74 FR 32351 32387
07/08/2009	90-Day Finding on a Petition to List the Coqui Llanero *(Eleutherodactylus juanariveroi*) as Endangered	Notice of 90–day Petition Finding, Substantial	74 FR 32510 32513

FISCAL YEAR 2009 AND FISCAL YEAR 2010 COMPLETED LISTING ACTIONS—Continued

Publication Date	Title	Actions	FR Pages
07/08/2009	90-Day Finding on a Petition to List the Susan's purse-making caddisfly *(Ochrotrichia susanae*) as Threatened or Endangered	Notice of 90–day Petition Finding, Substantial	74 FR 32514 32521
07/08/2009	Proposed Endangered Status for Flying Earwig Hawaiian Damselfly *(Megalagrion nesiotes*) & Pacific Hawaiian Damselfly *(M. pacificum*) Throughout Their Ranges	Proposed Listing, Endangered	74 FR 32490 32510
07/09/2009	Listing Casey's June Beetle *(Dinacoma caseyi*) as Endangered & Designation of Critical Habitat	Proposed Listing, Endangered; Proposed Critical Habitat	74 FR 32857 32875
07/22/2009	90-Day Finding on a Petition To List the White-Sided Jackrabbit *(Lepus callotis)* as Threatened or Endangered	Notice of 90–day Petition Finding, Substantial	74 FR 36152 36158
08/06/2009	Initiation of Status Review for Mountain Whitefish *(Prosopium williamsoni)* in the Big Lost River, Idaho	Notice of Status Review	74 FR 39268 39269
08/11/2009	90-Day Finding on a Petition To List the Jemez Mountains Salamander *(Plethodon neomexicanus*) as Threatened or Endangered With Critical Habitat	Notice of 90–day Petition Finding, Substantial	74 FR 40132 40138
08/18/2009	Partial 90-Day Finding on a Petition To List 206 Species in the Midwest & Western United States as Threatened or Endangered with Critical Habitat	Notice of 90–day Petition Finding, Not substantial (9 species); Notice of 90–day Petition Finding, Substantial (29 species)	74 FR 41649 41662
08/19/2009	12-Month Finding on a Petition To List the Ashy Storm-Petrel as Threatened or Endangered	Notice of 12–month petition finding, Not warranted	74 FR 41832 41860
08/28/2009	90-Day Finding on a Petition To List the Sonoran Population of Desert Tortoise *(Gopherus agasizzii*) as a Distinct Population Segment With Critical Habitat	Notice of 90–day Petition Finding, Substantial	74 FR 44335 44344
09/02/2009	12-Month Finding on a Petition To List the Sacramento Mountains Checkerspot Butterfly as Endangered with Critical Habitat	Notice of 12–month petition finding, Not warranted	74 FR 45396 45411
09/09/2009	90-Day Finding on a Petition to List the Eastern Population of the Gopher Tortoise *(Gopherus polyphemus*) as Threatened	Notice of 90–day Petition Finding, Substantial	74 FR 46401 46406
09/10/2009	12-Month Finding on a Petition to List *Astragalus anserinus* (Goose Creek milkvetch) as Threatened or Endangered	Notice of 12 month petition finding, Warranted but precluded	74 FR 46521 46542
09/10/2009	90-Day Finding on a Petition to List *Cirsium wrightii* (Wright's marsh thistle) as Threatened or Endangered with Critical Habitat	Notice of 90–day Petition Finding, Substantial	74 FR 46542 46547
09/10/2009	Endangered & Threatened Wildlife & Plants; 90-Day Finding on a Petition to List the Amargosa Toad *(Bufo nelsoni*) as Threatened or Endangered	Notice of 90–day Petition Finding, Substantial	74 FR 46551 46557

