

MT DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

Record of Decision

Forested State Trust Lands Amended Habitat Conservation Plan
and Supplemental Environmental Impact Statement

August 31, 2018

Prepared in accordance with the Montana Environmental Policy Act [MCA 75-1-201] and the
Administrative Rules of Montana [ARM 36.2.538]

TABLE OF CONTENTS

1	INTRODUCTION AND CONTEXT	1
2	PROJECT DESCRIPTION	1
3	DECISION AND RATIONALE	3
4	ALTERNATIVES	5
5	PUBLIC PARTICIPATION AND OUTREACH TO NATIVE AMERICAN TRIBES	8
6	RESPONSES TO COMMENTS ON THE FINAL HCP/EIS.....	8
7	CONCLUSION	8
9	REFERENCES.....	10
10	SIGNATURE OF DECIDING OFFICIAL	11

List of Acronyms and Abbreviations

ARMs	Administrative Rules of Montana for Forest Management (36.11.401-456)
BMP	best management practice
DNRC	Montana Department of Natural Resources and Conservation
EIS	environmental impact statement
ESA	Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.)
HCP	habitat conservation plan
LMA	lynx management area
MEPA	Montana Environmental Policy Act
MFWP	Montana Fish Wildlife and Parks
NEPA	National Environmental Policy Act
Permit	incidental take permit
ROD	record of decision
RMZ	riparian management zone
Service (in text)	U.S. Fish and Wildlife Service
USFWS (references)	U.S. Fish and Wildlife Service

1 Introduction and Context

The lands that are the subject of this Record of Decision (ROD) are managed by the Montana Department of Natural Resources and Conservation (DNRC) Trust Lands Management Division to generate revenues for trust beneficiaries. The lands are managed under the forest management program which generates revenue primarily through timber harvest on forested trust lands. DNRC's forest management actions are governed by the Forest Management Administrative Rules of Montana (ARMs 36.11.401 through 456), and other applicable rules and laws. Because forested trust lands support federally listed threatened species, the ARMs also identify habitat mitigation measures to address the needs of listed species. In 2010, DNRC elected to address the needs of listed species through the Habitat Conservation Plan (HCP) process authorized under Section 10 of the Endangered Species Act (ESA). Since 2012, DNRC has implemented the HCP on its forested trust lands.

DNRC recently acquired 81,416 acres of forested trust land and has voluntarily sought to amend its HCP and incidental take permit (Permit) to include the added lands.

A supplemental environmental impact statement (EIS) on the effects of adding the lands to the HCP and Permit was prepared in accordance with both the Montana Environmental Policy Act (MEPA) and the National Environmental Policy Act (NEPA). DNRC is required by ARM 36.2.538 to prepare a Record of Decision (ROD) for proposed actions for which an EIS is prepared. The ROD is a public notice of what the decision is, the reasons for the decision, and any special conditions surrounding the decision or its implementation.

2 Project Description

The DNRC submitted a request to the Service to 1) formally amend its conservation commitments in the Stillwater Block to incorporate the terms of a 2015 Settlement Agreement between DNRC and Plaintiffs on the 2010 HCP and 2) add 81,416 acres to the HCP-covered lands and amend some HCP commitments to accommodate the added lands, and 3) amend the Permit for incidental take of listed species to include the added lands recently acquired by DNRC.

The primary elements of the HCP are largely unchanged as described in the subsections below. Some changes to the HCP commitments are required to amend the HCP and Permit as described in Sections 2.4 and 5.4.2.

2.1 Covered Species

The covered species would remain the same as those identified in the 2012 Permit and 2010 HCP: the grizzly bear (*Ursus arctos horribilis*), Canada lynx (*Lynx canadensis*), and bull trout (*Salvelinus confluentus*), and federal candidate species westslope cutthroat trout (*Oncorhynchus clarkii lewisi*) and Columbia River redband trout (*Oncorhynchus mykiss gairdneri*). There are no occurrences or habitat for Columbia redband trout on the added lands.

