



FISH AND WILDLIFE SERVICE

1875 Century Boulevard  
Atlanta, Georgia 30345

In Reply Refer To:  
FWS/R4/ES

**MAY 18 2011**

Mr. Michael J. Robinson  
Center for Biological Diversity  
Post Office Box 53166  
Pinos Altos, New Mexico 88053

Dear Mr. Robinson:

On February 15, 2011, the Fish and Wildlife Service (Service) received your petition to reintroduce the endangered Florida panther (*Puma (=Felis) concolor coryi*) to the Okefenokee National Wildlife Refuge and nearby suitable lands in south Georgia and north Florida as an experimental population under authority of section 10(j) of the Endangered Species Act of 1973, as amended (ESA), 16 U.S.C. § 1539(j) as well as under the Administrative Procedures Act of 1946 (APA), 5 U.S.C. § 553(e), which allows an interested person the right to petition for issuance of a rule.

The requested action is not something that is petitionable under the provisions of section 4 of the ESA. Section 4 of the ESA authorizes petitions to list, reclassify, or delist species, and to amend existing critical habitat designations. 16 U.S.C. § 1533(b)(3). The reintroduction of an experimental population under section 10(j) of the ESA is not a petitionable action under the Service's ESA regulations. See 49 Fed. Reg. 38900 (Oct. 1, 1984) (preamble to latest version of 50 C.F.R. part 424). Furthermore, although in your petition you state that reintroduction of the panther is mandated by the Florida Panther Recovery Plan, the implementation of a recovery plan is also not a petitionable action under the ESA.

We agree with you that the designation of an experimental population is petitionable under the APA. In the preamble to the final 50 C.F.R. part 424 regulations (see above), the Service determined that although petitions to designate experimental populations would not be treated under the ESA, they would be treated under the APA. The Department of the Interior's regulations require the Service to give prompt consideration to the petition and promptly notify the petitioner of the action taken. 43 C.F.R. § 14.3.

Accordingly, after careful consideration, the Service is denying your petition. The implementation of recovery plans is left to the discretion of the Service, Fund for Animals v. Rice, 85 F.3d 535, 547 (11<sup>th</sup> Cir. 1996), as is the creation of experimental populations under section 10(j) ("The Secretary may authorize the release . . . of any population . . . of a [listed] species outside the

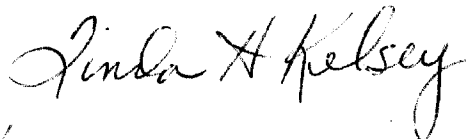
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current range of such species if the Secretary determines that such release will further the conservation of the species.”)

As you accurately noted in your petition, the Service has a recovery plan for the Florida panther and is implementing it. We have provided a summary of recovery implementation activities for the Florida panther as an attachment to this letter.

Thank you for your concern regarding conservation of the Florida Panther. If you have any questions concerning this matter, please contact Patrick Leonard, Assistant Regional Director, Ecological Services, at (404) 679-7085.

Sincerely yours,

A handwritten signature in cursive script that reads "Linda H. Kelsey".

for Cynthia K. Dohner  
Regional Director

Enclosure

## Summary of Florida Panther Recovery Plan Implementation

The Florida panther is federally listed as endangered under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Implementing recovery actions for endangered species is one of our highest priorities. Recovery plans delineate actions which the best available science indicates are required to recover and protect listed species. Approved recovery plans are subject to modification as dictated by new findings, changes in species' status, and the completion of recovery actions. Implementation of recovery plans can be constrained by the availability of budgetary and staffing resources. In recovery plans, we prioritize recovery actions that are needed to be taken for a listed species. For example, Priority 1 actions are those that must be taken to prevent extinction or to prevent the species from declining irreversibly in the foreseeable future. Priority 2 actions are those taken to prevent a significant decline in a species' population, habitat quality, or some other significant negative impact short of extinction. Priority 3 actions are all other actions necessary to provide for the full recovery of the species.

We continue to implement the Florida Panther Recovery Plan that was finalized in December 2008 (FWS 2008) marking the culmination of many years of effort by the 42-member Florida Panther Recovery Team. The Recovery Plan outlines the following recovery objectives (FWS 2008, p. 95):

1. To maintain, restore, and expand the panther population and its habitat in south Florida and expand the breeding portion of the population in south Florida to areas north of the Caloosahatchee River.
2. To identify, secure, maintain, and restore panther habitat in potential reintroduction areas within the historic range, and to establish viable populations of the panther outside south and south-central Florida.
3. To facilitate panther recovery through public awareness and education.

While these objectives include reintroducing additional populations outside of southern Florida, our recovery plan makes clear (through the recovery program presented and the priority numbers assigned to each recovery action) that our first priority has to be in southern Florida to maintain and expand the only known breeding population of Florida panthers. A full suite of actions needed to recover the Florida panther are presented and prioritized in the Recovery Plan Outline and Implementation Schedule (FWS 2008, pp. 101 – 155). The Implementation schedule has predominantly prioritized actions centered around maintaining and restoring populations and habitats in south Florida as “Priority 1” while those actions related to reintroduction outside of south and south-central Florida are mainly prioritized as “Priority 2” or “Priority 3.” We have been and continue to work with a broad range of partners to implement the priority actions identified in the Recovery Plan.

