May 17, 2011

Jim McClintic, Chairman
New Mexico Game Commission
Tod Stevenson, Director, NMDGF
New Mexico Department of Game and Fish
P.O. Box 25112
Santa Fe, NM 87504

Re: Comments on Rulemaking Process for Wildlife Known as "Furbearers"
Request to Ban Trapping on New Mexico's Public Lands

Dear Mr. Chairman, Mr. Director, and Game Commissioners:

Thank you on behalf of our 24,500 members and supporters WildEarth Guardians, the Rio Grande Chapter of the Sierra Club, and Animal Protection of New Mexico for accepting these comments on the "furbearer" rule-making process. "Furbearers" are animals that are trapped or hunted because of the commercial value of their pelts.

In no uncertain terms: We seek a public lands trapping ban in New Mexico.

Simply put, trapping is barbaric and cruel. It causes injuries and stress for people and animals caught in their grip, including species that enjoy special protections. Therefore, we seek an end to body-gripping traps, and a ban on all recreational and commercial trapping on public lands in New Mexico.

On February 12, 2011, undersigned author, Mary Katherine Ray, found a coyote with a mangled leg in a cruel, steel-jawed leg-hold trap. The coyote suffered unspeakably -- lacerations and a broken bone – see the picture below. Ms. Ray and others found no tracks in the soft soil or snow, which indicated that the trapper failed to conduct daily checks of his/her trap. Ms. Ray called the game warden and the next day led him to the trap location. He discovered that the trapper had also failed to identify his/her trap with the required identification tag. The trap was lying on the ground and the coyote was gone, apparently escaped with her catastrophic injury. This story is indicative of the abuse wildlife face in New Mexico.

On December 20, 2010, Arifa Goodman and her two dogs were caught in leghold traps on public lands near Taos. Ms. Goodman's fingers were ensnared for 30 minutes before she could find help. She was afraid she would lose the use of those fingers during her ordeal. She suffered numbness for weeks after the event. Ms. Goodman became a victim after she used "adrenaline force" to free her first dog from an unmarked leg-hold trap that was set near a popular hiking area in the Village of San Cristobal. She then freed her other dog. Both she and her two dogs required emergency medical attention.

Ms. Goodman wrote to Governor Martinez and received a reply from Director Stevenson, which included a recitation of the State's trapping regulations, including this statement: "Your concerns regarding humaneness and public safety have been addressed over time by the establishment of various laws and regulations." (See NMDGF's letter herewith.)

The letter seemed to dismiss Ms. Goodman's ordeal as trivial. More important, the existing regulations and laws did nothing to keep Ms. Goodman or her dogs safe from this danger.

Similarly, Karen Cunningham of Albuquerque wrote to Congressman Martin Heinrich's office after her friends and their dog were the victims of a trap while conducting a permitted Christmas tree harvest in the Cibola National Forest. Director Stevenson responded to the Congressman's Office and indicated that neither the Department nor the U.S. Forest Service are obligated to warn hikers of the presence of leghold traps on public lands. (See NMDGF's letter herewith.)

On December 12, 2010, while hiking on the Dome Road of the Santa Fe National Forest, Maggie Craw, a Peña Blanca resident and her friend, found themselves frantically rescuing Craw's Labrador retriever, Lulu. It took both adults to accomplish the task after a steel-jawed, leg-hold trap slammed shut and concussed Lulu's paw.

The trap that caught Lulu was placed near the roadway, and was illegal because it both failed to identify the trapper and was baited with fresh meat. A game warden and Craw attempted to visit the site on December 17, but deep snow prevented them and a second visit on December 27 was unfruitful because of snow cover over the traps.

In the month of December 2010 alone, three human and dog incidents occurred in New Mexico – with humans and dogs both ensnared in leg-hold traps. These stories are indicative of the abuse hikers of public lands face while recreating on public lands in New Mexico.

* * *

A 2005 poll conducted by Research and Polling, Inc. found that 63% of New Mexican *voters* regardless of party affiliation support a ban on leg-hold, snare and lethal traps on public lands, while 22% of voters oppose a trap ban. In short, *most voters* want to see traps banned because they are cruel devices. Since 2010, at least five New Mexico governmental bodies have adopted anti-trapping on public lands of New Mexico resolutions.[1]

Other studies show that New Mexicans appreciate viewing wildlife and knowing that the state's wildlife are allowed to flourish in complex ecosystems—in fact, most New Mexicans who have identified themselves as wildlife recreationists fall into the category of wildlife watchers, 797,000 compared with only 99,000 hunters (USFWS 2007). Even in high-pelt price years, approximately

[1] The Towns of Silver City, Mesilla, and Las Cruces, and Doña Ana and Santa Fe Counties.

only 2,000 people (less than one-tenth of one percent of the state's total population) purchase a $20 trapping license in New Mexico. A drop in the bucket when compared with wildlife-watchers, who spend $208 million annually (USFWS 2007).