2.2 Covered Lands

The covered lands, also referred to as the HCP project area, include the 548,500 acres contained in the original HCP project area and 81,416 acres of added lands, increasing the HCP project area to 629,915 acres.

The lands proposed for addition are located within the Northwestern and Southwestern Land Offices. The lands occur on five DNRC administrative units and were acquired in six acquisition areas: Swan, Chamberlain, Potomac, Lolo Land Exchange, Blackfoot, and Bitterroot (Table 1).

The added lands would increase the acreage of blocked lands in the Swan River State Forest by 16,446 acres. All other added lands are scattered parcels that are outside of blocked lands.

Location of Added Lands	Northwestern Land Office		Southwestern Land Office			Total Acres
	Plains Unit	Swan Unit	Missoula Unit	Clearwater Unit	Hamilton Unit	
Swan	0	16,446	0	0	0	16,446
Chamberlain	0	0	0	14,537	0	14,537
Potomac	0	0	32,266	0	0	32,266
Lolo	1,518	0	9,548	0	0	11,066
Upper Blackfoot	0	0	0	5,458	0	5,458
Southern Bitterroot	0	0	0	0	1,643	1,643
Total Acres	1,518	16,446	41,814	19,995	1,643	81,416

2.3 Covered Activities

The covered activities remain the same as those described in Chapter 1 of the 2010 HCP (DNRC 2010, pp.1-15 through 1-24).

2.4 Overview of the Amended HCP Commitments

To accommodate the added lands, some of the 2010 HCP commitments would require amendment. In the Swan River State Forest, these proposed changes include the addition of lands and an amendment to the forest boundary, expansion of the transportation plan, amendment of the grizzly bear active timber management/rest rotation, and expansion of the Swan lynx management area (LMA) boundary. The Proposed Action would amend the Swan River State Forest Transportation Management Plan to include the existing road miles on the added lands in the Swan, incorporate the road constraints described in the Montana Fish Wildlife and Parks (MFWP) conservation easement on the Swan, update the baseline data to include the roads constructed to date under the 2010 HCP, and increase the miles of temporary roads allowed in the Swan River State Forest proportionately to the acreage of added lands. Under the Proposed Action, commitment GB-SW3(1) would be revised to a 3-year active timber management, including salvage harvest/6-year rest rotation as is the current practice in the Swan River State Forest.

Other proposed changes to the 2010 HCP commitments include protection of lands by conservation easements on 16,446 acres of the Swan, 13,453 acres of the Chamberlain, and 3,097 acres of the Blackfoot, the addition of lands to the Garnet LMA, adjustment of the acreage of lynx critical habitat in the HCP project area, and an adjustment to the acreage subject to the transition lands strategy. The details of the Proposed Action are described in Section 5.4.2.

3 Decision and Rationale

3.1 The Decision to be Made

DNRC will implement the amended HCP on the added lands to facilitate forest management activities on forested trust lands and provide field personnel with consistent standards for conducting forest management activities affecting habitat of ESA-listed species. DNRC will also apply the other requirements of the HCP on the added lands, including ensuring adequate resources are available to implement the HCP and following the processes for adaptive management and monitoring, as well as transition lands and changed circumstances.

3.2 Authority for the Decision

As delegated by the Land Board in 2010 through the approval of the ROD for the original HCP Final EIS, and as the Director of the Montana Department of Natural Resources and Conservation, I have decision-making authority for the HCP.

3.3 Decision

I have decided to implement the Proposed Action and formally incorporate the terms of the 2015 Settlement Agreement into the HCP commitments for the Stillwater Block and add the recent acquisition areas to the HCP under DNRC's forest management program. Implementing the HCP on the added lands provides the best opportunity for DNRC to effectively implement forest management activities and to conserve and protect habitats of ESA-listed species while also providing reasonable management flexibility so the agency can continue to successfully implement its forest management program and generate revenue for the trust beneficiaries.

