

Canada Lynx

Policy, Litigation and The Slow Road Towards Recovery



Cottonwood Environmental Law Center

The Endangered Species Act of 1973

- “[T]he most comprehensive legislation for the preservation of endangered species ever enacted by any nation.”
 - U.S. Supreme Court, *TVA v. Hill*

Congressional Findings

“Various species of fish, wildlife and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation.”

16 U.S.C. § 1531(a)(1)

Purposes

- Provide a program for the conservation of threatened and endangered species.
- Conserve ecosystems that are relied upon by threatened and endangered species.

Section 4

- Listing
- Recovery Plan
- Designation of Critical Habitat

Section 7

Interagency Consultation

ESA Listing Criteria

1. The present or threatened destruction, modification, or curtailment of its habitat or range;
2. Overutilization for commercial, recreational, scientific, or educational purposes;
3. Disease or predation;
4. The inadequacy of existing regulatory mechanisms; or
5. Other natural or manmade factors affecting its continued existence.

Factors Causing Lynx Decline

- Trapping
 - 1984: 62 lynx trapped in Montana
 - 1991: 2 lynx quota in Montana
 - 1999: Trapping season closed.
- Timber Harvest

Listing Rationale

- “The contiguous U.S. Distinct Population Segment of the lynx is threatened by the inadequacy of existing regulatory mechanisms.”
- “The lack of protection for lynx in these Plans render them inadequate to protect the species.”
 - 65 Fed. Reg. 16052, 16052 (March 24, 2000)

Listing Take Home Message

- Listing took 10 years start to finish.
- Canada lynx were listed in 2000 because Forest Plans are “regulatory mechanisms” that were inadequate to protect lynx.

Critical Habitat

- The physical or biological features essential to the conservation of the species.
- The function of critical habitat is to provide for the recovery of the species.

C.H. for Lynx

Boreal forest landscapes supporting a mosaic of differing successional forest stages and containing:

- a. Presence of snowshoe hares and their preferred habitat conditions, which include dense understories of young trees, shrubs or overhanging boughs that protrude above the snow, and mature multistoried stands with conifer boughs touching the snow surface;
- b. Winter snow conditions that are generally deep and fluffy for extended periods of time;
- c. Sites for denning that have abundant coarse woody debris, such as downed trees and root wads; and
- d. Matrix habitat (e.g., hardwood forest, dry forest, non-forest, or other habitat types that do not support snowshoe hares) that occurs between patches of boreal forest in close juxtaposition (at the scale of a lynx home range) such that lynx are likely to travel through such habitat while accessing patches of boreal forest within a home range.

- FWS must designate critical habitat at the time the species is listed.
 - Lynx listed in 2000.
 - No critical habitat designated.

- 2001 Lawsuit
- 2002: Court orders “prompt rulemaking in order to designate critical habitat.”