Background

State law requires that New Mexico protect and conserve the state's wildlife (NMSA §17-1-1), and that the Game Commission carry out rules and regulations that protect "fur-bearing animals" so that their populations are not "wasted or depleted" (NMSA §17-5-1). Furthermore, the Legislature gave broad authority to the Game Commission to carry out rules and regulations pertaining to wildlife management (NMSA §17-1-26). But that duty has failed since 2006.

Between 1994 and 2000, the New Mexico Game Commission reviewed furbearer regulations at three-year intervals, and from 2000 to 2006, at two-year intervals. In 2008, the Game Commission conducted a partial review of "furbearer" regulations. It set reporting deadlines for sportsmen and commercial interests, that is, "furbearer" trappers and hunters were required to detail their catch to the agency (we supply the unhappy results below). In 2009, the Game Commission voted to reopen the "furbearer" rulemaking process – but declined to take further action at that time. The undersigned groups supplied a letter dated August 14, 2009 to the Game Commission.

It has taken the Game Commission two years to open the process, pursuant to our request. In all, the Game Commission and the agency have failed to take a hard look at the "furbearer" rulemaking process since 2006. Thus both the Commission and the Agency have failed not only their public trust duty to responsibly manage wildlife on behalf of the citizens of New Mexico, but the State's own statute mandating the same.

Currently, bobcat pelts are worth several hundred dollars and this value drives the magnitude of trapping in the State. New Mexico's lax "furbearer" regulations exacerbate this problem. The regulations fail to account for, and mitigate against, pressures on wildlife populations when pelt prices are high that can also include other factors such as extreme drought, excessive snowfall, erratic temperature fluctuations, and epizootic disease outbreak, all of which have occurred in recent years and which take a toll on wildlife in addition to direct human-caused mortality.

In New Mexico, a fur-bearing animal is defined as a "quadruped" and includes the species: "muskrat, mink, weasel, beaver, otter, nutria, masked or black-footed ferret, ringtail cat, raccoon, pine marten, coatimundi, badgers, bobcat and all species of foxes" (NMSA §17-5-2).[2]

Currently, coyotes and skunks receive no protections from *resident* hunters or trappers (NMSA §17-5-5 (B)). The State's proclamation calls coyotes, skunks and others "nongame species" or "unprotected furbearers." Last fall, the New Mexico Department of Game and Fish (NMDGF) misrepresented to the public and State officials that coyotes go unregulated by Game and Fish (discussed below).

[2] The 2010-11 trapping seasons are: 1) Badgers, weasels, foxes, ringtails, and bobcats (Nov-Mar 15); 2) beaver, muskrat, and nutria (Apr 1-Apr 30 and Nov 1-Mar 31); 3) raccoons (Apr-May 15; Sep-Mar); and 4) coyotes and skunks have no season or bag limits. Some "furbearers" cannot be hunted or trapped and include pine martens, river otters, black-footed ferrets, and coatimundi (Big Game Trapper Rules and Information, 2011-2012).

New Mexican Coyote with Mangled Leg in Leg-Hold Trap[3]

The NMDGF charges a nominal fee to trappers and hunters of "furbearers" -- $20.00 for a residential license and $345.00 for a non-residential license. The agency's costs of administering "furbearer" exploitation (i.e., administrative costs and law enforcement) likely exceed the revenues derived from "furbearer" hunters and trappers. On top of that, likely zero to very little of these revenues go towards "furbearer" conservation. In other words, for a nominal sum, hunters and trappers of "furbearers" are allowed to exploit these species, while their conservation goes monitored in a slip-shod, unjustifiable, unscientific manner. See Robert Harrison, Ph.D, Department of Biology, University of New Mexico's letter of March 14, 2010, herewith and incorporated by reference.

In addition, all traps must have a trapper identification number from the State, or the user's name and address notated with a permanent mark (New Mexico's Natural Resources and Wildlife Code, 19.32.2.10 (1)). The "manner of take," that is, the way by which these wildlife can be "killed," includes using dogs, firearms, archery, traps and snares, and calling devices (19.32.2.10(A)). Trappers must place their devices no closer than ¼ mile of any occupied dwelling, public campground, rest area, picnic area, or boat-launching area, and not closer than 25 yards of federal land agency designated trails (19.32.2.10 (B)). Hikers and others have no warning that the devices are placed in the areas, and as a result untold numbers of hikers, equestrians, and others have had negative encounters with traps placed on public lands.

Trappers are required to check their devices every 24 hours and release non-target animals including pets or non-target wildlife (19.32.2.11(A)). The lack of manpower in the field ensures that trap checks are not well monitored, and as the undersigned documented, some traps go forgotten and do not get checked. Escalating pelt prices add incentive to set more traps than can be checked in the required time.

[3] Photo taken by Mary Katherine Ray in the Cuchillo Mountains north of Winston, New Mexico, February 12, 2011. Learn more here: http://www.wildearthguardians.org/site/News2?page=NewsArticle&id=6626&news_iv_ctrl=1194.