FISCAL YEAR 2009 AND FISCAL YEAR 2010 COMPLETED LISTING ACTIONS—Continued

Publication Date	Title	Actions	FR Pages
09/10/2009	90-Day Finding on a Petition to List the Pacific Walrus as Threatened or Endangered	Notice of 90–day Petition Finding, Substantial	74 FR 46548 46551
10/08/2009	Listing *Lepidium papilliferum* (Slickspot Peppergrass) as a Threatened Species Throughout Its Range	Final Listing-Threatened	74 FR 52013 52064
10/27/2009	90-day Finding on a Petition To List the American Dipper in the Black Hills of South Dakota as Threatened or Endangered	Notice of 90–day Petition Finding, Not substantial	74 FR 55177 55180
10-28-2009	Status Review of Arctic Grayling (*Thymallus arcticus*) in the Upper Missouri River System	Notice of Intent to Conduct Status Review	74 FR 55524 55525

Our expeditious progress also included work on listing actions that we funded in FY 2009 but have not yet completed to date. These actions are listed below. Actions in the top section of the table are being conducted under a deadline set by a court. Actions in the middle section of the table are being conducted to meet statutory timelines, that is, timelines required under the Act. Actions in the bottom section of the table are high-priority listing actions. These actions include work primarily on species with an LPN of 2, and selection of these species is partially based on available staff resources, and when appropriate, include species with a lower priority if they overlap geographically or have the same threats as the species with the high priority. Including these species together in the same proposed rule results in considerable savings in time and funding, as compared to preparing separate proposed rules for each of them in the future.

ACTIONS FUNDED IN FISCAL YEAR 2009 BUT NOT YET COMPLETED

SPECIES	ACTION
Actions Subject to Court Order/Settlement Agreement	
Coastal cutthroat trout	Final listing determination
Mono basin sage-grouse	12–month petition finding
Greater sage grouse	12–month petition finding
Southwest bald eagle population	12–month petition finding
White-tailed prairie dog	12–month petition finding
American pika	12–month petition finding
Hermes copper butterfly	90–day petition finding
Thorne's hairstreak butterfly	90–day petition finding
Actions with Statutory Deadlines	
48 Kauai species	Final listing determination
Black-footed albatross	12–month petition finding
Mount Charleston blue butterfly	12–month petition finding
Mojave fringe-toed lizard[1]	12–month petition finding
Pygmy rabbit (rangewide)[1]	12–month petition finding
Kokanee – Lake Sammamish population[1]	12–month petition finding
Delta smelt (uplisting)	12–month petition finding
Cactus ferruginous pygmy-owl[1]	12–month petition finding
Tucson shovel-nosed snake[1]	12–month petition finding

ACTIONS FUNDED IN FISCAL YEAR 2009 BUT NOT YET COMPLETED—Continued

SPECIES	ACTION
Northern leopard frog	12–month petition finding
Tehachapi slender salamander	12–month petition finding
Coqui Llanero	12–month petition finding
Susan's purse-making caddisfly	12–month petition finding
White-sided jackrabbit	12–month petition finding
Jemez Mountains salamander	12–month petition finding
29 of 206 species	12–month petition finding
Desert tortoise – Sonoran population	12–month petition finding
Gopher tortoise – eastern population	12–month petition finding
Wrights marsh thistle	12–month petition finding
Southeastern population of snowy plover & wintering population of piping plover	90–day petition finding
Berry Cave salamander[1]	90–day petition finding
Ozark chinquapin[1]	90–day petition finding
Smooth-billed ani	90–day petition finding
Bay Springs salamander[1]	90–day petition finding
Mojave ground squirrel[1]	90–day petition finding
32 species of snails and slugs	90–day petition finding
Calopogon oklahomensis	90–day petition finding
Striped newt	90–day petition finding
Sprague's pipit	90–day petition finding
Southern hickorynut	90–day petition finding
5 Southwest mussel species	90–day petition finding
Chihuahua scarfpea	90–day petition finding
White-bark pine	90–day petition finding
Puerto Rico harlequin	90–day petition finding
Fisher – Northern Rocky Mtns. population	90–day petition finding
42 snail species (Nevada & Utah)	90–day petition finding
Hawaii yellow-faced bees	90–day petition finding
475 Southwestern species (partially completed)	90–day petition finding
High Priority Listing Actions[3]	
19 Oahu candidate species (16 plants, 3 damselflies) (15 with LPN = 2, 3 with LPN = 3, 1 with LPN =9)	Proposed listing
17 Maui-Nui candidate species (14 plants, 3 tree snails) (12 with LPN = 2, 2 with LPN = 3, 3 with LPN = 8)	Proposed listing
Sand dune lizard (LPN = 2)	Proposed listing
2 Arizona springsnails *(Pyrgulopsis bernadina* (LPN = 2), *Pyrgulopsis trivialis* (LPN = 2))	Proposed listing
2 New Mexico springsnails *(Pyrgulopsis chupaderae* (LPN = 2), *Pyrgulopsis thermalis* (LPN = 11))	Proposed listing

