

CHAPTER 1

1.1 SUMMARY

Determination of Effects

Canada Lynx

Implementation of the proposed federal action MAY AFFECT but is NOT LIKELY TO ADVERSELY AFFECT the threatened Canada lynx (*Lynx canadensis*).

Implementation of the proposed federal action MAY AFFECT but is NOT LIKELY TO ADVERSELY AFFECT designated critical habitat for the threatened Canada lynx (*Lynx canadensis*).

Bull Trout

Implementation of the proposed federal action MAY AFFECT but is NOT LIKELY TO ADVERSELY AFFECT the threatened bull trout (*Salvelinus confluentus*).

Implementation of the proposed federal action MAY AFFECT but is NOT LIKELY TO ADVERSELY AFFECT designated critical habitat for the threatened bull trout (*Salvelinus confluentus*).

Consultation Requirements

In accordance with the Endangered Species Act (ESA), its implementation regulations (50 CFR 402.13), Forest Service Manual FSM 2671.4, and NRCS, General Manual, Title 190, Part 410.22, the United States Department of Agriculture – Natural Resources Conservation Service (NRCS) is required to request written concurrence from the United States Department of the Interior – Fish and Wildlife Service (FWS) with respect to determinations of potential effects on threatened, endangered and proposed species, or designated critical habitat.

Need for Re-Assessment Based on Changed Conditions

The biological assessment findings are based on the best current data and scientific information available. A revised biological assessment must be prepared if: (1) new information reveals effects, which may impact threatened, endangered, and proposed species or designated critical habitat in a manner or to an extent not considered in this assessment; (2) the proposed action is subsequently modified in a manner that causes an effect which was not considered in this assessment; or (3) a new species is listed or critical habitat designated which may be affected by the action.

1.2 INTRODUCTION

Threatened, endangered and proposed species are managed under the authority of the Federal Endangered Species Act (PL 93-205, as amended). Under provisions of the Endangered Species

Act (ESA), federal agencies shall use their authorities to carry out programs for the conservation of listed species, and shall insure any action authorized, funded, or implemented by the agency is not likely to: (1) adversely affect listed species or designated critical habitat; (2) jeopardize the continued existence of proposed species; or (3) adversely modify proposed critical habitat (16 USC 1536). Section 7 of ESA requires that Federal agencies consult with the FWS to determine the effects of a proposed federal action on threatened, endangered and proposed species, or designated critical habitat.

The purpose of this programmatic biological assessment is to describe and analyze the possible effects of implementing standard NRCS conservation practices throughout Montana on listed or proposed species, or designated critical habitat. In most cases, the affects determinations apply to relatively simple, straightforward actions that have insignificant effects, discountable effects, or beneficial effects on species listed as threatened or endangered, species proposed for listing as threatened or endangered, and designated critical habitat.

Each listed species in Montana is analyzed in a separate chapter of this biological assessment (vertebrates only, listed plants will not be included in this informal consultation). The species list is confirmed at approximately 90 day intervals by checking the FWS, Montana Ecological Services Field Office web site for current listed species information:
<http://montanafieldoffice.fws.gov/>.

An interagency review of this programmatic biological assessment will occur annually. The purpose of the annual review is to review implemented projects, review conservation projects covered by the programmatic, discuss proposed amendments to the programmatic, and schedule any necessary field reviews. Members of this review team may include the NRCS state resource conservationist, state biologist(s), area biologist(s) (ad hoc), and FWS biologist(s).

1.3 PROPOSED ACTION

This programmatic assessment is specific to implementing USDA Natural Resources Conservation Service standard conservation practices on private, federal, tribal, state or county lands throughout Montana. The NRCS typically provides technical and financial assistance to private land owners to implement conservation practices necessary to address resource concerns on either their privately owned property or on state and/or federally leased property. In the case of projects involving Native Americans, the projects may occur on privately owned land, federal trust land or federal allotted land; either within reservation boundaries or not. When NRCS technical assistance provides the basis of NRCS financial assistance, the NRCS must consult with the FWS where the action may affect any listed species. In addition, the NRCS must confer with the FWS if the action may affect designated or proposed critical habitat. Thus, the ***federal action*** triggering this consultation is NRCS providing funding to implement one or more of the 90 conservation practices in Montana. The ***action area*** will be the entire range of a listed or proposed species in Montana, and include all designated or proposed critical habitat for a given species.

Typically, private landowners and the NRCS engage in a cooperative effort, with the private landowner receiving technical and financial assistance through congressionally authorized programs funded by the most recent Farm Bill (Food, Conservation, and Energy Act of 2008, Public Law 110-246 as codified in 16 U.S.C 3801 *et seq.*). These include any of the following NRCS conservation programs: Conservation Technical Assistance, Working Lands Programs, Private Lands Protection Programs, Land Retirement Programs, Stewardship Programs, the Emergency Watershed Protection Program and the Watershed Protection and Flood Prevention Program. A typical cooperative project cycle may last 5-10 years, with requisite inventory and planning occurring the first year. Through a competitive selection process, projects are funded in the second year, followed by implementation of the conservation practices beginning in year two or three, with closeout in the final year.