Under NMDGF's regulations, all trappers and "furbearer" hunters must file a report by April 7, and indicate the outcome of their trapping and hunting activities (19.30.10.9(A)). Failure to file the report renders the trapper/hunter unable to obtain a license in the next year (19.30.10.9(C)), unless they pay a late fee of $8, which then absolves them of not complying with the reporting requirements in a timely way (2011-2012 Big Game Trapper Rules and Information). The result has been a decline in hunters and trappers' compliance with the law. Table 1.

Unlike any other state, NMDGF relies on a **"sustainable kill limit"** to protect "furbearers" from over-hunting and trapping. The sustainable kill limit is meant to be the agency's estimate of the number of animals that can be killed without causing harm to the population. It is comprised of a range of numbers, with little to no substantive validity. New Mexico's "sustainable kill limit" system is inherently flawed, unsupported by information from the field, and contested by biologists. As a result, "furbearer" populations are not well monitored, and the State's population monitoring is unreliable. Furthermore, New Mexico allows the longest season on bobcats of any Western state, and it does not curb offtake excesses with either bag limits or quotas.

Body-gripping traps are inherently cruel and non-selective. People, pets, and non-target wildlife, even protected species, are all too commonly caught in traps (see, e.g., Dyer 2011). Animals frequently sustain injuries from restraining traps, such as physiological trauma, dehydration, exposure to weather, and predation by other animals. See (Harris et al. 2005, Iossa et al. 2007). Animals released from restraining traps may later die from injuries and/or reduced ability to hunt or forage for food. See id.

On July 28, 2010 Governor Bill Richardson issued an executive order that prohibited leghold and body-crushing traps within the Mexican wolf recovery area in New Mexico to protect imperiled wolves. The order banned commercial and recreational trapping in this area by private persons for a six-month period beginning on November 1, 2010; required the New Mexico Department of Game and Fish to undertake a study to see if traps harm wolves; and directed the Department of Tourism to undertake a study on potential economic benefits of lobo-related ecotourism. On October 28, the Game Commission unanimously adopted the Governor's Executive Order as part of its regulations.

On November 8, 2010, Game and Fish issued a press release that stated:

> The trapping ban was in effect November 1, and applies to steel traps, foothold traps, snares and conibear body-gripping traps. **Trapping for coyotes is allowed.** Trapping for regulated furbearer is allowed when necessary to protect public safety and private property (emphasis added).

As we show below, coyote trapping in the wolf recovery area violates state law and the public trust doctrine. Other protected species are harmed by traps.

Bobcats should enjoy protections from over-exploitation, pursuant to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (Appendix II). New Mexico is required to ensure that it does not cause "detriment" to the survival of bobcats (CITES, Article IV). Because of the high amount of offtake in New Mexico (Table 1), and the lack of adequate monitoring, it appears that New Mexico is not in compliance with CITES.

Moreover, radio-collared lynx have been documented as moving into northern New Mexico, and so may be inadvertently trapped. The State has made no provision to protect them except to assert they are not present despite GPS data that show otherwise.

River otters, once extirpated from New Mexico, have been newly reintroduced into the State and can be trapped in beaver traps. More must be done to ensure that beavers and river otters are better protected.

Because economic incentives for a few individuals drive the rate of trapping activities, wildlife require protection from overexploitation. Failure to monitor and conserve "furbearers" may jeopardize their conservation. Furthermore, because trapping conflicts with the public and their pets has occurred with alarming frequency, we seek better regulations to protect people and pets. New Mexico's trapping regulations are too lenient and enforcement of the regulations has been problematic. Therefore, it makes sense that trapping be banned on public lands to protect wildlife, people and pets.

UNM Expert: NMDGF's Furbearer Matrix and Population Studies "Worthless"

Robert Harrison, Ph.D., a research biologist affiliated with the University of New Mexico, provided NMDGF with a (March 2010) 6-page critique of furbearer management in New Mexico that has gone ignored by that agency. Dr. Harrison studies and monitors populations of small carnivore species in the field.

Dr. Harrison's letter is herewith and incorporated herein.

Dr. Harrison reported that NMDGF's "harvest reporting" rules were an improvement over having collected no data, but that many years' data would be required to see a trend. Unfortunately, as we note throughout this letter, that trend will take even longer because hunters and trappers of furbearers have failed to report, despite the 2008 requirement.

Second, Dr. Harrison noted that the State's "furbearer matrix" had a multitude of problems, including no scientific foundation. His request for credible data used by NMDGF to inform its matrix consists of an assortment of "miscellaneous documents" contained in "two cardboxes." Those documents, Dr. Harrison discovered, had no bearing on the creation of a matrix. Therefore he concludes that NMDGF's matrix is scientifically invalid.

