



ADMINISTRATIVE RULES OF MONTANA



36.11.428 THREATENED AND ENDANGERED SPECIES

- (1) The department shall participate in recovery efforts of threatened and endangered plant and animal species as listed below. The department shall confer in its sole discretion with the United States Fish and Wildlife Service (USFWS) to develop habitat mitigation measures.
 - (a) Measures may differ from federal management guidelines because the department plays a subsidiary role to federal agencies in species recovery. In all cases, measures to support recovery must be consistent with department responsibilities under the Endangered Species Act and Trust Law. The department shall work with the USFWS to amend such measures when, in the judgment of the forest management bureau chief, they are inconsistent with trust management obligations.
 - (b) Measures to support species recovery shall be periodically updated to implement new biological information and legal interpretations as warranted.
- (2) The department shall, in its sole discretion, participate on interagency working groups established to develop guidelines and implement recovery plans for threatened and endangered species.
 - (a) If additional plant or animal species with habitat on state trust lands are federally listed as threatened or endangered, the department shall, in its sole discretion, participate in working groups for those species.
 - (b) The department shall, in its sole discretion, also participate in interagency groups formed to oversee management of recently de-listed species.
- (3) The department staff shall report sightings of threatened and endangered species to respective working groups or an appropriate data repository.
- (4) With respect to Canada lynx, the department will:
 - (a) establish and maintain a lynx habitat map utilizing science-based habitat classifications, which may be revised and/or replaced based on improved scientific information upon approval of the forest management bureau chief, including:
 - (i) summer foraging habitat;
 - (ii) winter foraging habitat;
 - (iii) other suitable habitat;
 - (iv) temporary non-suitable habitat; and
 - (v) total potential habitat;

- (b) commit to the following project-level measures in mapped lynx habitat to provide downed woody structure for lynx escape cover, habitat for prey species, and structure that may provide some potential den sites in the future by:
 - (i) providing for retention of coarse woody debris using applicable scientific publications;
 - (ii) emphasizing the retention of downed logs of 15-inch diameter or larger where they occur, and managing to retain at least one large log per acre that is at least 20 feet long; however
 - (iii) retention of coarse woody debris may be superseded in special management situations where other goals must be considered such as:
 - (A) fuels management and aesthetic considerations in the urban interface;
 - (B) projects near recreational areas, where downed wood is collected and burned;
 - (C) harvest units adjacent to open roads;
 - (D) broadcast burning; and
 - (E) meeting mandated hazard reduction requirements; but
 - (iv) ensuring adequate recruitment for Canada lynx, by retaining an average of two snags and two live snag recruitment trees of greater than 21 inches diameter at breast height (DBH) per acre in stands identified as lynx habitat:
 - (A) if snags or snag recruitment trees of greater than 21 inches DBH are not present, then the largest snags or snag recruitment trees available will be retained;
 - (B) snags may be evenly distributed or clumped, but if there is an absence of sufficient snags or recruits, some substitution between the two may occur;
 - (v) leaving one percent of the definable blowdown area unsalvaged on blowdown salvage projects involving flattened patches, where the material will be retained in a nonlinear patch or patches to the extent practicable;
- (c) prohibit motorized forest management activities and prescribed burning associated with forest management activities within 0.25 mile of known active lynx den sites from May 1 through July 15;
- (d) proceed with suspended activities if a department biologist has confirmed that lynx have vacated the den site vicinity prior to July 15;
- (e) retain small, shade-tolerant trees including grand fir, subalpine fir, and Engelmann spruce in thinned portions of pre-commercial thinning units within mapped lynx habitat that do not pose substantial competition risks to desired crop trees;
- (f) retain patches of advanced regeneration of grand fir, subalpine fir, and Engelmann spruce as a component of commercial harvest prescriptions in winter foraging habitat, where canopy cover of retained patches would typically not exceed ten percent of the stand area through implementation of this measure;
- (g) design harvest units to maintain a connected network of suitable lynx habitat along RMZs, ridge tops, and saddles on timber sale projects;

- (h) document in MEPA analysis the circumstances where maintaining habitat connectivity and travel corridors along ridge tops and saddles are impracticable, which may include:
 - (i) non-forested ridges;
 - (ii) non-forested saddles;
 - (iii) harvest units where cable systems are used;
 - (iv) locations where habitat associated with scattered parcels is isolated by management on surrounding ownerships;
 - (v) locations where lynx habitat polygons are isolated within a parcel;
 - (vi) locations where forest types not preferred by lynx bisect lynx habitat;
 - (vii) locations where silvicultural, fiduciary, or access objectives cannot be met;
 - (viii) lodgepole pine stands requiring stand-replacement harvest; and
 - (ix) retaining trees on sites with high potential for blowdown;
- (i) implement the following on total potential lynx habitat on scattered parcels outside of LMAs:
 - (i) maintain at least 65 percent of total potential lynx habitat as suitable habitat at the land office scale; and
 - (ii) maintain no more than 35 percent as temporary non-suitable habitat at the land office scale;
- (j) implement the following on defined LMAs:
 - (i) maintain at least 65 percent of total potential lynx habitat as suitable lynx habitat, and no more than 35 percent as temporary non-suitable habitat;
 - (ii) prohibit conversion of more than 15 percent of the total potential lynx habitat to temporary non-suitable habitat per decade within each lynx management area;
 - (iii) maintain at least 20 percent of total potential lynx habitat as winter foraging habitat;
 - (iv) identify and retain un-thinned 20 percent of each pre-commercial thinning project area in lynx habitat, where:
 - (A) patches will maintain a density of greater than 2,000 stems per acre;
 - (B) in stands where a density of 2,000 stems per acre is not present, areas will be retained with the greatest density available;
 - (C) retention patches will be designed to be at least five acres when possible to facilitate tracking and promote habitat function;
 - (D) retention patches of dense saplings will:
 - (I) emphasize retention of subalpine fir, Engelmann spruce, and/or grand fir, where available;
 - (II) locate retention patches adjacent to other suitable lynx habitat where practicable; and

- (III) prohibit entry into retention patches for future pre-commercial thinning or commercial harvest until they structurally meet the department's minimum definition of sawtimber.

Authorizing statute(s): 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA

Implementing statute(s): 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

History: NEW, 2003 MAR p. 397, 2003 MAR p. 397, Eff. 3/14/03; AMD, 2020 MAR p. 2239, Eff. 12/12/20.