3.4 Rationale for the Decision

3.4.1 Best Meets DNRC's Purpose and Need

I believe, given the mission of DNRC's forest management program, and the purpose of Section 10 of the ESA, that the Proposed Action provides the most reasonable and responsible combination of the two aspects of the DNRC's Purpose and Need: (1) minimization of take and conservation of listed species, and (2) long-term regulatory certainty and management flexibility.

DNRC's Purpose

Implementing the HCP on the added lands would minimize take and conserve fish and wildlife species listed under the ESA while providing long-term regulatory certainty and flexibility for DNRC's forest management practices on its amended HCP project area lands.

DNRC's Need

By amending the Permit and managing the added lands under the HCP, DNRC seeks to benefit the forest management program by increasing regulatory certainty and ensuring greater economic viability and management flexibility.

3.4.2 Best Balance between Revenue Generation and Species Conservation

I believe the Proposed Action provides the best balance between revenue generation and long-term commitments for the conservation of ESA-listed species for the following reason.

- Implementing the HCP on the added lands would allow DNRC to meet its sustainable yield goals in order to sustainably harvest and generate revenue to the trust beneficiaries while providing the habitat conservation levels necessary to meet Permit issuance criteria.

3.4.3 Legal Sufficiency

Trust Mandate

The Enabling Act of 1889 (25 STAT. 679) granted the state of Montana sections 16 and 36 in each township (or other lands in lieu of those sections) “for the support of common schools.” While all trust lands are considered state-owned, they may only be managed to fulfill the specific purposes for which the trust was created (i.e., the lands must be managed to provide income for the designated trust beneficiary, such as the common schools, agricultural college, mining college asylums, reform school, or public buildings).

I believe that by implementing the Proposed Action, DNRC will best meet its obligations to generate revenue in support of its trust beneficiaries. Compliance with all applicable state and federal laws is part of the planning environment in which we meet our trust mandate. As a long-term plan for complying with the ESA that still maintains a reasonable amount of management flexibility, the Proposed Action will allow us to continue to produce short- and long-term income for the trust beneficiaries.

Other State Laws, Rules, and Policies

The original and amended HCP, the original EIS (USFWS and DNRC 2010), and the supplemental EIS (USFWS and DNRC 2018) were prepared to comply with all applicable State laws, rules, and policies, including but not limited to:

- MEPA and its implementing Rules
- The State Forest Land Management Plan
- The Administrative Rules of Montana for Forest Management
- Nongame and Endangered Species Conservation Act
- Montana Streamside Management Zone Law
- Montana Stream Protection Act

- Antidegradation Policy
- Montana Water Pollution Control Act
- Clean Air Act of Montana
- Montana Antiquities Act
- Montana Noxious Weed Control Act.

4 Alternatives

Two alternatives were analyzed in the Supplemental EIS, including a no-action alternative and the Proposed Action. The alternatives are described in detail in Chapter 2 of the Supplemental EIS (USFWS and DNRC 2018). A brief description of the alternatives is provided below.

4.1 No Action

The No-Action Alternative would amend the HCP to incorporate the terms of the 2015 Settlement Agreement, which is legally required, but would not add lands or issue an amended permit authorizing additional take. DNRC would continue to implement the 2010 HCP on the 2010 covered lands under its existing Permit, along with the terms of the 2015 Settlement Agreement. The added lands would be managed under the existing DNRC Forest Management Administrative Rules of Montana (ARMs 36.11.401 through 36.11.456) as described in detail for the No Action Alternative in the 2010 Final EIS (USFWS and DNRC 2010, pp. 3-4 through 3-6), available at: <http://dnrc.mt.gov/divisions/trust/forest-management/hcp>, and the 2018 Final Supplemental EIS (USFWS and DNRC 2018), available at: <http://dnrc.mt.gov/divisions/trust/forest-management/hcp/hcp-announcements> .