Further, pursuant to a 2010 "Furbearer Task Force meeting" held by NMDGF, Rick Winslow, the State's "furbearer" biologist, stated that the matrix came from the 1992 *Ecologically-Based Management Evaluation for Sustainable Harvest and Use of New Mexico Furbearer Resources*, authored by Thompson, B.C., D.F. Miller, T.A. Doumitt, and T. R. Jacobson. Dr. Harrison wrote in his letter to NMDGF: "the sustainable harvest figures which appear in the matrix are not in this publication. In fact, Thompson et al. concluded that it was impossible to generate reasonable limits for sustainable harvest levels with available information." Dr. Harrison further noted that few studies on "furbearers" have been undertaken in New Mexico since 1992.

Dr. Harrison found that few "furbearer" population studies have been conducted in New Mexico. Instead, he found, based on information from the State, that the State's matrix was informed largely by studies conducted outside of New Mexico.

The out-of-state studies that NMDGF applied to New Mexico, argued Dr. Harrison, came from studies conducted in small areas, where species occur abundantly. He wrote: "As a result, study

area densities are usually higher than those in many of the habitats where the species may be found. In the matrix, such study area-derived densities are very likely too high."[4]

Dr. Harrison told NMDGF officials in no uncertain terms that they had applied "a gross overestimate of the actual statewide population size, and hence a gross overestimate of the estimated sustainable harvest level." Furthermore, the subpopulations are not broken down by ecological region. In other words, there are no hunting/trapping zones. That failure results in the hammering of certain populations, such as on gray fox populations in southwestern counties of New Mexico. Moreover, Dr. Harrison said, the matrix and the "furbearer" policy process fails to account for changes in climate conditions, such as excessive drought. Not only did Dr. Harrison find that the matrix a fallible document, he said that the State's notion that historic trapping levels have not caused populations harm cannot be proven.

Dr. Harrison, in his letter to NMDGF, notes that there is no proof, counter to the agency's assertion, that years of trapping in the State has caused no harms to populations. In fact, there is no available proof. No monitoring or lax monitoring has and is occurring. Despite Jim Lane's assertions to Dr. Harrison during the 2010 stakeholder process, the State holds no verifiable population trend data for species called "furbearers" – except for bobcats. According to Dr. Harrison, the trend data for bobcats does not show that harm has not been done to their populations. That is because the number of cats killed declined although pelt prices remained static. Dr. Harrison concludes that there is not enough evidence to show that bobcat numbers in New Mexico are not in detriment.

In his letter to NMDGF, Dr. Harrison also critiques NMDGF's track survey analysis – the basis of its population monitoring. Dr. Harrison stated that these surveys are "worthless" and "inadequate" and that "populations could rise and fall dramatically without the changes being detected by the track surveys." He recommends that this expensive and futile program be scrapped and that the agency find other, more credible study methodology. Dr. Harrison also noted that the 2008 swift fox population surveys went awry. The agency collected scat but failed to give fresh samples to the DNA laboratory in a timely manner. Thus the DNA deteriorated and the collection efforts and analysis useless.

In his conclusion, Dr. Harrison recommends that the State engage developing a robust "furbearer management plan" that is fully documented and based on the best available science – with plans for bobcats and gray foxes to be developed first – because these species are the hardest hit by trappers. He recommends adopting the plan developed by Utah Division of Wildlife Resources for bobcats.

New Mexico's "Sustainable Kill Limit" is Fundamentally Flawed

Unlike any other state, NMDGF relies on a "sustainable kill limit" to protect "furbearers" from over-hunting and trapping. The sustainable kill limit is the agency's estimate of the number of animals that can be killed without causing harm to the population. It is comprised of a range of numbers that lacks scientific credibility, as Dr. Harrison has indicated. New Mexico's "sustainable kill limit" system is inherently flawed, unsupported by information from the field, and contested by Dr. Harrison, a field biologist who studies small carnivores.

[4] We note that NMDGF did the same to cougars last year. It threw out the highly-praised, 10-year Logan and Sweanor study; applied an unpublished, one-year, student study. In that unpublished master's thesis, authors postulated 4 density levels for cougars – in excellent habitat. NMDGF officials then took the highest density estimate from the one-year, unpublished study and applied it statewide. It then greatly increased cougar-hunting quotas while shuttering the public process from 2 years to every 4 years.

New Mexico's current furbearer population estimates do not come from empirical study, but from an antiquated document that discounts this methodology, Thompson et al. (1992).

The range of numbers in the "sustainable kill limit" system is so broad as to be meaningless. For gray foxes, for example, the "sustainable" range is between 5,587 and 16,761, the highest number is three times greater than the lowest.

NMDGF implies that the upper range is a safe number to kill each year, despite the well-established fact that wildlife populations fluctuate from environmental and anthropogenic influences. The Game Commission has not instituted a mechanism to limit kills when populations are in trouble. As a result, hunters and trappers can kill as many animals as they can find—without regard to long-term population consequences or obligations under state, federal, and international laws.

