

**Canada Lynx
Incidental Take Plan and Permit Application for
Maine Trapping Program
Questions and Answers**

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More resources: U.S. Fish and Wildlife Service, Maine Field Office site (<http://www.fws.gov/mainefieldoffice/index.html>).

Permit Process

1. Why does MDIFW need a permit, and will other activities need permits? The federal Endangered Species Act (ESA) protects all listed threatened and endangered species from “take,” which is broadly defined as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect or attempting to do those actions.

The State of Maine, by implementing statewide trapping programs and by issuing associated trapping licenses, is responsible under the ESA to avoid take of the threatened Canada lynx. MDIFW is seeking incidental take coverage for their recreational fur trapping, animal damage control and predator management trapping programs.

When conducting trapping activities for target species, trappers sometimes incidentally catch lynx, with most lynx released with no or very minor injuries. This is considered take under the ESA and is prohibited, regardless of the effect on the population, unless there is an incidental take exemption. Incidental take of lynx through trapping activities is well documented by MDIFW and the Service. MDIFW’s incidental take estimates are described in question 16.

Any non-federal entity (e.g., person, tribe, business, state agency, etc.) that conducts activities that may result in take of a federally protected species should obtain an incidental take permit. Federal agencies can comply with the ESA through the section 7 consultation process when their own actions or activities they fund or approve may adversely affect a listed species.

2. Are other states pursuing incidental take coverage for their trapping programs? Incidental trapping of lynx has been documented in Idaho, Maine, Minnesota and Montana. Maine and Minnesota are developing incidental take plans to obtain coverage under the ESA.

3. What is required to obtain an incidental take permit under the Endangered Species Act? Section 10(a)1(B) of the ESA identifies the regulatory and permit issuance criteria for granting incidental take permits. These permits serve as an exception to the take prohibitions in ESA section 9 and are for otherwise lawful activities that may incidentally result in take of listed species.

The applicant must provide a conservation plan, which MDIFW in this case calls an incidental take plan, to accompany the permit application. The following must be described in the plan:

- The impact that will likely result from the incidental take;
- Steps the applicant will take to minimize and mitigate such impacts;
- Funding that will be available to implement such steps;
- Alternative actions to reduce take considered by the applicant;
- Reasons why these alternatives are not being used; and
- Other measures the Secretary of the Department of the Interior, through the Service, may require.

In order to issue a permit, the Service must find:

- The taking will be incidental, which means it is not the purpose of carrying out an otherwise lawful activity;
- The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of incidental taking;
- The applicant will ensure that adequate funding for the plan will be provided; and
- Any additional measures, if required, are met.

The permit may contain terms and conditions deemed necessary by the Service. The Service has a habitat conservation plan manual to help applicants (http://www.fws.gov/midwest/endangered/permits/hcp/hcp_readings.html).

4. What measures would MDIFW use to reduce incidental take? MDIFW's plan outlines a number of measures to reduce and address the potential for injuring lynx, such as:

- Continue and increase education of trappers on incidental capture of lynx and how to minimize injuries such that most lynx can be immediately released;
- Continue using trapped lynx hotline and having MDIFW staff respond to lynx incidental captures to assess injuries, treat minor injuries and document take;
- Train staff with veterinary oversight to assess lynx for injuries;
- Establish a network of cooperating veterinarians to ensure injuries (if they occur) are assessed and treated; and
- Implementing a protocol to care for lynx kittens when responding to situations where a female with kittens is captured and injured and must be removed from the wild to be rehabilitated.

Current regulations allow use of restraining traps (e.g., foothold traps) and killer-type traps (e.g., conibear traps), and MDIFW intends to allow the use of non-lethal cable restraints and cage traps in Wildlife Management Districts (WMDs) where lynx occur (WMDs 1 to 11, 14, 18, 19). MDIFW's plan proposes to phase in the use of non-lethal cable restraints, initially with its predator management and animal damage control programs. If sufficiently protective of lynx, MDIFW plans to allow the use of these devices in their furbearer trapping program.

While restraining traps can sometimes cause injuries and fatalities (to a lesser extent), their purpose is to capture and hold an animal until the trapper returns to the trap. Restraining traps can catch both targeted furbearers, such as bobcat, and non-target species, such as lynx. Killer-type traps are designed to kill the target animals upon activation. For these traps, MDIFW will require lynx exclusion devices for ground-based killer-type traps and leaning poles for elevated traps, which should prevent lynx captures in these types of traps. See the plan for additional measures.

A number of the current trapping regulations will continue under the conservation plan since MDIFW has been implementing these measures in response to a 2007 consent decree settlement. However, there are some changes and additional measures, as summarized in question 8 and described in detail in the plan.

5. How would the plan address uncertainty, such as more lynx being caught? MDIFW identifies potential contingency measures in the plan should circumstances change over the term of the permit, such as:

- Lynx caught in traps at a higher rate than expected;
- Lynx severely injured in traps at a higher rate than expected;
- Lynx killed in traps at a higher rate than expected;
- Use of new information or technological advances;
- Changes in trapper compliance with elevated killer-trap regulations; and
- Legislative changes to trapping regulations.