ACTIONS FUNDED IN FISCAL YEAR 2009 BUT NOT YET COMPLETED—Continued

SPECIES	ACTION
2 mussels (rayed bean (LPN = 2), snuffbox No LPN)	Proposed listing
2 mussels (sheepnose (LPN = 2), spectaclecase (LPN = 4),	Proposed listing
Ozark hellbender[2] (LPN = 3)	Proposed listing
Altamaha spinymussel (LPN = 2)	Proposed listing
5 southeast fish (rush darter (LPN = 2), chucky madtom (LPN = 2), yellowcheek darter (LPN = 2), Cumberland darter (LPN = 5), laurel dace (LPN = 5))	Proposed listing
8 southeast mussels (southern kidneyshell (LPN = 2), round ebonyshell (LPN = 2), Alabama pearlshell (LPN = 2), southern sandshell (LPN = 5), fuzzy pigtoe (LPN = 5), Choctaw bean (LPN = 5), narrow pigtoe (LPN = 5), and tapered pigtoe (LPN = 11))	Proposed listing
3 Colorado plants (Pagosa skyrocket *(Ipomopsis polyantha*) (LPN = 2), Parchute beardtongue *(Penstemon debilis*) (LPN = 2), Debeque phacelia *(Phacelia submutica*) (LPN = 8))	Proposed listing

[1] Funds for listing actions for these species were provided in previous FYs.
[2] We funded a proposed rule for this subspecies with an LPN of 3 ahead of other species with LPN of 2, because the threats to the species were so imminent and of a high magnitude that we considered emergency listing if we were unable to fund work on a proposed listing rule in FY 2008.
[3] Funds for these high-priority listing actions were provided in FY 2008 and FY 2009.

We have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant laws and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the Act, the actions described above collectively constitute expeditious progress.

We will revise the boundaries of the Canada lynx DPS in the contiguous United States when funding is available for discretionary listing actions. At such time that funding becomes available to develop a proposed rule, we will develop revised boundaries for the listed DPS based on the biology of the species. We will continue to monitor the status of this DPS as new information becomes available. This review will determine if a change in status is warranted, including the need to make prompt use of emergency listing procedures.

We intend any amendment to this listing to be as accurate as possible. Therefore, we will continue to accept additional information and comments on the status of and threats to this DPS from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding.

References Cited

A complete list of all references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Supervisor, at the U.S. Fish and Wildlife Service, Montana Field Office (see **ADDRESSES**).

Author

The primary author of this document is staff of the Mountain-Prairie Region of the U.S. Fish and Wildlife Service, 134 Union Blvd., Suite 645, Lakewood, Colorado 80228 (also see **ADDRESSES**).

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 25, 2009

Daniel M. Ashe,

Acting Director, U.S. Fish and Wildlife Service

[FR Doc. E9–29960 Filed 12–16–09; 8:45 am]

BILLING CODE 4310–55–S