The trapping and hunting of "furbearers" is unevenly distributed across New Mexico making it possible that local populations are severely hammered over and again. The "sustainable kill limit" system has one hunting zone, the entire State, for all of the State's furbearers. Imagine the furor if the same logic were applied to elk hunting—having the entire State delineated as one hunting zone with no regard to localized conditions.

Furthermore, no mechanism exists to limit the killing regardless of environmental conditions, market demand, or population status. In short, the "sustainable kill limit" used in New Mexico is so flawed and unreliable it must be completely discarded. It has no biological credibility.

Trapping is barbaric. It goes unmonitored in New Mexico. Wildlife are trapped and killed in unknown numbers. For these reasons, commercial and recreational trapping should be banned on public lands in New Mexico.

Table 1: NMDGF's "Sustainable Kill Limits" & Kill Reporting Compliance by Year

	NM's Range "Sustainable Kill Limit"	Numbers Killed & (Lack of) Reporting Compliance			
		06-07	07-08	08-09	09-10
Percentage of Trappers/Hunters Reporting their Kills	N/A	79%	58%	58%	29%
Beavers	630-1,401	*154	*213	*81	*61
Bobcats	3,627-5,440	[a]3,410	[a]4,240	[a]2,958	[a]1,715
Gray foxes	5,587-16,761	*3907	*6234	*4178	*1,694
Kit foxes	2,450- 4,143	*77	*142	*120	*67
Swift foxes	2,221- 3,702	*107	*264	*133	*43

[a]Pursuant to CITES, bobcat pelts must be tagged by the State—presumably these data are accurate.
*These data come from trappers' own reports, making them unreliable.

Endangered Species Are Not Protected from Traps

NMDGF has a duty to protect Mexican wolves, lynx, and river otters. Banning traps on public lands in New Mexico would better help protect these rare and unique species.

The primary source of authority for the Game Commission and NMDGF to protect endangered and threatened species is the New Mexico Wildlife Conservation Act ("WCA"). N.M.S. §§ 17-2-37 to 17-2-46. The WCA declares that species of wildlife indigenous to the State that may be found to be threatened or endangered should be managed to maintain and, to the extent possible, enhance their numbers within the carrying capacity of their habitat. N.M.S. § 17-2-39(a). The gray wolf (a species level identification that includes the Mexican wolf subspecies) is listed as an endangered species in New Mexico.[5] The WCA further provides that the State "should assist in the management of species of wildlife that are deemed to be endangered elsewhere by prohibiting the taking … of species of wildlife listed on the United States lists of endangered fish and wildlife …" N.M.S. § 17-2-39(b). Most importantly, the WCA makes it "unlawful for any person to take … any species of wildlife" appearing on the state or federal lists of endangered species. N.M.S. § 17-2-41(c). The regulatory definition of "take," that is, the means by which things are killed, includes to "trap." Banning traps on public lands would help the Game Commission fulfill its statutory duty.

Moreover, the Game Commission "is authorized and directed to establish such regulations as it may deem necessary to carry out all the provisions and purposes of the Wildlife Conservation Act." N.M.S. § 17-2-43. Accordingly, the Game Commission's decision to close the Blue Range Wolf Recovery Area to commercial and recreational trapping to protect endangered Mexican wolves is entirely within its authority under the WCA. NMDGF's opinion that it must have authority to regulate coyotes in order to close the Blue Range Wolf Recovery Area to trapping to protect endangered Mexican wolves is an error.

A Three-Legged Lobo, Middle Fork Pack, FWS Photo

Another source of authority for the Game Commission and NMDGF to protect and regulate the taking of all wildlife in the State, including Mexican wolves, lynx, and coyotes, arises from the public trust doctrine and the basic common law rule that the State holds all wildlife in trust for its

[5] See http://www.fws.gov/southwest/es/EndangeredSpecies/lists/ListSpecies.cfm (endangered and threatened species listing of Gray Wolf in New Mexico).

people.[6] See e.g. Hughes v. Oklahoma, 441 U.S. 322, 334-335 (1979) ("while the fiction of state ownership of wildlife is consigned to history, the state's responsibility to preserve the public's interest through preservation and wise use of natural resources is a current imperative. In essence, the public trust doctrine commands that the state not abdicate its duty to preserve and protect the public's interest in common natural resources."); Douglas v. Seacoast Products, Inc., 431 U.S. 265, 284 (1977) ("The 'ownership' language … must be understood as no more than a 19th-century legal fiction expressing 'the importance to its people that a State have power to preserve and regulate the exploitation of an important natural resource.'"), *quoting*, Toomer v. Witsell, 334 U.S. 385, 402 (1948) ("The whole ownership theory … is now generally regarded as but a fiction expressive in legal shorthand of the importance to its people that a State have power to preserve and regulate the exploitation of an important natural resource."); State v. Fertterer, 841 P.2d 467 (Mont. 1992) ("wild animals are public property within the meaning of Montana's criminal mischief statute"); Collopy v. Wildlife Comm'n, 625 P.2d 994 (Colo. 1981) (holding ownership of wild game is in the state for the benefit of all the people); Center for Biological Diversity, Inc. v. FPL Group, Inc., 83 Cal. Rptr.3d 588 (2008) ("it has long been recognized that wildlife are protected by the public trust doctrine").