6. What has happened so far, and what's next? Following MDIFW's request for a permit under the ESA, the Service coordinated with the state agency to develop a draft incidental take plan, which was reviewed by the Service in a draft environmental assessment. The documents were released for public review and comment in November 2011; three public information sessions were held, and the Service received numerous comments. MDIFW revised the draft plan to address public and Service comments and submitted a revised version to the Service in July 2013, which the Service evaluated in order to revise the assessment.

The Service is now releasing the revised versions of the plan and assessment for a 30-day supplemental public comment period. Written comments may be submitted electronically by September 5, 2014, via the Federal eRulemaking Portal: <http://www.regulations.gov>, or in hard copy, via U.S. mail, to: Public Comments Processing, Attn: FWS-R5-ES-2014-0020; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM; Arlington, VA 22203. The docket number for this notice is FWS-R5-ES-2014-0020.

Following this comment period, the Service will evaluate the revised plan and comments we receive to determine whether the permit application meets the requirements of section 10(a) of the ESA (16 U.S.C. 1531 et seq.). We will also evaluate whether issuance of a section 10(a)(1)(B) permit complies with ESA section 7 by conducting an intra-Service consultation. We will use the results of the consultation, in combination with the above findings, in our final analysis to determine whether to issue a permit. If the requirements are met, we will issue the permit to the applicant. We will also finalize the environmental assessment to incorporate and address comments that we receive during this supplemental public comment period.

7. What kinds of comments were received in the 2011 to 2012 comment period?

During the public comment period on the draft incidental take plan and 2011 draft environmental assessment, the Service received 285 unique letters, 129 comment cards from public information sessions and about 6,100 form letters. Topics included outreach, lynx handling procedures and protocols, trapping practices, enforcement, mitigation measures, monitoring measures, the process for the National Environmental Policy Act, and lynx listing and recovery. The Service's responses to these comments are included in appendix 1 of this revised draft environmental assessment, "Response to public comments received on the 2008 ITP and November, 2011 draft EA."

8. What has changed since the comment period? MDIFW's revised plan includes a number of revisions and clarifications. In many instances, the text has been revised to provide additional rationale and explanation for various components of the plan. In other instances, there are substantive changes to components of the plan. These are summarized below:

- The covered activities have been changed to include predator management and animal damage control programs, in addition to recreational fur trapping.
- Several new methods of trapping and new trapping regulations are incorporated into the plan, including eliminating size restrictions on foothold traps, requiring the use of exclusion devices on larger killer-type traps set on the ground, lifting restrictions on the use of cage traps and implementing a phased-in program allowing the use of cable restraints.
- Measures to avoid and minimize take have been updated to include developing and implementing a field-based injury score system for evaluating incidentally captured lynx, mandatory staff training by a veterinarian on injury evaluation, increased veterinary oversight on incidental lynx capture events, protocols for responding to orphan kittens in the event it occurs, production and distribution of a trapper DVD that demonstrates techniques for reducing incidental lynx captures and injuries, increased monitoring by wardens to ensure compliance with trapping regulations, and more clear commitments for compliance and effectiveness monitoring and reporting.
- Changed circumstances have been revised to address a number of potential contingencies (see question 5).
- The mitigation strategy, which seeks to offset the effect of any potential lynx mortalities, has been described in detail. MDIFW will maintain and enhance at least 4,785 acres of lynx habitat on a 10,411-acre area in the Maine Division of Parks and Public Lands Seboomook Unit in northern Maine.

9. What happens if the permit is issued? If issued an incidental take permit, MDIFW will implement the incidental take plan in conjunction with any permit conditions. The permit will outline the responsibilities and obligations of MDIFW for the trapping program, including minimization measures, mitigation and monitoring. The permit will allow MDIFW to continue implementing trapping programs and will allow take of lynx that would otherwise be prohibited under ESA section 9 over a 15-year permit period. The permit will cover MDIFW and licensed trappers that are abiding by all laws, regulations and plan conditions.

10. Are some measures required under the 2007 consent decree? In 2007, MDIFW settled litigation with Animal Welfare Institute and other plaintiffs under a federal court settlement in the U.S. District Court of Maine. The consent decree describes measures that MDIFW must implement to reduce take of lynx.

If MDIFW obtains an incidental take permit for its trapping programs, they will be no longer bound by the terms of the consent decree and instead will be bound by the terms of the permit. MDIFW can then seek an order terminating the consent decree. Additionally, the

agency intends to rescind consent decree restrictions on the size of foothold traps, wooden-based rat traps and cage traps.

The court will terminate the decree only if it finds the action has become permanent (not subject to any further judicial review or no judicial review has been sought by anyone within 90 days of taking this action). According to the consent decree, an incidental take permit will be deemed to not be in effect if it is vacated, stayed or enjoined by a court.