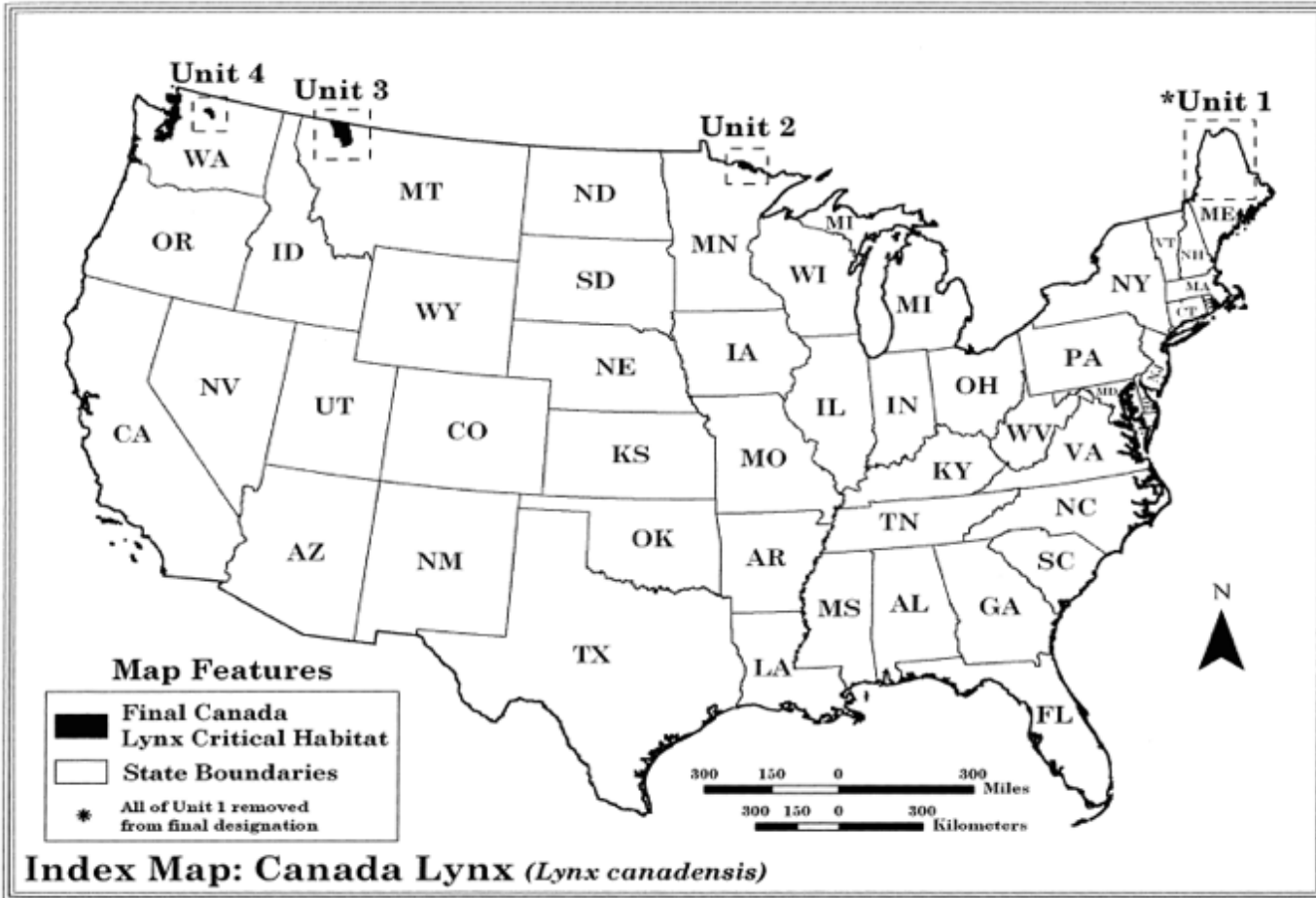
- 2006 FWS designates critical habitat in three National Parks (Glacier, Voyageurs, North Cascades).

- Why were lynx listed?
- What is allowed in National Parks?
 - Trapping?
 - Timber sales?
 - Mining?