Accordingly, because the State holds all wildlife in trust for its people, the Game Commission and NMDGF have a trustee responsibility, and by way of necessary implication, the power to preserve the corpus of the trust – wildlife (including Mexican wolves, lynx, and coyotes). Because Governor Bill Richardson's executive order, which was unanimously ratified by the Game Commission, determined that a trapping closure is necessary to preserve the Mexican Wolf, the State has a general public trust responsibility and the necessary power to act. Indeed, a failure to act in such circumstances could be considered an actionable breach of the public trust. See e.g. Center for Biological Diversity, Inc. v. FPL Group, Inc., 83 Cal. Rptr.3d 588 (2008) ("members of the public may enforce the public trust").

Mexican Wolves (*Canis lupus baileyi*)

The Mexican gray wolf is the smallest, rarest, and most genetically distinct subspecies of gray wolf (*Canis lupus*). Although once roaming by the thousands across portions of Arizona, New Mexico, Texas, and the Republic of Mexico, the Mexican wolf declined as a direct result of concerted federal eradication efforts undertaken on behalf of American livestock interests. The Mexican wolf was completely eradicated from the United States by 1970, and suffered a similar fate in Mexico by the early 1980s. The Mexican wolf was at that time, and remains today, one of the rarest land mammals – and most endangered wolf – anywhere in the world—a loss created entirely by human persecution.

Despite over three decades of federal protections and over a decade of active reintroduction efforts, the Mexican gray wolf is far from recovering. See generally, FWS 2010 Mexican Wolf Conservation Assessment.[7] The latest population counts reveal that just 50 individual wolves and two breeding pairs currently inhabit the Blue Range Wolf Recover Area. These numbers fall far short of original projections for recovery progress, and reflect the urgent need for reform. The Mexican gray wolf remains endangered by multiple threats, all of which are human-caused and most

[6] This public trust responsibility was originally expressed as a theory of State "ownership" of all wildlife within its borders. The modern interpretation of this ancient theory of sovereign ownership, arising from English common law, is that the State acts as a trustee with the power and responsibility to regulate wildlife for the benefit of State residents pursuant to the State's general police power.

[7] This document is publicly available at: http://www.fws.gov/southwest/docs/41948WollfConservationAssessment4-2010.pdf.

of which are completely avoidable. One such threat to the wolf's recovery has been persistent trapping and snaring throughout their recovery area.

Even when protected by Governor Bill Richardson's executive order, which was ratified unanimously by the Game Commission, NMDGF determined unilaterally that coyote trapping could continue citing the spurious excuse that it maintained no authority over coyotes.

Innocent "bycatch." *Spotted* cougar kitten in leghold trap. Not legal to hunt spotted cougar kittens in NM – but what if you trap one?

BornFree USA – undercover in NM. Expose at: http://www.bornfreeusa.org/press.php?p=2765&more=1

Table 2[8] Mexican Wolves and Known Non-project Trap Related Incidents				
Date	**Animal**	**Location**	**Reported Injury**	**Notes**
3/18/02	M578	Outside BRWRA - NM	None apparent	Wolf removed by trapper, relocated by project personnel in the BRWRA.
Winter 2002-2003	F562	BRWRA - NM	None apparent	Wolf released by trapper.
Winter 2002-2003	M583	BRWRA - NM	None apparent	Wolf self released.
11/20/03	F858	Outside BRWRA -AZ	None apparent	Wolf relocated by project personnel into the BRWRA.
11/22/03	M859	Outside BRWRA - AZ	None apparent	Wolf relocated by project personnel into the BRWRA.
10/15/05	F562	BRWRA - NM	Yes	IFT observed animal with trap on its foot. Captured via helicopter 2 days later to remove trap and treat the injured foot.
3/26/06	M1008	Outside BRWRA - NM	None apparent	Wolf removed by project personnel.
10/18/06	F923	BRWRA - NM	Yes	IFT received reports of a wolf with a trap on its foot. F923 was observed the same day in the same area limping (no trap on foot).
Winter 2006-2007	M1041	BRWRA - NM	Yes	Resident of Catron County observed m1041 with a trap on its foot in the winter 2006-2007. Upon necropsy (at death in May 2007) a lesion was noted to the right front foot suggestive of a steel trap type wound.
1/1/07	Un-collared	Outside BRWRA - NM	Unknown	Wolf pulled loose with trap. (This wolf may be M1107. M1107 was first captured by project personnel in November of 2007 and was missing two middle toes, which would be consistent with a small trap capture. M1107 was not included in this compilation because of unknown status of injury and possible double count with this uncollared wolf in the vicinity of the two capture locations.)
1/19/08	F1112	BRWRA - NM	Yes	Animal first captured during helicopter survey and had old (healed) injury to front foot consistent with a non-project trapping incident.
1/23/09	M871	BRWRA - NM	Yes	Captured during helicopter survey to replace radio collar - a portion of the front foot was missing consistent with a non-project trapping incident. Leg was amputated by project veterinarian.
2/10/08	m1039	Outside BRWRA - NM	Yes	Wolf pulled loose with trap. Captured via helicopter on 2/17/2008, leg was amputated by project veterinarian.
2/18/09	F1106	BRWRA - NM	None apparent	Wolf removed by trapper, released by project personnel.