Under the No Action Alternative, collective actions under the varying forest management ARMs and the conservation easements placed on the Blackfoot, Swan, and Chamberlin acquisition areas would provide long-term conservation value to grizzly bears, lynx, and native fish. Regulations and BMPs would evolve over time to address new issues.

4.2 Proposed Action

The Proposed Action/amended HCP would: 1) incorporate the terms of the 2015 Settlement Agreement on the Stillwater Block and 2) add 81,416 acres to the HCP project area. These changes are described below.

4.2.1 Incorporate the 2015 Settlement Agreement

Under the Proposed Action, DNRC would amend its conservation commitments in the Stillwater Block to incorporate the terms of a 2015 Settlement Agreement between DNRC and Plaintiffs on the 2010 HCP. In this portion of the 2010 HCP project area, the negotiated terms of the 2015 Settlement Agreement replace a portion of the 2010 HCP commitments.

The primary difference between the Stillwater Block commitments under the 2010 HCP and the 2015 Settlement Agreement is the replacement of the 19,400 acres of Class A lands designated under the 2010

HCP. The 2015 Settlement Agreement created seven areas of lands with 22,007 acres defined as grizzly bear security zones (security zones) (see Figure 2-1 of the Final Supplemental EIS). These security zones include much of the 2010 HCP Class A lands, but also include a new area (Security Zone 7 - 2,300 acres in Coal Creek State Forest). Under the 2010 HCP on Class A lands, no new permanent road construction was allowed, and lands were divided into four subzones to be managed on a 4-year active timber management/8-year rest rotation. Under the 2015 Settlement Agreement, forest management activities in the seven security zones will be restricted to the denning season only, eliminating the need for a management/rest rotation. Under the 2010 HCP, all lands not included as Class A lands were referred to as Class B lands. Under the 2015 Settlement Agreement, all lands outside the security zones are referred to as “lands outside security zones” and will continue to be managed as described for Class B lands in the 2010 HCP. The Stillwater Block Transportation Plan for the lands outside the security zones would remain the same as detailed in the 2010 HCP.

4.2.2 Add 81,416 acres to the HCP Project Area and Incidental Take Permit

The Proposed Action would add 81,416 acres to the 2010 HCP project area, such that the HCP project area (covered lands) would be increased from 548,500 acres to 629,915 acres. This change would require USFWS to amend the Permit to authorize additional incidental take associated with the added lands. To accommodate the added lands, some of the 2010 HCP commitments would require amendment. These changes are summarized below and described in detail in the Final Supplemental EIS, Appendix A (available at: [Montana DNRC](#)).

Amendment of the Swan River State Forest Lands and Commitments

In the Swan River State Forest, the Proposed Action would add lands and amend the forest boundary, expand the transportation plan, amend the grizzly bear active timber management/rest rotation, and expand the Swan LMA boundary.

The Proposed Action would amend the Swan River State Forest Transportation Management Plan to include the existing road miles on the added lands in the Swan, incorporate the road constraints described in the MFWP conservation easement on the Swan, update the baseline data to include the roads constructed to date under the 2010 HCP, and increase the miles of temporary roads allowed in the Swan River State Forest proportionately to the acreage of added lands (from 5 miles to 6.5 miles).

Under the Proposed Action, commitment GB-SW3(1) would be revised from a 4-year active timber management/8-year rest rotation to a 3-year active timber management, including salvage harvest/6-year rest rotation as is the current practice in the Swan River State Forest.

The Proposed Action would expand the Swan LMA boundary from 39,657 acres to 56,302 acres to encompass the Swan added lands. All 2010 HCP commitments for lynx would remain the same and would be applied within the expanded LMA.

