



April 7, 2014

*Sent via Email and Certified Mail/Return Receipt Requested*

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Re: Sixty-Day Notice of Intent to Sue for Violations of the Endangered Species Act for Take of Canada Lynx Incidental to Authorized Recreational Trapping

Dear Governor Otter, Director Moore, and Commissioners:

On behalf of the Center for Biological Diversity, Western Watersheds Project, and Friends of the Clearwater, you are hereby notified that we intend to file suit against the Governor of Idaho, the Director of the Idaho Department of Fish and Game, and the members of the Fish and Game Commission (together "the State"), in their official capacities, for violations of sections 9 and 4(d) of the federal Endangered Species Act ("ESA").<sup>1</sup> The State has authorized and continues to permit recreational trapping in Idaho that is causing unlawful

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<sup>1</sup> 16 U.S.C. §§ 1538(a)(1)(B), 1533(d); 50 C.F.R. § 17.40(k).

take of Canada lynx (*Lynx Canadensis*), a species that is protected as threatened under the ESA. The State does so in the absence of a regulatory scheme to avoid, minimize, or mitigate such take, and without an incidental take permit (“ITP”) from the U.S. Fish and Wildlife Service (“FWS”).

We provide this letter pursuant to the citizen suit provision of the ESA.<sup>2</sup> If these violations do not cease within the next 60 days or the State has not begun the process of obtaining an ITP, we will file suit in United States District Court to enjoin State-authorized trapping that results in the incidental take of Canada lynx.

## I. THE RELEVANT STATUTORY AND REGULATORY FRAMEWORK

### A. The ESA and its Take Prohibition

The ESA is “the most comprehensive legislation for the preservation of endangered species ever enacted by any nation.”<sup>3</sup> Its fundamental purposes are “to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved [and] to provide a program for the conservation of such endangered species and threatened species ....”<sup>4</sup> To achieve these objectives, the ESA directs FWS to determine which species of plants and animals are “threatened” and “endangered” and to place them on the endangered species list.<sup>5</sup> An “endangered” species is one “in danger of extinction throughout all or a significant portion of its range,” and a “threatened” species is “likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.”<sup>6</sup>

Once a species is listed, the ESA provides a variety of procedural and substantive protections to ensure not only the species’ continued survival, but ultimately its recovery. According to the U.S. Supreme Court, “Congress has spoken in the plainest words, making it clear that endangered species are to be accorded the highest priorities.”<sup>7</sup>

Among the many protections for species in the ESA, section 9 prohibits any “person” from “taking” or causing take of any member of any endangered species and the Service has extended this prohibition to the Canada lynx.<sup>8</sup> The ESA defines “take” to mean “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.”<sup>9</sup> Congress intended “take” to be defined in the “broadest possible

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<sup>2</sup> *Id.* § 1540(g)(2).

<sup>3</sup> *TVA v. Hill*, 437 U.S. 153, 180 (1978).

<sup>4</sup> 16 U.S.C. § 1531(b).

<sup>5</sup> *Id.* § 1533.

<sup>6</sup> *Id.* §§ 1532(6), (20).

<sup>7</sup> *Hill*, 437 U.S. at 155.

<sup>8</sup> 16 U.S.C. § 1538(a)(1)(B), § 1533(d); 50 C.F.R. § 17.40(k)(2).

<sup>9</sup> 16 U.S.C. § 1532(19).

manner to include every conceivable way” in which a person could harm or kill fish or wildlife.<sup>10</sup>

An act can cause take directly or indirectly, regardless of whether the act was purposeful or deliberate.<sup>11</sup> Therefore, incidental take also violates section 9 unless it is permitted by FWS. An act may also constitute take whether or not it results in injury or death, such as when a listed species is trapped or otherwise harassed. FWS defines “harass” to mean “an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include but are not limited to, breeding, feeding, or sheltering.”<sup>12</sup>