As demonstrated by Table 2 above, at least 14 wolves have been injured by non-project related trapping just since 2002. Guardians points out that most if not all of these wolves were trapped as non-target species, and points out that *any* type of instant kill or restraining trap or snare has the capacity to capture a Mexican gray wolf or wolf pup, causing it episodes of great pain, suffering, and potential major injuries or death.

[8] Guardians obtained all data in Table 1 via FWS informal request to FWS. Within the context of Table 1, "M" means alpha male, "F" means alpha female, "m" means male, and "IFT" means Mexican Wolf Interagency Field Team.

Lynx (*Lynx canadensis*):

In 1999, the Colorado Division of Wildlife began restoring wild-caught lynx from Canada and Alaska into southwestern Colorado. From the period 1999 to 2006, the agency released 218 lynx. Since that time, lynx have recruited several Colorado-born offspring, and many have moved into New Mexico and other states (Shenk Undated), Figure 1. In 2000, lynx were listed as "threatened" under the Endangered Species Act (ESA) in a portion of their range excluding New Mexico. But in 2009, New Mexico's lynx population was elevated to "candidate" status but precluded from listing because of higher priority FWS's concerns (FR, Vol 74, No. 241, December 17, 2009).

Figure 1. Lynx Dispersal From Colorado into New Mexico-from *Journal of Applied Ecology*

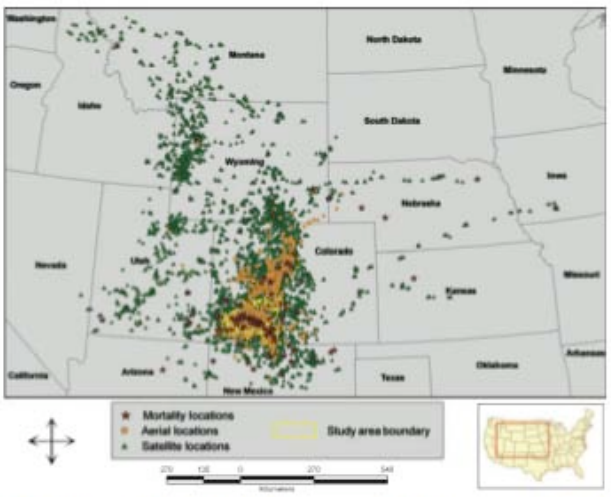


Fig. 1. Map of Colorado outlining the core reintroduction and primary post-release monitoring area, and documenting all post-release locations obtained by either satellite platform transmitter terminal or aerial very high frequency tracking for the 218 lynx reintroduced to Colorado from February 1999 to November 2007. All known mortality locations are shown as stars.

Historically, lynx were easily trapped and poisoned and this lead to their decline. Today, lynx are often caught in snares and traps intended for coyotes (Carroll 2007). This should concern the State because lynx are considered "critically imperiled" in Colorado, Utah, Wyoming, Oregon, and Washington, and "vulnerable" in Montana, and yet they go completely unprotected from traps in New Mexico.

A Colorado Division of Wildlife Lynx Release, San Juan Mountains

To protect these vulnerable species from the effects of global warming, Carroll (2007) suggests that wildlife managers create bioregional conservation plans, and protect vulnerable populations by *reducing trapping not only in their core areas but in critical linkages.* In other words, the NMDGF should ban all trapping in northern New Mexico in the counties or the national forests where lynx reside (Figure 1). In fact, it should ban all public lands trapping to protect lynx.

In the August 23, 2005 Biological Opinion issued by the U.S. Department of Interior for the State of Colorado (where public lands trapping with body-gripping devices had been banned since 1996), the FWS suggested mitigation measures for *private* lands as follows:

1. Leg-hold traps placed for coyotes will not be used in conjunction with any visual attractants of the type normally expected to attract bobcats or other feline species (i.e., pieces of fur, feathers, shiny metal or fabric, etc.)
2. Leg-hold traps placed for coyotes will not be used in conjunction with any olfactory attractants containing fish oil, catnip, anise, or castor as ingredients, to reduce the likelihood of attracting lynx or other feline species.
3. Leg-hold traps and foot-snares set to capture larger predators (such as mountain lions, black bears, or adult wolves) will have pan-tension adjusted such that it would require 8-10 pounds of pressure to trigger the trap . . .

FWS Lynx Biological Opinion for Colorado, August 23, 2005.