Addition of the Terms of Conservation Easements

The Proposed Action includes the protection of lands by conservation easements held by MFWP on 16,446 acres of the Swan and 13,453 acres of the Chamberlain, and the conservation easement held by USFWS on 3,097 acres of the Blackfoot added lands.

The Swan conservation easements restrict all 16,466 acres of added lands in the Swan as follows: no net increase in the baseline miles of roads, no grazing licenses, and no commercial or residential development. Further, timber harvest and mechanized equipment operation are prohibited within designated riparian exclusion zones on important bull trout streams: South Woodward Creek, Swan River, Goat Creek, and Squeezer Creek.

The Chamberlain conservation easement includes 13,453 acres, of which 11.083 are referred to as core area. All lands are limited to no net increase in the baseline miles of roads and no commercial and residential development. Further, all corrective actions related to connectivity on bull trout and westslope cutthroat trout streams and high-risk sediment sites must be achieved by July 2025. In the core area DNRC is prohibited from issuing grazing licenses. The conservation easement also expands the riparian management zone on Class 1 streams and prohibits adverse effects on wetlands.

The Blackfoot conservation easement restricts 3,097 acres of the added lands from an increase in baseline miles of roads and commercial or residential developments. New road construction is only allowed when approved by the easement holder (i.e., the Service).

Amendment of the Garnet Lynx Management Area

The Proposed Action increases the acreage owned by DNRC within the Garnet LMA from 7,507 acres to 9,015 acres to incorporate lynx habitat occurring within portions of the Chamberlain and Potomac added lands. All 2010 HCP commitments for lynx would remain the same and would be applied on the additional lands in the LMA.

Designated Lynx Critical Habitat

On September 25, 2013, in response to litigation over the USFWS' 2009 critical habitat designation, the USFWS published a revised designation of Canada lynx critical habitat as well as a revised definition of the lynx distinct population segment. In the October 2014 final rule (79 FR 54782), USFWS removed all DNRC HCP-covered lands from designation as critical habitat. Therefore, the Proposed Action acknowledges that 175,127 acres of the 2010 HCP-covered lands are no longer designated lynx critical habitat. The added lands were not specifically identified as excluded from critical habitat designation by the 2014 final rule, and as such, the new total of lynx critical habitat lands within the amended HCP project area would be 56,014 acres.

Amend the HCP Transition Lands Strategy

The Proposed Action would retain the 5 percent cap on the North Continental Divide and Cabinet-Yaak grizzly bear recovery zone lands, Cabinet-Yaak grizzly bear non-recovery occupied habitat, all LMAs, and bull trout core areas. The acreage of lands subject to the 5 percent cap would increase from 227,271 acres to 308,687 acres under the Proposed Action. Thus, the total acres that could be removed under the 5 percent cap would increase from 11,363 acres to 15,434 acres.

Under the Proposed Action, the 10 percent cap on all other lands in the HCP would be increased to 15 percent. Because all the newly added lands are subject to the 5 percent cap, the total acreage of lands subject to the 15 percent cap would remain at 321,229 acres; however, the total lands allowed for removal from the HCP under the cap would increase to 48,184 acres.

5 Public Participation and Outreach to Native American Tribes

Here is a summary of the public participation milestones:

- The notice of intent to prepare a Supplemental EIS for the proposed amendment was published in the Federal Register on November 29, 2016 (81 FR 86000). A notice of availability for the draft Supplemental EIS was published in the Federal Register on August 29, 2017.
- The draft Supplemental EIS was released for a 45-day public comment period that began August 29 and ended on October 13, 2017. During this time, the Service and DNRC received 13 comment letters and emails on the draft Supplemental EIS. A primary concern raised was the effects of climate change on the HCP-covered species.
- Comments on the Draft Supplemental EIS were addressed in Chapter 4 of the Final Supplemental EIS.
- The notice of availability for the final Supplemental EIS was published in the Federal Register on May 18, 2018.
- The Service provided updates to Native American Tribes through government to government consultation on the proposed changes to the DNRC HCP. The 2009 Programmatic Agreement with the Blackfoot Indian Nation is still in effect.