The take prohibition applies to any “person,” including “any officer, employee, agent, department, or instrumentality ... of any State, municipality, or political subdivision of a State ... [or] any State, municipality, or political subdivision of a State ... .”<sup>13</sup> Furthermore, the ESA citizen suit provision authorizes suits against any person, including any state governmental instrumentality or agency to the extent permitted by the Eleventh Amendment, to enforce the prohibition on take.<sup>14</sup>

It is unlawful for agencies or agency officials to take or to “cause [take] to be committed” by another person.<sup>15</sup> Thus, courts have held that state officials are liable if they authorize a third party to undertake an activity that causes unpermitted take, such as issuing a trapping license that results in incidental trapping of an endangered or threatened species.<sup>16</sup> A federal court found that the act of allowing trapping within a state’s borders can result in take liability, where lynx were incidentally taken by recreational trapping.<sup>17</sup>

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<sup>10</sup> S. Rep. No. 307, 93rd Cong., 1st Sess. 1, reprinted in 1973 U.S. Code Cong. & Admin. News 2989, 2995.

<sup>11</sup> *Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*, 515 U.S. 687, 704 (1995).

<sup>12</sup> 50 C.F.R. § 17.3.

<sup>13</sup> 16 U.S.C. §§ 1532(13), 1538(a)(1).

<sup>14</sup> *Id.* § 1540(g)(1); see also *Ex Parte Young*, 209 U.S. 123, 159-60 (1908) (authorizing lawsuits for prospective relief against state officials acting in violation of federal law).

<sup>15</sup> *Id.* § 1538(g).

<sup>16</sup> *Strahan v. Coxe*, 127 F.3d 155, 163 (1st Cir. 1997) (“the statute not only prohibits the acts of those parties that directly exact the taking, but also bans those acts of a third party that bring about the acts exacting a taking,” and “a governmental third party pursuant to whose authority an actor directly exacts a taking of an endangered species may be deemed to have violated the provisions of the ESA”); see also *Loggerhead Turtle v. County Council of Volusia County, Florida*, 896 F. Supp. 1170, 1182 (M.D. Fla. 1998), reversed and remanded on other grounds by *Loggerhead Turtle v. County Council of Volusia County*, 148 F.3d 1231 (11th Cir. 1998); *Pac. Rivers Council v. Brown*, No. 02-243, 2002 U.S. Dist. LEXIS 28121 (D. Or. Dec. 23, 2002); *Seattle Audubon Soc’y v. Sutherland*, No. 06-1608, 2007 U.S. Dist. LEXIS 31880 (W.D. Wash. May 1, 2007).

<sup>17</sup> *Animal Prot. Inst. v. Holsten*, 541 F. Supp. 2d 1073, 1079 (D. Minn. 2008); see also Idaho Code § 36-401 (prohibiting trapping in Idaho without a state-issued license). As in *Animal Prot. Inst.*, Idaho has not issued regulations that would assist in avoiding take of lynx. *Animal Prot. Inst.*, 541 F. Supp. 2d at 1080.

Like the defendants in *Animal Prot. Inst.*, a state may be able to avoid take liability by obtaining an incidental take permit from FWS under section 10 of the ESA.<sup>18</sup> For an ITP to be issued, take of a listed species must be incidental to a state's primary action and the state must develop a Habitat Conservation Plan ("HCP") that will facilitate conservation of the species.<sup>19</sup> FWS also must find that the HCP will minimize and mitigate the impacts of take "to the maximum extent practicable," that the applicant has adequate funding to carry out the plan, and that the incidental take will not appreciably reduce the likelihood of survival of the species.<sup>20</sup>