Habitat loss, degradation, and fragmentation are the greatest threats to panther survival (FWS 2008, pp. 5, 36) and we are working to address these threats and protect panther habitat in southern Florida. One example is the Picayune Strand Restoration Project which is an essential part of the Comprehensive Everglades Restoration Plan. This 55,000-acre restoration project falls within the Florida panther's Primary Zone and is near other important lands such as Fakahatchee Strand State Park, Florida Panther National Wildlife Refuge, and Big Cypress National Preserve. The initial phases of the project including road removal and canal plugging have already begun and a

Florida panther den has since been recorded in the project footprint. This would not have been possible if this area had been lost to development. Another key phase of this extremely vital Everglades restoration project has recently begun. Our role in this project's implementation, including future monitoring and adaptive management efforts, is pivotal to restoring the greater Everglades ecosystem and conserving the panther (FWS 2008, action numbers 1.1.1.2.3.3., 1.1.2.1., and 1.1.2.4.2.).

Additionally, we continue to advance conservation banking, a promising approach to provide incentives to landowners to protect, restore, and manage in perpetuity strategically important Florida panther habitat (FWS 2008, action number 1.1.1.1.3., and 1.1.3.3.2.). We have already finalized three conservation banks in Hendry County, one in the Florida panther's Primary Zone (FWS 2008, action number 1.1.1.3.2.) and two in the Dispersal Zone (FWS 2008, action number 1.1.1.3.1.3.1.) and another conservation bank in Hendry County in the Florida panther's Primary Zone is nearly complete. Several other banks in locations that are strategically important to the Florida panther in the Primary and Dispersal Zones are being negotiated.

Implementing Florida panther crossings at key segments of roads in south Florida will also continue to be a major point of focus (FWS 2008, action numbers 1.1.1.4.1., 1.1.1.4.2., and 1.1.1.4.3.). To address the threat to Florida panthers from vehicle collisions, a total of seven new crossings are planned. Two crossings are planned for Oil Well Road and ground has been broken for a crossing on County Road 846 east of Immokalee, as well as four crossings for U.S. 1 in the southeastern part of the Florida panther's range. We are also working with partners to implement and evaluate a Roadside Animal Detection System on U.S. 41 and Turner River Road, and additional needs will be considered for other locations in the future.

The Service continues important reviews under section 7(a)(2) of the ESA of proposals that "may affect" the panther and the areas in which they are found (FWS 2008, action number 1.1.1.2.3.2.). This mandate requires all Federal agencies to consult with us to insure that the actions they authorize, fund, or carry out are not likely to "jeopardize the continued existence" of the species.

Four conservation organizations, including Audubon of Florida, the Collier County Audubon Society, Defenders of Wildlife, and the Florida Wildlife Federation are working toward a collaborative approach with major landowners in Collier County, Florida, to implement a landscape-scale Habitat Conservation Plan (HCP) for which they would seek a permit from the Service in accordance with section 10 of the ESA (FWS 2008, action number 1.1.1.2.4.4.). This effort, known as the Eastern Collier County HCP, will undergo rigorous review by the Service, as well as public evaluation and comment. Given the scope of this initiative, we have created a team of biologists across office programs to consider every aspect of the concept in detail. We believe that this model, if ultimately successful, could provide a framework for conservation and recovery efforts in other locations and particularly in the northern portion of the Florida panther's historic range where much of the suitable panther habitat is privately owned. This collaboration between private landowners and environmental groups will undoubtedly provide important lessons learned for future recovery efforts in other parts of the Florida panther's historic range.

The Service continually strives to improve the scientific understanding of Florida panthers and their habitats. For example, we just received the final report, "Estimating effects of land-use changes on Florida panther habitat," for a GIS-based "Florida Panther Habitat Estimator" model

we had developed to better evaluate the potential effects of various land-use changes on Florida panther habitat (FWS 2008, action numbers 1.1.1.2.3.2., 1.1.2.4.2.). This model was peer reviewed and improved based on comments from several prominent wildlife habitat modelers. Also, working with the Florida Fish and Wildlife Conservation Commission and the University of Florida, we just received the final report, "Population Ecology of the Florida Panther." The objective of this work was to estimate Florida panther survival and cause-specific mortality of sub-adults and adults, kitten survival, and reproductive parameters. This information will be used to complete a population-viability-analysis model to better understand the dynamics and persistence of the Florida panther population and examine the effects of various management scenarios on these variables (e.g., effects of removal of adult females whether from vehicle collisions or for reintroduction purposes; FWS 2008, action numbers 1.1.5.1.1., 1.1.5.1.2., and 1.1.5.2.3.). We continue to monitor trends in Florida panther numbers, population health, genetics and demographics via annual panther captures and counts of adult and subadult Florida panthers (FWS 2008, action numbers 1.1.5.1.2., 1.1.5.2.1., 1.1.5.4.1.2., and 1.1.5.4.2.1.).

Finally, we are presently facing some management issues (i.e., calf depredations) in southern Florida that need to be resolved. Understanding recent calf-depredation and working with the ranching community to develop acceptable solutions is critical for long-term panther conservation. Successful recovery of the Florida panther is strongly influenced by the availability of suitable habitat on private lands and ultimately the cooperation and assistance of private landowners. Collaboration with ranchers, the Florida Fish and Wildlife Conservation Commission, and other parties on this challenging issue will not only benefit the Florida panther in southern Florida, but will provide important insights for recovery actions such as reintroduction.

Because panthers require such large areas to maintain their life needs and social structure and the fact that they are such a large predator, many Federal, state, and local agencies, NGOs, large landowners, and the public will have to be involved in every step of their recovery including any potential reintroduction planning. The Florida Panther Recovery Plan identified protecting Florida panthers in south Florida as the highest priority, and the work we are now completing to this end will protect the existing breeding population and also provide invaluable lessons about the human dimensions of panther conservation on private lands that will be vitally important to future efforts to expand the panther's range.