6 Responses to Comments on the Final HCP/EIS

The Final Supplemental EIS and Amended HCP was published in May 2018. We received one anonymous comment on the Final Supplemental EIS that was not relevant to the HCP.

7 Conclusion

Adding lands to the HCP brings several advantages both for the State's forest management program and for wildlife and fisheries conservation:

- By committing to this long-term agreement on the added lands, the State plays a pro-active role in establishing how the forest management program will be affected by the ESA for decades.
- The State will be doing its part to contribute to the conservation of ESA-listed species on the added lands. For species covered by HCPs, the Service can leverage long-term conservation plans, like the DNRC HCP, as part of their de-listing process.
- Adding the lands to the HCP will streamline the forest management program in the Swan River State Forest.
- Adding the lands to the HCP project area will facilitate applications for HCP Land Acquisition Grants under Section 6 of the ESA. Since 2001, these grants have helped conserve wildlife habitat in Montana with conservation easements and outright purchase of land. Those awards

were possible because of existing HCPs; implementing the HCP on the added lands will expand this conservation opportunity.

- Public participation in management of the added lands will continue with implementation of the HCP:
 - Through the MEPA process, DNRC will continue to offer opportunities for public participation at the project level, where ID teams implement the HCP commitments,
 - The HCP website will continue to be used to keep the public informed about the HCP and future land acquisitions, and
 - Our annual and 5-year HCP meetings are open to the public, and monitoring reports on the HCP project area, including the added lands, will be posted on the HCP website.

DNRC is responsible for providing a long-term sustainable revenue stream to the trust beneficiaries. Acquiring lands and adding them to the forest management program enhanced our ability to generate revenue to the trust beneficiaries. Operating the added lands under the HCP and the incidental take permit increase the assurances that our program will remain viable on these lands.

The Final Supplemental EIS is posted on the Montana DNRC website at [Montana DNRC](#).

9 References

Administrative Rules of Montana. ARMs 36.2.521 through 36.3.543.

DNRC. 2010. Montana Department of Natural Resources and Conservation Forested State Trust Lands Final Habitat Conservation Plan and Environmental Impact Statement. September 2010. Document available on project website: [Montana DNRC HCP](#).

USFWS and DNRC. 2010. Final Environmental Impact Statement and Habitat Conservation Plan. Prepared by Parametrix, Bellevue, WA. Prepared for the U.S. Fish and Wildlife Service, Montana Field Office, Helena, MT. and Montana Department of Natural Resources Conservation, Missoula, MT. September 17th, 2010.

USFWS and DNRC 2018. Final Supplemental Environmental Impact Statement. Forested State Trust Lands. Habitat Conservation Plan. U.S. Fish and Wildlife Service and Montana Department of Natural Resources and Conservation.

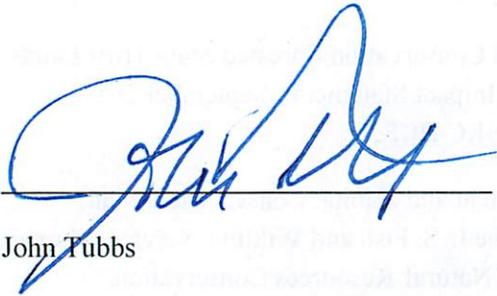
Endangered Species Act of 1973. Title 16 United States Code, §1531-§1544. Print.

Montana Enabling Act of 1889, Title 25, § 679.

Montana Environmental Policy Act of 1971. Montana Code Annotated §75-1-101 through §75-1-324.

National Environmental Policy Act of 1969. Title 42 United States Code, §4321 through §4347.

10 Signature of Deciding Official

A handwritten signature in blue ink, appearing to read 'John Tubbs', is written over a horizontal line.

John Tubbs

Director, Department of Natural Resources and Conservation