## B. The Current Framework Governing Trapping in Idaho

All wildlife in Idaho belongs to the State.<sup>21</sup> State policy assures that wildlife "shall be preserved, protected, perpetuated, and managed."<sup>22</sup> The Fish and Wildlife Commission administers state wildlife policy, but it does not have the authority to change state wildlife policy.<sup>23</sup> However, because circumstances change, the Commission has the authority to promulgate regulations to preserve and protect state wildlife.<sup>24</sup> The Commission decides "when, under which circumstances, in which localities, by what means, what sex, and in what amounts and numbers the wildlife of this state may be taken."<sup>25</sup> No person may trap any wild animal without first having procured a license.<sup>26</sup> The license is granted and administered by the Idaho Department of Fish and Game ("IDFG").<sup>27</sup> The license is subject to limitations under Title 36 of the Idaho Code and Commission regulations.<sup>28</sup>

However, to date neither the Commission nor IDFG have set any specific requirements to protect lynx from incidental trapping or to reduce the incidental take of lynx. The entire regulatory scheme governing recreational trapping in Idaho currently only includes guidelines to reduce the incidental take of lynx – but these guidelines are inadequate to

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<sup>18</sup> 16 U.S.C. § 1539(a)(1)(B).

<sup>19</sup> *Id.* and (a)(2); see also *Sierra Club v. U.S. Fish and Wildlife Serv.*, 245 F.3d 434, 441-42 (5th Cir. 2001) ("'[c]onservation' is a much broader concept than mere survival" because the "ESA's definition of 'conservation' speaks to the recovery of a threatened or endangered species").

<sup>20</sup> 16 U.S.C. § 1539(a)(2).

<sup>21</sup> Idaho Code § 36-103(a).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* § 36-103(b).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* § 36-104(b)(1).

<sup>26</sup> *Id.* § 36-401.

<sup>27</sup> See IDFG, *Application for Trapping License* (Revised July 2013), <http://fishandgame.idaho.gov/public/licenses/trapLicenseApp.pdf>.

<sup>28</sup> Idaho Code § 36-402.

prevent incidental capture of Canada lynx, and moreover, they are merely advisory and lack full enforcement capability by IDFG.<sup>29</sup>

## II. FACTUAL BACKGROUND

### A. Canada Lynx

The Canada lynx is a rare member of the cat family, *Felidae*, similar to bobcat but characterized by tufted ears, long legs, and large paws. It is a cold-loving cat that feeds predominantly on snowshoe hares.

Canada lynx once inhabited large areas of at least 16 states in the contiguous United States, but the species has since been extirpated from significant portions of its historical range. Declining population numbers and inadequate regulatory mechanisms led FWS to list Canada lynx as a threatened species under the ESA in 2000.<sup>30</sup> However, trapping, as well as habitat destruction, climate change, and other threats, continues to harm the Canada lynx today.

In Idaho, Canada lynx are known to occupy much of the State, with “populations occur[ring] north of the Salmon River in the west, and north of the Caribou Range in the east.”<sup>31</sup> Information from FWS shows the Canada lynx is known to or is believed to occur in 27 of Idaho’s 44 counties.<sup>32</sup>

The total number of Canada lynx in Idaho is precariously low, estimated at as few as 100 individuals; the loss of just a few animals could have dire genetic consequences for the species in the State and across the American West.<sup>33</sup> Lynx habitat in Idaho is crucial, as “lynx disperse in both directions across the Canada-U.S. border, and this connectivity and interchange with lynx populations in Canada is thought to be essential to the maintenance and persistence of lynx populations in the contiguous United States.”<sup>34</sup> For example, the

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<sup>29</sup> IDFG, *2014-2015 Upland Game, Furbearer and Turkey Seasons and Rules* at 43.

<sup>30</sup> 65 Fed. Reg. 16,052 (Mar. 24, 2000). FWS has promulgated an ESA section 4(d) rule that applies all the prohibitions in section 9 of the ESA to wild populations of lynx. 50 C.F.R. § 17.40(k).