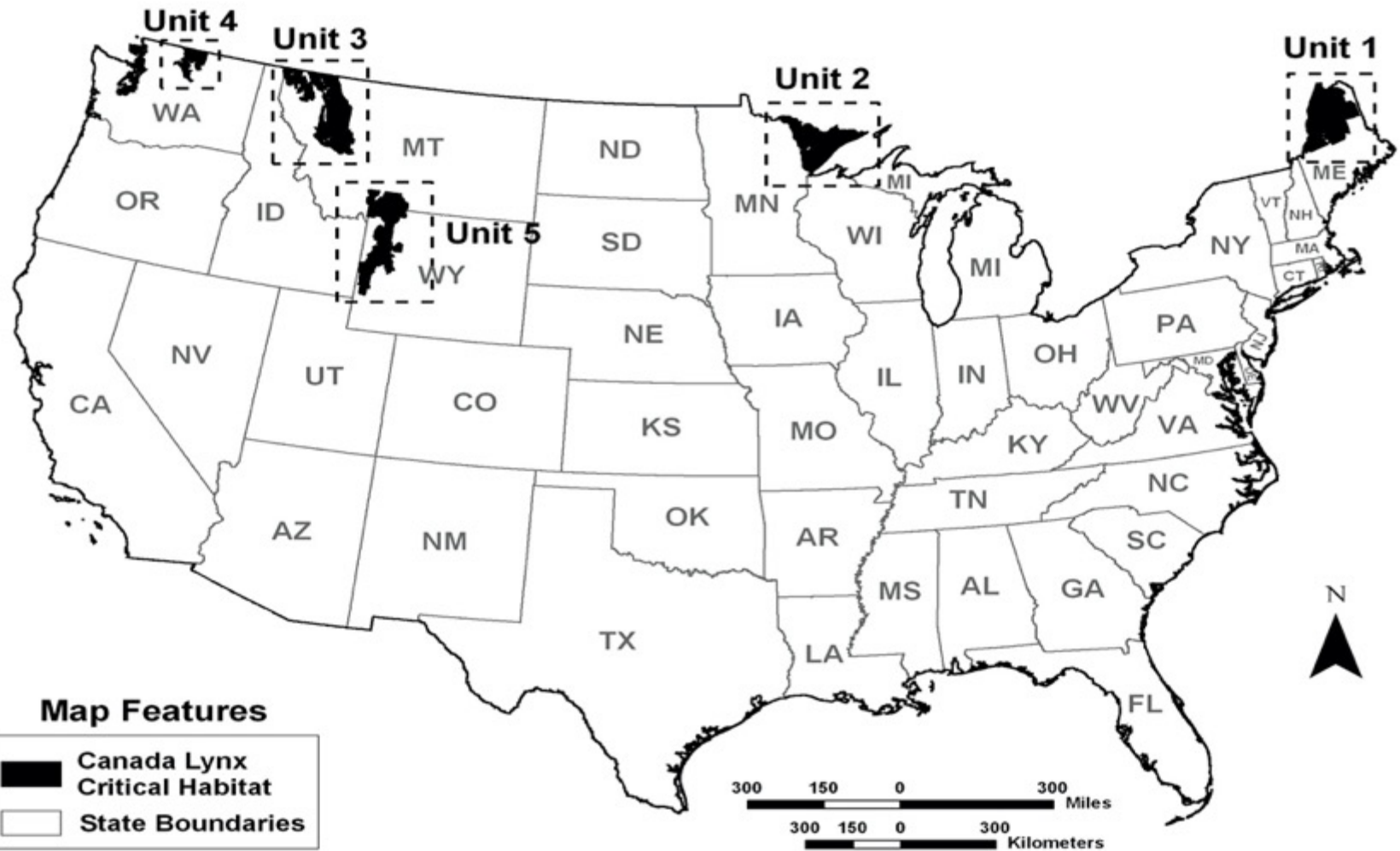
Julie Macdonald

- Assistant Secretary of Interior
 - Appointed by George W. Bush
- Engineer by training. Not a wildlife biologist.

2006 Critical Habitat Designation



2009 Critical Habitat Designation



Index Map: Critical Habitat for *Lynx canadensis* (Canada Lynx)

Northern Rockies Lynx Amendment (2007)

- Programmatic Management Direction
- Designed to address reason lynx were listed.
- Contains standards and guidelines that constrain timber sales and other activities on all national forests where lynx are found.

- Exemptions & Exceptions
 - 700,000 acres
 - Wildland Urban Interface

What Exactly is The Home Ignition Zone?



What is the Home Ignition Zone?

Post-fire studies, experiments and models have shown homes ignite due to the condition of the home itself and everything around it up to 200' from the foundation.

