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Lynx proposal not fair to land owners – Opinion

By Aubyn Curtiss (Daily Inter Lake)

Information gathered at the Jan. 10 lynx hearing in Kalispell substantiated concerns shared by many about subjecting private property to federal oversight to ostensibly aid in lynx recovery efforts.

Until scientific evidence is available to prove recovery efforts have not been successful in areas where habitat conservation is already in progress, it is totally irresponsible to designate land in private ownership as “critical habitat.”

Response to a question directed to the biologist who coordinated the “critical habitat designation” encapsulates the absurdity of the entire proposal. Asked how they could prove the presence of lynx on a specific location, the reply was: “If it has been designated critical habitat, we assume the lynx are there!” So acting on assumptions if this proposal goes forward, an agency would be in a position to dictate what a property owner can do with his/her property.

It is small solace for the U.S. Fish & Wildlife Service to promise that landowners would be required to go through a formal “consultation” process for activities on their property only when a so-called federal nexus exists. Who can possibly envision what “federal nexus” might be devised and written into future administrative rules?

Bruce Vincent of Communities for the Great Northwest, in his testimony, reminded listeners of the promises made to stakeholders when the grizzly bear issues were undergoing a similar hearing process, and of what has since become reality in the logging community.

One expert critiquing my hearing testimony emphasizes that a “federal nexus” already exists whenever landowners participate in federal programs and accept federal money. Some examples given are: a landowner logging his timber who accepts federal cost-share for reforestation is under federal nexus, as are landowners receiving farm subsidies or participating in special conservation programs, even if the assistance comes from the state, if the state program received funding from the federal government. Landowners are also making themselves vulnerable if they have need to obtain any federal permit.

I strongly oppose the term “critical habitat” and the idea that “critical” measures must be taken on private land until such a time (if ever) scientific evidence proves that the actions already taken on millions of acres of public lands, which are more likely the habitat of the elusive lynx, have not been effectual. We are aware of the deceit exercised in the past to allege habitat, when indeed there was none. Lynx habitat essentially is at high elevations where snowshoe rabbits provide adequate food. Their presence indicated on some “critical habitat” map should not be assumed, and affected landowners should not arbitrarily be imposed upon by senseless infringements upon their property rights. Even the agency spokesperson, Lori Nordstrom, indicated that the service has long held position that expensive critical habitat designations are not expected to provide “much additional benefit” to a species.

So why is it an issue? A lawsuit and court ruling ordered the Fish & Wildlife Service to designate critical habitat essential to conservation of the species, and in November the agency proposed the “critical habitat” designations for public review. What we have before us is what some perceive to be a frivolous proposal with very limited or no potential to accomplish the expressed purpose of the program. The one guarantee is that it is designed to involve an already stressed agency in more litigation, as landowners envision their property devalued to accommodate alleged lynx recovery. Both the U.S. Constitution and the Montana Constitution protect private property from such takings.

There is promise of an economic analysis to be done, but again, comments of those involved in the study indicated that the assessment could concentrate mostly on the biological benefits of the recovery. At any rate, economic statistics should be available to the public before the comment period closes.

Written comments are to be submitted by Feb. 7 and should be sent to Lynx, U.S. Fish & Wildlife Service-Montana Field Office, 100 N. Park Ave, Suite 320 Helena, MT 59601. Comments may also be emailed to FW6_lynx@fws.gov.

Curtiss, a Fortine Republican, represents District 1 in the Montana Senate.