<sup>31</sup> See IDFG, *Profile on Canada Lynx* (2005), <http://fishandgame.idaho.gov/ifwis/cwcs/pdf/Canada%20Lynx.pdf> (citing McKelvey, K.S., K.B. Aubry, and Y.K. Ortega. 2000. History and distribution of lynx in the contiguous United States. Pages 207-264 in Ecology and conservation of lynx in the United States. USDA Forest Service General Technical Report RMRS-GTR-30WWW).

<sup>32</sup> FWS, *U.S. Counties in which the Canada Lynx (Contiguous U.S. DPS) is known to or is believed to occur* (undated), <http://ecos.fws.gov/speciesProfile/profile/countiesBySpecies.action;jsessionid=758AC9290C95536895BBE5DD5FBCCC0D67d-49653-s=1&entityId=24&d-49653-o=2&d-49653-p=1>.

<sup>33</sup> *Id.*; IDFG, *Profile on Canada Lynx*, *supra* note 31.

<sup>34</sup> 78 Fed. Reg. 59430, 59434 (Sep. 26, 2013) (to be codified at 50 C.F.R. Part 17) (internal citations omitted); see also Ruediger, Bill, *et al.* 2000. Canada lynx conservation assessment and strategy. Forest Service Publication #R1-00-53, Missoula, MT. 142 pp.

northwestern corner of the Idaho Panhandle is connected to the Salmon Priest lynx recovery management zone in Washington, with lynx capable of long-distance dispersion. Hence, maintaining healthy numbers of Canada lynx in Idaho is critical to Canada lynx conservation throughout the contiguous United States.

#### B. Canada Lynx Trapping

Lawful trapping of Canada lynx ended in Idaho in 1997, but the State continues to authorize trapping for bobcats, coyotes, wolves, and other species within lynx habitat. State regulations permit the use of all types of traps – including leg-hold traps, conibear (body-crushing) traps, and snares that are known to catch Canada lynx – and allow traps to remain unattended for up to three days. Three cases of non-target trapping of Canada lynx have been documented in Idaho in the last two years. It is clear that the authorization of trapping in this manner in Idaho causes take of Canada lynx. And as discussed below, the number of trapping licenses issued is skyrocketing, meaning future take is bound to escalate.

On January 26, 2012, a third-party recreationist found a Canada lynx caught in a foot-hold “long spring trap with offset jaws, multiple swivels, on a drag with six foot chain” in the Salmon-Challis National Forest – the first confirmed sighting of a lynx in that area in more than 20 years.<sup>35</sup> Fortunately, the recreationist immediately reported the incident to the State, and the lynx reportedly was released without visible signs of injury, although whether it was able to recover from the stress of the experience is unknown. A subsequent DNA analysis showed the trapped animal was a male Canada lynx that did not match any individuals in the lynx DNA database.<sup>36</sup>

Less than a year later, a trapper reported that he had killed a Canada lynx caught in a leg-hold trap while trapping bobcats in Boundary County.<sup>37</sup> The State’s wildlife officer reported that the trapper was licensed by the State, and that the trapper shot and killed the lynx after mistaking it for a bobcat.<sup>38</sup> A necropsy report found it was a juvenile female Canada lynx.<sup>39</sup>

Trappers reported another lynx caught in a trapline in Idaho’s Cabinet Mountain range on January 29, 2014.<sup>40</sup> A State biologist drugged, tagged, and placed a radio-tracking collar on the lynx, the first lynx being tracked as part of a new project to study lynx and wolverine.

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<sup>35</sup> Idaho Conservation Data Center, *Rare Animal Observation Report Form* (Jan. 26, 2012).

<sup>36</sup> Pilgrim, K. and Schwartz, M., *USFS Rocky Mountain Research Station Report* (Feb. 8, 2012).

<sup>37</sup> IDFG, *Misdemeanor Citation Report* (Jan. 2, 2013).

<sup>38</sup> *Id.*

<sup>39</sup> IDFG, *Preliminary Laboratory Report* (Feb. 11, 2013).