The ***proposed action*** is to implement a screening process for individual cooperative projects (often referred to as a Conservation Management System for a single resource concern, or Resource Management System where multiple resource concerns are addressed, and each resource concern addressed by one to several conservation practices) to determine whether proposed NRCS conservation practices properly fall within a programmatic approach to consultation. These projects are often simple and straightforward, such that the proposed conservation practices would result in a ‘may affect, not likely to adversely affect’ determination. The screening process also provides rationale for ‘no effect’ determinations; however, these are not subject to consultation, will be documented in the project file following standard NRCS protocol (using form MT-CPA-52, Environmental Evaluation Worksheet), and will not be discussed hereafter. A chapter for each listed species (and where appropriate, designated critical habitat) contains the specific information needed to screen each conservation practice in a proposed project, and provides a means to document the project specific affects determinations.

Under this programmatic, if the proposed conservation practices are fully compliant with the screens in each species’ chapter, and the screens lead to a ‘may affect, not likely to adversely affect’ conclusion, the proposed conservation practices will be considered to meet the intent of this programmatic and the proposed activities could proceed once the appropriate documentation is complete. Practice effects are documented on a consultation summary sheet (Chapter 1, Appendix A) that will include only the ‘may affect’ determinations for listed species and critical habitat. NRCS project planners will submit completed electronic copies and/or paper copies of the applicable species’ screens and consultation summary sheet to their respective area biologist for final review and signature. The NRCS field office District Conservationist is responsible for implementing the screening process, determining the appropriate course of action, and ensuring appropriate documentation is complete.

For all NRCS project planners, the initial step is to consult the species list by checking the FWS, Montana Ecological Services Field Office web site for current listed species by county at <http://montanafieldoffice.fws.gov/>. To determine whether a proposed project is covered by this programmatic, the proposed conservation practices will be compared against the list of practices in each species’ chapter within this biological assessment by using the screening process. It is possible that even though a practice is assessed using the screens, if there is any ambiguity with regard to the effects determination of the proposed project or associated conservation practices,

standard Section 7 consultation procedures may still be required. Standard consultation refers to the consultation procedures set forth in CFR Part 402 regulations that implements Section 7 of the ESA and determines whether an action agency undergoes either/or informal or formal consultation procedures.

Following are general conditions or procedures that apply to all proposed NRCS cooperatively funded projects and associated conservation practices covered by this assessment:

Conditions Common to All Project Types

Federal actions covered in this biological assessment are for those NRCS projects where the determination of effects clearly leads to a ‘may affect, not likely to adversely affect’ determination. More complex projects for which a listed species’ concerns are not fully covered in this programmatic biological assessment must proceed through the formal Section 7 consultation process (e.g., multiple conservation practices, only one of which is ‘may affect, likely to adversely affect’).

In the event one practice does not meet a listed species’ screening criteria, then formal consultation procedures will be followed for the entire project unless the practice is eliminated from the proposed Conservation or Resource Management System. In the event this scenario occurs, it is still possible to apply the screens as documentation for those practices that do meet the screening criteria. In such a case, the documentation should be included in the analysis for the formal consultation (i.e., affects analysis is complete for those specific practices) along with the practices that do not meet the screening criteria.

In all cases, cumulative effects must be considered; cumulative effects findings may cause the project to require formal consultation.

In situations that present ambiguity regarding the application of the species screens or a ‘may affect’ determination, final review must be made by a qualified biologist. These include NRCS area and state biologists with the potential for assistance from FWS biologists or Montana Fish, Wildlife and Parks biologists.

In no case does this programmatic biological assessment cover any project and/or individual practices that have the potential to cause or increase the likelihood of incidental take as defined by Section 3 of the ESA and the U.S. Fish and Wildlife Service’s regulatory definition of “harm” and “harass” [16 U.S.C. 1532 (19)].

In order to ensure that the screening criteria are effective, properly interpreted and uniformly applied there will be an annual review of a subset of all projects that have utilized the species’ screening process. Each September, area biologists will randomly select two projects from their respective area (Missoula, Great Falls, Bozeman, Miles City) for the annual audit. The exception for bull trout will be that the Missoula Area Office will provide four projects for annual review considering that the vast majority of the projects occur in this area. Copies of the applicable species screens and consultation summary sheets for these selected projects will be forwarded to the state biologist by December 15 of each year.

The statewide collection of consultation summary sheets will be submitted from the NRCS State Office to the FWS no later than December 31 of each year. The summary sheets will be reviewed by FWS staff and any comments and/or suggested modifications will be agenda items at the next annual review of the biological assessment and species' screens. The annual review will be held no later than February 28 of the following year unless a later date is mutually agreed upon. Following the annual review and as agreed upon by the NRCS and FWS staffs, written amendments and additions to the biological assessment and species' screens will be finalized and submitted to FWS by the end of April of that year.