Homes and their surroundings are vulnerable to three potential ignition sources:

1. Embers (a/k/a firebrands)
2. Surface fire – small flames
3. Crown fire – large flames

Section 7 Interagency Consultation

The Heart of ESA

- No Jeopardy
- No Destruction or Adverse Modification of Critical Habitat

Biological Opinion for Northern Rockies Lynx Amendment in 2007 determined:

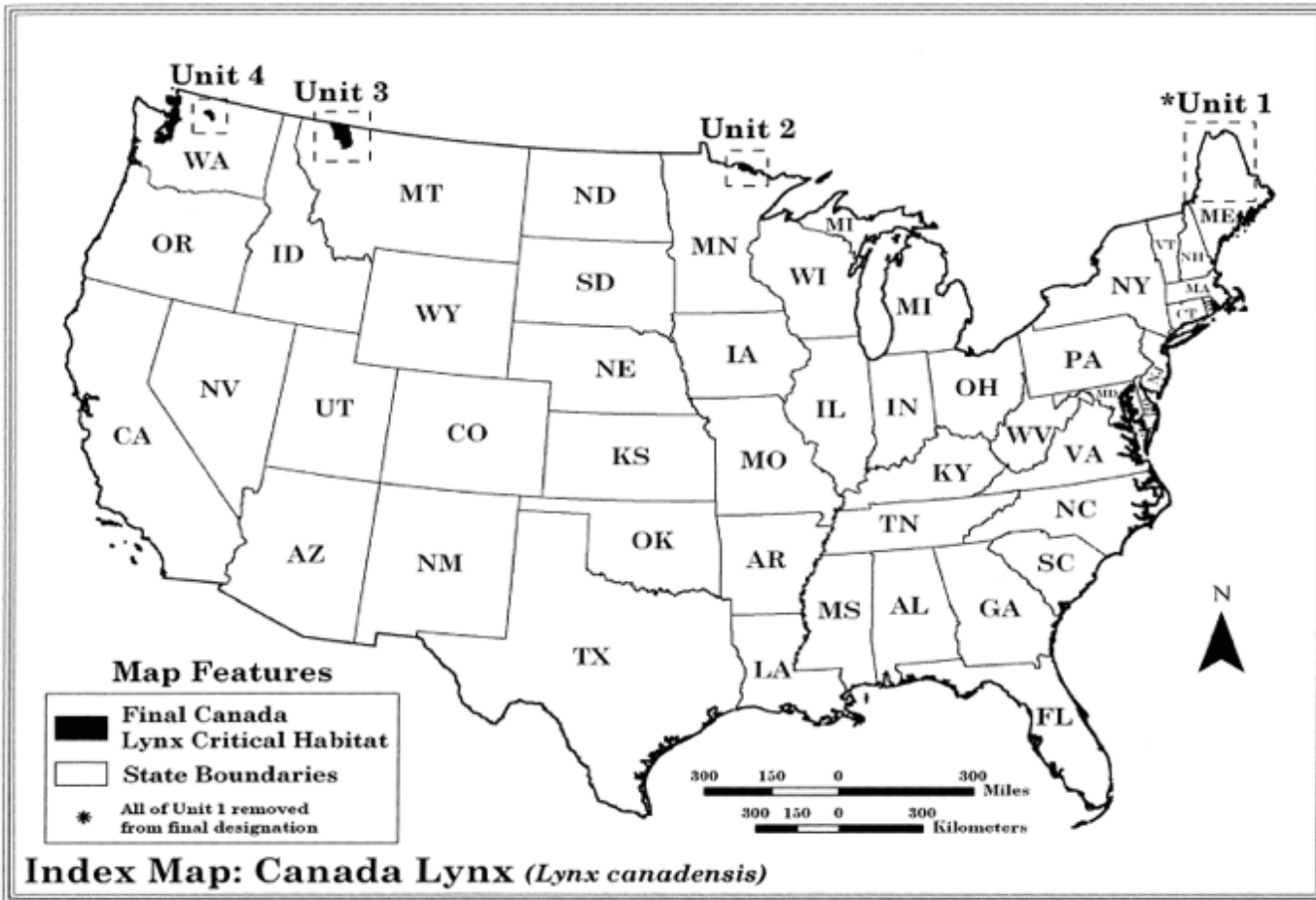
- No Jeopardy
- No Adverse Modification of critical habitat because none designated in 2007.