<sup>40</sup> IDFG, *Lynx Captured in West Cabinet Mountains* (Feb. 4, 2014), <https://fishandgame.idaho.gov/content/post/lynx-captured-west-cabinet-mountains>).

The female lynx was reportedly uninjured by the trap, but only time will tell if she survives the ordeal.

These are the only documented cases in which Canada lynx were trapped in Idaho in recent years, but it would strain credulity to believe that no additional trappings have occurred. State regulations only require a trapper to report non-target catch when the caught animal has died in the trap.<sup>41</sup> This year's non-target catch totals have not yet been reported, and live caught animals need not be reported. Beyond this gap in information, and given the substantial price paid for lynx pelts just across the border in Canada, there is substantial reason to believe that at least some dead trapped lynx are not reported.

Indeed, FWS noted concerns with unreported Canada lynx trapping when it listed the species under the ESA, stating:

We know that lynx are taken during legal trapping and hunting for other species, such as wolverine and bobcat, even when lynx seasons are closed. We do not know how many lynx may be purposefully poached, but are concerned about radio-collared lynx that have been killed but not reported. No reliable recordkeeping exists to determine how frequently such taking occurs, nor if it has increased because of the increasing accessibility of forests.<sup>42</sup>

Moreover, a joint report from the Bureau of Land Management ("BLM") and FWS describes incidental trapping of lynx as "fairly common" in Idaho.<sup>43</sup> To develop the report, the two agencies interviewed more than 75 trappers and other individuals who are familiar with lynx and its habitat, compiling "the best available [information] on where Canada lynx lived and how they survived in Idaho." The federal agencies concluded that "[m]any Canada lynx have been trapped incidentally while targeting bobcat and coyotes," and they name incidental trapping as one of the major factors to blame for lynx decline in the State. The report documents the extent of trapping in the 1990s, when it was far less prevalent than it has become today. Incidental trapping has undoubtedly increased with the huge increase in recreational trapping in Idaho in the last two decades.

The absence of reported take of Canada lynx could well be because trappers are concerned about liability for take and hence do not report it. It is unclear whether the lynx trapped in the Salmon-Challis National Forest in 2012 would have been reported if the trapper had gotten to the animal before a third party. After this lynx was trapped, a representative from

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<sup>41</sup> IDAPA 13.01.16 (200.03)(a) and (b). However, this regulation is inconsistent with the statute on which it is based. Idaho Code § 36-1105. The statute requires the reporting of animals "caught, killed and pelted," while the State only requires reporting of animals killed and pelted. The State's "Furtaker Harvest Report" form, which cites to IDAPA 13, asks furtakers to report both live and dead non-target catch totals. Hence, trappers who do not report live catch totals are out of compliance with the statute.

<sup>42</sup> 65 Fed. Reg. 16,052, 16,080 (Mar. 24, 2000) (internal citations omitted).

<sup>43</sup> Lewis, L. & Wenger, C.R., Idaho's Canada Lynx: Pieces of the Puzzle, *Idaho Bureau of Land Management Technical Bulletin No. 98-11* (1998).

the Idaho Trappers Association argued that FWS should require the State to obtain an ITP, as “there is no protection” currently from liability under the ESA for trappers “who might unintentionally catch a lynx and report it to IDFG.”<sup>44</sup> Since no ITP exists for trapping in Idaho, the trapper pointed out that failing to prevent unpermitted take would “send a very loud message to Idaho trappers to simply not report any incidentally captured lynx” if FWS pursued legal action against the trapper who caught a Canada lynx in the Salmon-Challis National Forest in 2012.<sup>45</sup>

The BLM and FWS joint report also warned that “incidental trapping remains a problem ... when Canada lynx populations are so critically low.”<sup>46</sup> The agencies made this finding even though they believed incidental trapping was “less of an issue” at that time, a conclusion based on three mitigating factors: (1) fur prices were low; (2) there were minimal trapping efforts; and (3) a complete closure of Canada lynx trapping was in effect when the report was issued. However, since 1998, fur prices have skyrocketed and trapping is far more widespread, elevating these concerns to a much higher level today.