Canada Lynx

11. Why are lynx federally listed as threatened in many U.S. states when they are abundant in some parts of Canada? Lynx were listed as threatened under the ESA in 2000. The listing process for the lynx is described in detail in the Federal Register in 2000 and in a reevaluation in 2003 (see <http://www.fws.gov/mountain-prairie/species/mammals/lynx/listing.htm>). The primary threat for which the lynx was listed was the inadequacy of existing regulatory mechanisms to ensure species' survival on federally managed lands. Additional potential threats to lynx in our listing and critical habitat documents include some types of forest management, human-caused mortality and climate change. The Service will develop a recovery plan for the lynx specifying recovery goals and objectives and actions to recover the species.

Lynx are protected by the provincial governments in New Brunswick and Nova Scotia, where they also incidentally trapped and snared. Lynx can be harvested in the province of Quebec.

12. Why are lynx considered threatened by the Service and not MDIFW? The Service reviews the status of a species from a national or range-wide perspective, examining factors set forth in section 4(a) of the federal ESA: threat to habitat and range, overutilization, disease or predation, regulatory protection, and other natural or manmade factors affecting the species' survival. Our listing documents for the lynx describe how these listing factors affect the lynx in the U.S.

MDIFW's process for state-listing species is described in an Endangered and Threatened Species Listing Handbook (<http://www.maine.gov/ifw/pdfs/listingHandbook.pdf>). MDIFW periodically reviews the status of lynx in the state and has determined that the lynx does not currently meet the state's requirements for protection as a state-threatened or endangered species, but it is considered a species of special concern.

13. What is the population status of lynx in Maine? Maine's lynx population is part of a larger lynx population that extends at least into Quebec's Gaspé Peninsula and into northern New Brunswick, Canada. There are no standard methods for estimating lynx populations in North America, and they are secretive animals, living in dense, regenerating forest, with populations extending over large, remote areas. Based on systematic snow-track surveys in northern and western Maine and a 12-year radio telemetry study, MDIFW estimates that there are currently between 750 and 1,000 lynx in northern and western Maine. Since this estimate was generated, lynx populations have expanded in to portions of eastern Maine.

14. What is the recovery strategy for lynx in the U.S.? The Service's 2005 recovery outline for Canada lynx (<http://www.fws.gov/mountain-prairie/species/mammals/lynx/final%20lynx%20recoveryoutline9-05.pdf>) includes objectives such as ensuring the availability of high-quality habitat to support lynx populations over the long term and maintain connectivity with the core of the species' geographical range in northern Canada. Recovery outlines provide interim guidance until a formal recovery plan is completed. Development of a formal recovery plan has been delayed due to limited resources and ongoing litigation related to the species' listing and critical habitat decisions.

However, the Service has continued to work with federal and state agencies, tribes, private landowners and other partners to undertake lynx conservation activities. Even in the absence of a formal recovery plan, much has been accomplished to recover lynx, including the formal adoption of lynx conservation measures on most federal lands within the species' range, which addresses the primary threat for which the lynx was listed (the inadequacy, at that time, of existing regulatory mechanisms to ensure species' survival on federally managed lands). Pursuant to a June 2014 court order, the Service plans to complete a final recovery plan for the contiguous U.S. distinct population segment of the lynx by January 2018, unless we determine that a recovery plan will not promote its conservation. Public participation and formal peer review will be invited upon release of the draft recovery plan.

Trapping

15. Why is the Service allowing trapping? Both the Service and state agencies recognize legal, regulated trapping as a valued outdoor pursuit that is an effective wildlife management tool. Federal and state agencies support state-regulated trapping programs that maintain sustainable target species populations and minimize impacts to non-target species' populations.

16. How will the permit and plan affect trapping regulations? In response to a 2007 consent decree, MDIFW made several substantial changes to trapping regulations to avoid and minimize take of lynx. Based on information gathered since then, some of these measures would be rescinded and some would continue to be employed in the future if a permit is issued. The final incidental take plan will result in some changes to trapping regulations. See questions 4 and 8 for more information.

17. What is the extent of incidental trapping of lynx in Maine, and what is expected to occur under the permit? From 1999 to 2013, 84 lynx have been reported as incidentally trapped (seven were caught in killer-type traps and 77 in foothold traps). Most lynx were released from the trap with no or minor injuries. Five of these lynx were killed in killer-type traps prior to the implementation of current trapping regulations to minimize incidental captures. Two lynx died in foothold traps after being illegally shot by hunters. A few lynx that received severe injuries in foothold and killer-type traps were treated and rehabilitated, and released back to the wild. The majority of lynx have been captured by recreational fur trappers, with predator management trappers reporting seven trapped lynx. Since 2008, trappers have been required to report the incidental capture of lynx.

Under the plan, MDIFW anticipates that up to 13 lynx per year, or 195 total, might be incidentally trapped in restraining traps (e.g., foothold, cage traps and cable restraints) following issuance of the 15-year permit. MDIFW expects that the majority of lynx caught in these traps will be released with little to no injury. However, they are requesting the permit allow for up to three lynx fatalities as the result of incidental trapping. MDIFW does not anticipate take in killer-type traps.

To mitigate for potential lynx mortalities, MDIFW would maintain and enhance at least 4,785 acres of lynx habitat on a 10,411-acre area in the Maine Department of Agriculture Conservation and Forestry, Bureau of Parks and Lands Seboomook Unit in northern Maine.