- Critical habitat on National Forests Designated in 2009.

- 2013 timber sale in Critical Habitat
- No adverse modification.
 - Relied on 2007 Biological Opinion for Northern Rockies Lynx Amendment.

What was rationale for no adverse modification determination in 2007 Biological Opinion?

2006 Critical Habitat Designation



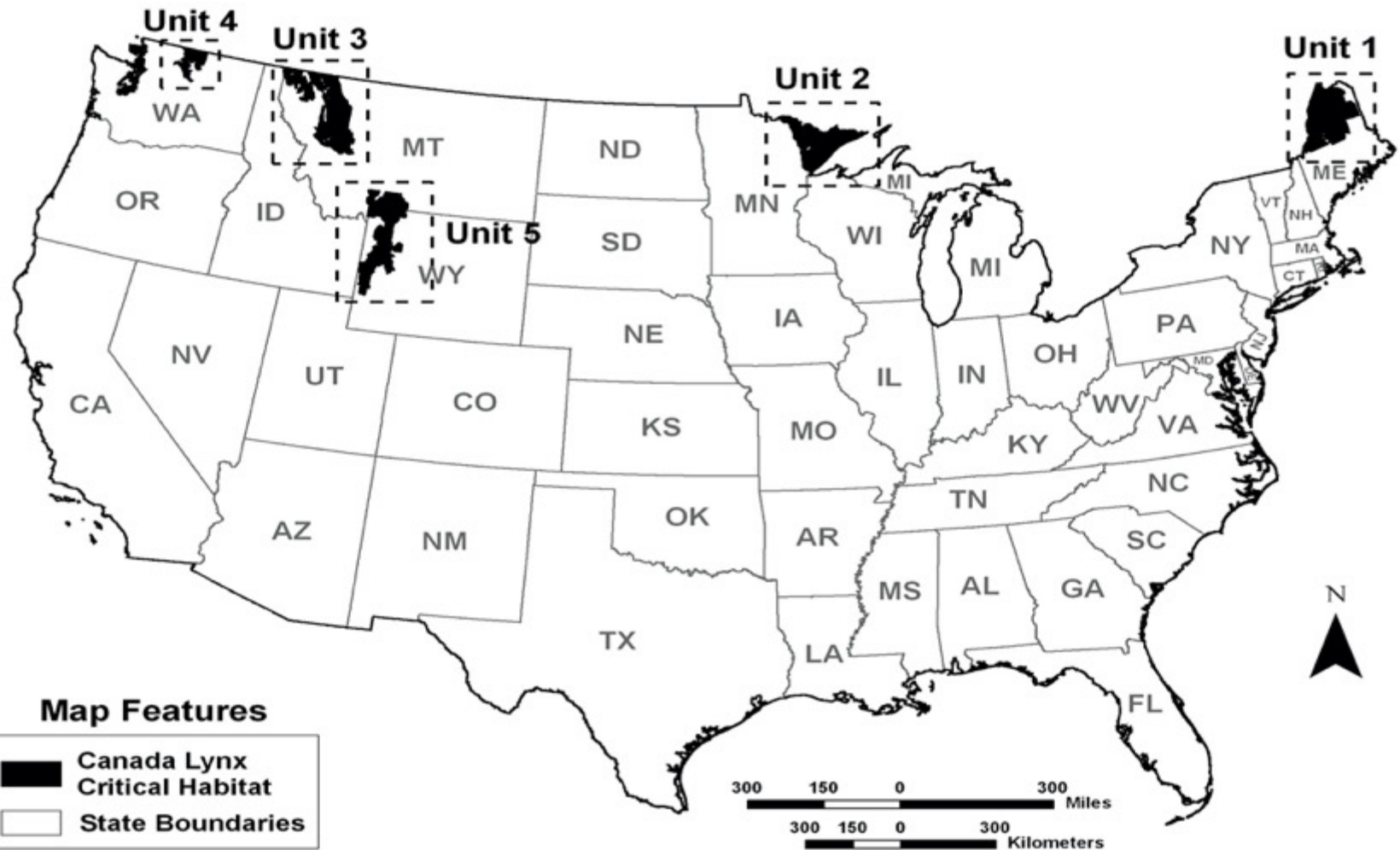
Reinitiation of Section 7 Consultation

Reinitiation of formal consultation is required:

- If new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered;
- If a new species is listed or critical habitat designated that may be affected by the identified action.