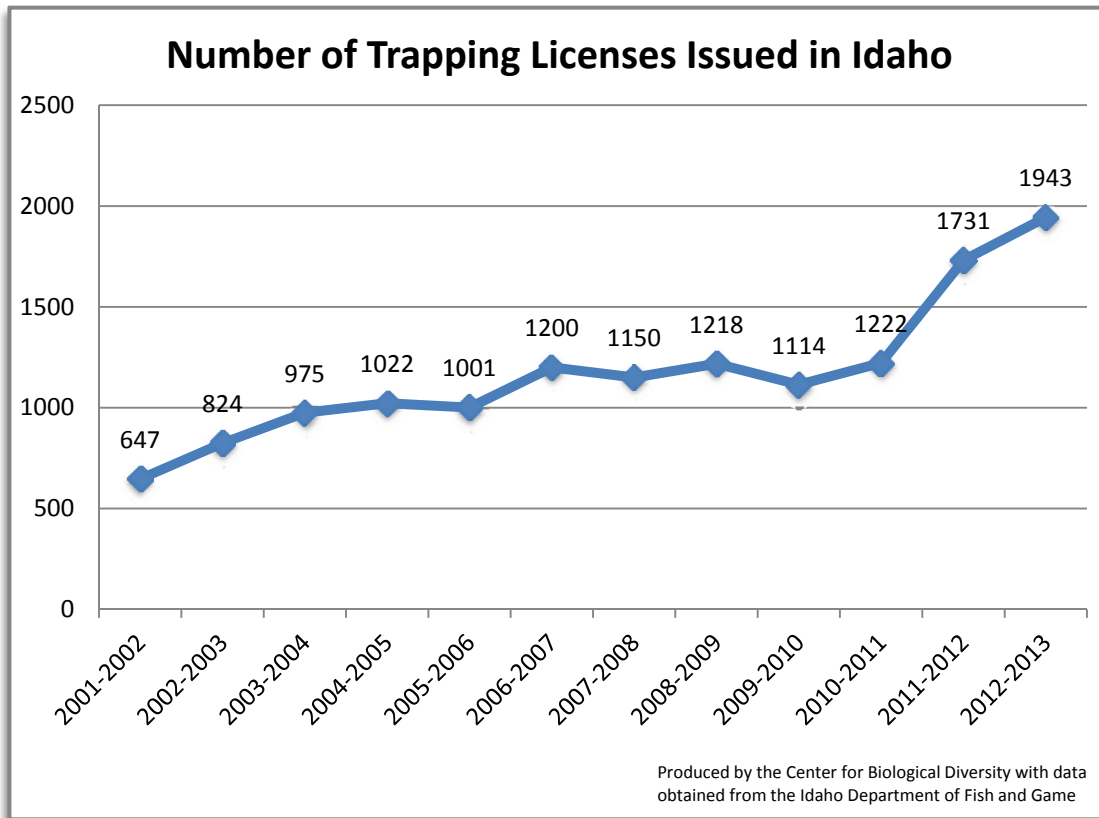
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<sup>44</sup> Email from Mark Collinge, Idaho Trappers Association, to Brian Kelly, IDFG (Feb. 1, 2012, 11:11 MST) [hereinafter “Collinge Email”].

<sup>45</sup> This quoted trapper works for Wildlife Services, a federal agency within the U.S. Department of Agriculture that sought and obtained an ITP for its trapping program in Idaho after catching a Canada lynx. In communication to FWS and the State, he pointed out that “[t]he risk of Wildlife Services unintentionally trapping a lynx is arguably much lower than the risk of a private bobcat trapper capturing a lynx in Idaho,” and noted that “Wildlife Services rarely tries to intentionally capture bobcats, but with the current high prices being paid for bobcats, there are likely hundreds of traps and snares being set for bobcats by Idaho fur trappers.” Collinge Email (*supra* note 44).

<sup>46</sup> *See also* Lynx Biology Team, Lynx Conservation Assessment and Strategy (Jan. 2000) at 28 (“At low population levels, or in situations where reproduction or recruitment are low, trapping mortality can be additive and lead to population declines.”)





The number of trapping licenses the State has issued climbed exponentially in recent years, with the number of furbearer trapping licenses tripling in the dozen years since the lynx was protected under the ESA and doubling in just the last three years alone.<sup>47</sup> This correlates with an increase in fur prices and fur sales, which reached record levels in 2012 largely due to increased demand for fur in places like China.<sup>48</sup> In Idaho, fur prices averaged \$302 for 62 bobcat pelts and \$29 for 424 coyote pelts trapped and sold in Idaho eight years ago, compared with \$532 for 135 bobcat pelts and \$40 for 668 coyote pelts trapped and sold in Idaho in 2013.<sup>49</sup> A recent report has suggested that bobcat pelt prices have increased ten-fold in just four years, this year reaching near \$2,000 for each bobcat sold.<sup>50</sup>

The number of total trapping licenses has increased even further since the State authorized wolf trapping in 2011, with the number of licenses jumping nearly 60 percent in just two

<sup>47</sup> “The Number of Idaho Fur Trappers Doubles as Pelt Prices Soar,” Boise State Public Radio (Mar. 24, 2014), <http://boisestatepublicradio.org/post/number-idaho-fur-trappers-doubles-pelt-prices-soar>.

<sup>48</sup> Fur Harvesters Auction Inc., *FHA concludes record year with June 18<sup>th</sup> auction results* (June 18, 2013), <http://www.furharvesters.com/results/2013/June/june13us.pdf>.

<sup>49</sup> Idaho Trappers Association, *Fur Sale Archives* (Mar. 2013), <http://www.idahotrappersassociation.com/archives.html>.

<sup>50</sup> “The Number of Idaho Fur Trappers Doubles as Pelt Prices Soar,” *supra* note 47.

years.<sup>51</sup> Wolf trapping is now authorized within Canada lynx habitat, and the season – running from as early as October 1 to March 31 – coincides with a time in which lynx family groups may be particularly vulnerable to trapping.<sup>52</sup>

### III. THE STATE IS LIABLE FOR TAKE

Governor Otter has ultimate authority for the direction of all executive agencies in his state, including IDFG. IDFG, under Director Moore, issues all licenses for recreational trapping throughout Idaho. The Director is also responsible for enforcing any limitations on trapping, such as seasonal restrictions and reporting requirements, and can rescind trapping licenses. The Commissioners of the Idaho Fish and Wildlife Commission have the authority to and have determined when, where, how, and in what number wildlife species can be taken in Idaho. These individuals authorize widespread recreational trapping with very few restrictions overall and no restrictions designed to prevent incidental take of lynx.

Recreational trapping in Idaho causes take of Canada lynx by resulting in the death, harassment, and harm of individual lynx. Trapping causes or leads to the direct mortality of the animals that are caught, as made evident by the death of a Canada lynx in Boundary County in 2013. Indeed, trapping is defined under the ESA as a form of take.<sup>53</sup>

Additionally, even if released alive, the temporary immobility of individual lynx constitutes a “take” in the form of harassment, as it causes adverse physiological responses in trapped and struggling animals, including anxiety, stress, and pain that change hormone, enzyme, and electrolyte levels as well as muscle pH.<sup>54</sup> “When prolonged, this distress can have a deleterious effect on an animal’s health and subsequent survival” after it is released.<sup>55</sup> Moreover, after being caught in a trap for up to three-days, a Canada lynx may not survive even if released alive. Damage from snares and traps can reduce mobility and survivorship of animals due to injury, limping, and tissue necrosis that may take days to appear, or an inability to catch prey due to broken teeth or claw loss.<sup>56</sup> “Because yearling lynxes are dependent on their mothers for survival, mortality may increase if their mothers are trapped.”<sup>57</sup> Orphaned kittens may die of starvation, especially when newborn or if their