50 C.F.R. § 402.16(a)(2),(4)

2009 Critical Habitat Designation



Index Map: Critical Habitat for *Lynx canadensis* (Canada Lynx)

FILED

MAY 16 2013

Clerk, U.S. District Court
District Of Montana
Missoula

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

NOLAN SALIX; COTTONWOOD
ENVIRONMENTAL LAW CENTER,

Plaintiffs,

vs.

UNITED STATES FOREST
SERVICE; FAYE KRUEGER, in her
official capacity as Regional Forester
for the U.S. Forest Service, Region
One,

Defendants.

CV 12-45-M-DLC

ORDER

Before the Court are the parties' cross-motions for summary judgment. For the reasons discussed below, Plaintiffs' motion is granted and Defendants' motion is denied. As threshold matters, Plaintiffs have standing to challenge the Forest Service's failure to reinitiate section 7 consultation on the programmatic plan amendment at issue here, and the Court has jurisdiction to consider the case because Plaintiffs' notice of intent to sue was adequate. The Court also finds that the Ninth Circuit's decision in *Pacific Rivers Council v. Thomas*, 30 F.3d 1050 (9th Cir. 1994), *cert. denied* 514 U.S. 1082 (1995) ("*Pacific Rivers (1994)*"), remains good law in this Circuit and that the programmatic plan amendment is thus subject to the Endangered Species Act's requirements that section 7

- Cottonwood wins in district court
- Cottonwood wins in 9th Circuit
- SCOTUS Denies Petition

LOCAL & STATE

SUNDAY, DECEMBER 11, 2016

billingsgazette.com

SECTION C

...lation would overturn lynx dec



ASSOCIATED PRESS

...ds for the woods after being released near South
... legislators are backing a joint bill to reverse a
... S Forest Service failed to properly update its lynx

ROB CHANEY
rchaney@missoulian.com

MISSOULA – A court ruling on how to manage Canadian lynx under the Endangered Species Act could be overturned by legislation released by all three members of Montana's congressional delegation Friday.

In what's known as the Cottonwood decision, the U.S. 9th Circuit Court of Appeals found the U.S. Forest Service failed to properly update its lynx critical habitat maps after the U.S. Fish and Wildlife Service acknowledged its maps had been improperly drawn by administrators in President George Bush's administration. In October, the U.S. Supreme Court declined to review the case, making it law of the land.

Democratic Sen. Jon Tester and Republican Sen. Steve Daines, along with Republican Rep. Ryan Zinke, all called for Congress to overturn the decision. While their joint bill was introduced on Friday morning, it's unlikely that it will be acted on during the last days of the 2016 congressional session. That means debate will begin under the new Congress and incoming administration of president-elect Donald Trump.

"Congress needs to take urgent action to reverse the disastrous activist court ruling for the sake of forest health, recreation and watershed and habitat protection," Daines said in a press release on Friday. "By seeking a simple fix and codifying the Obama administration's own position into

law, we
and con
collabo
project
by this

In an
soulian
bill wa
Cotton
too m
Forest
found

"Ev
forma
write
said.
petu
con
harv
be p

ck
to

Jobs! Jobs!! Jobs!!!



MICHAEL GALLACHER, Missoulian

The end of Montana's timber frontier was within sight as logger Kevin Rausch dropped a tree in the Gold Creek drainage east of Missoula in the summer of 1988.

“Specific management recommendations for areas designated as critical habitat are most appropriately addressed in subsequent recovery and management plans.”

2009 Critical Habitat Rule

- Does Forest Service have an adequate management plan in place for critical habitat?