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<sup>51</sup> IDFG, *Trapper Education and Trap Awareness for Conservation Officers* (undated PowerPoint presentation) (showing 647 trapping licenses were sold in 2001-2001, 1,222 were sold in 2011, 1,731 were sold in 2012, and 1,943 were sold at the time the information was compiled in 2013).

<sup>52</sup> Ulev, E. 2007. *Lynx canadensis*, in Fire Effects Information System, [Online]. U.S. Department of Agriculture, Forest Service, Rocky Mountain Research Station, Fire Sciences Laboratory (Producer) (Mar. 28, 2014), <http://www.fs.fed.us/database/feis/animals/mammal/lyca/all.html>.

<sup>53</sup> 16 U.S.C. § 1532(19).

<sup>54</sup> Iossa et al. *Mammal Trapping: A review of animal welfare standards of killing and restraining traps*, 16 *Animal Welfare* 345 (2007).

<sup>55</sup> Iossa et al. *Mammal Trapping: A review of animal welfare standards of killing and restraining traps*, 16 *Animal Welfare* 345 (2007).

<sup>56</sup> *Id.*

<sup>57</sup> Ulev, Elena 2007, *supra* note 52.

mothers are trapped “[d]uring periods of prey scarcity.”<sup>58</sup> Experts recommend “restricting trapping during early winter to avoid removing adult females from their kittens.”<sup>59</sup> Hence, animals may die even when trappers release lynx from their traps, but because current regulations do not require it, such take may never be reported.

Recreational trapping in Idaho has now resulted in three known instances of trapping and harassment in the last two years, including one that is known to have resulted in the death of a lynx, and experts believe it is highly likely that additional instances of take are also occurring. Hence, the State’s licensing of recreational wildlife trapping in Idaho is causing and will continue to cause incidental take of threatened Canada lynx and is a violation of sections 9 and 4(d) and 50 C.F.R. § 17.40(k). The individuals to whom this notice is addressed have the authority to stop such take.

Until the State either ends trapping that can result in the incidental take of Canada lynx in Idaho or obtains an HCP and ITP that mitigate impacts to the maximum extent practicable, the State is in violation of sections 9 and 4(d) of the ESA, and 50 C.F.R. § 17.40(k). Several states have obtained or are considering obtaining ITPs and HCPs to legally allow incidental take of lynx that result from trapping regulations and programs in their states. We encourage Idaho to work with these states and FWS to develop an HCP and ITP for Idaho that will protect this magnificent imperiled species.

#### IV. CONCLUSION

Despite its responsibility to regulate trapping in a manner consistent with the ESA, the State is permitting trapping that results in take of listed Canada lynx. The State is aware of at least three recent documented cases of take that have occurred, and FWS has made clear that trapping is an ongoing threat to the species, but the State has nevertheless failed to take action to prevent future take from occurring. Meanwhile, the State has significantly ramped up the number of recreational trapping licenses it is issuing at a time when the price of bobcat pelts is skyrocketing, thereby increasing threats to Canada lynx.

We urge the State to take action to prevent future unlawful take from occurring, while pursuing authorization for incidental take under the ESA. If you fail to remedy these violations within the next 60 days, however, we may pursue injunctive, declaratory, or other relief that is available under the law. We may also seek an award for any costs and fees associated with this litigation, including reasonable attorney and expert fees.

Please do not hesitate to contact us if you would like to discuss this matter or have any questions about this notice. Thank you for your consideration of this important matter.

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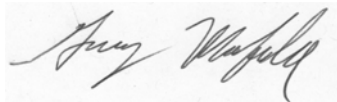
<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

Sincerely,



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