In addition to these mitigation measures for Colorado, a state that does not allow body-gripping traps on public lands, more mitigation measures need to be implemented in New Mexico because harmful body-gripping traps are allowed to trap bobcats and other species. Therefore, we request that all conibears, neck snares, and other body-gripping devices be banned on public and private lands where lynx reside in northern New Mexico. We ask that all commercial and recreational trapping cease on New Mexico's public lands.

Lynx prefer to live and den in old growth forests with large-downed trees at high altitudes. Reproduction and recruitment is the key to their survival—and this includes gene flow between subpopulations between Colorado and New Mexico, which can be hindered by trapping practices in New Mexico.

River Otters (*Lutra* or *Lontra canadensis*) and Beavers (*Castor canadensis*)

The last known river otter died in a trap set for beavers on the Gila National Forest. A few river otters have been reintroduced into New Mexico[9] and beaver trapping poses risks for otters as they are easily killed in the same underwater kill traps. Beavers and river otters, adapted to aquatic life, are adept are swimming and diving for long periods. Thus, death from lack of oxygen is slow even if the animal struggles; these animals often become distressed while attempting to escape from an underwater traps (Iossa et al. 2007).

Beavers are not commonly trapped in New Mexico for their fur, but in the last few years, beaver trapping has occurred. Beaver trapping is prohibited on the Gila, Cibola, Lincoln, and Apache-Sitgreaves National Forests (NM Big Game and Trapper Rules 2011-2012). We request that beaver

[9] Santa Fe New Mexican, "Otters Make Return to New Mexico Waters," October 2008, http://www.santafenewmexican.com/Local%20News/Otters-make-return-to-New-Mexico-waters.

trapping also be banned on the Carson and Santa Fe National Forests, and all other public lands to protect beaver and river otter populations.

Currently, river otters inhabit the Rio Grande River from Cochiti to the Colorado border. Monitoring reports indicate that they mostly inhabit the main portion of the Rio Grande River and with a higher density in the Pilar and Taos Box region. They are also in the Rio Pueblo de Taos. River otters may inhabit other tributaries in the Rio Grande watershed as they are adept at long-distance travel.[10]

Beavers are the keystone to providing wetlands habitat and function. Beavers build lodges from logs, sticks, and mud, which alter mountain streams, create ponds that enrich the landscape and increases species biological diversity. Beavers' ponds and their tree-felling habits benefit willow and aspen communities.

Ponds provide homes for a variety of species, including water-loving otters to wading cranes and herons to arboreal birds. While beavers increase species' richness, these aquatic rodents also enhance ecological function. Beaver lodges hold back silt, which spreads out behind their earthen dams.

The silt acts not only as a fertilizing agent, but as an enormous sponge that retains water, even during dry spells—key in arid climates such as occur in New Mexico. Dams slow the flow of water, maintain lush wetlands, keep water tables high, and literally keep streams flowing above ground. Because of beaver dams, cleaner water percolates downstream for extended periods—sometimes staving off drought.

The importance of beaver alive in the natural world cannot be understated. They create wetlands that help store water and form habitat for many other species. In a world with changing climate, water storage will become a crucial to the continuation of human populations downstream.

Technologies such as water diversion devices behind beaver dams, which prevent flood events, can make trapping beavers unnecessary (Muth et al. 2006).

River otters are rare in the West. Their long-term survival can easily be jeopardized by anthropogenic threats because they are reliant on free-flowing rivers, which are subject to drought and anthropogenic threats. Their persistence is far from certain, and thus trapping can harm them. Therefore we ask that all public lands trapping for the purposes of recreation or commerce in New Mexico cease in order to protect beavers and otters – among other species.

"Nongame" or "Unprotected" Species – Violation of Public Trust

Coyotes (*Canis latrans*)

Despite their persecution in New Mexico, coyotes play important keystone roles in their ecosystems. Coyotes are an important *native* carnivore species.

Coyotes increase biological diversity by preying upon medium-sized carnivores such as skunks, house cats, foxes, and raccoons. This predation indirectly benefits ground-nesting birds (Crooks and Soule 1999), even greater sage-grouse (Mezquida et al. 2006), a species under consideration for

[10] Personal communication between Rachel Conn, Amigos Bravos and Wendy Keefover, WildEarth Guardians (February 22, 2011).

listing under the ESA). Coyotes indirectly protect kit fox populations by reducing red fox densities (because red foxes are small, they can easily enter kit fox dens, whereas coyotes are too big) (Cypher and Spencer 1998). By competing with medium-size predators, coyotes increase diversity of various rodent species (Henke and Bryant 1999).

Costly coyote eradication programs provide little real benefits to livestock growers (Berger 2006, Baker et al. 2008). Coyote-killing programs may make endangered species and other sensitive species more vulnerable to disease or to other predators (Sovada et al. 1995, Cypher and Spencer 1998, Kitchen et al. 1999, Baker et al. 2008).

While humans expend extraordinary resources to exploit coyote populations, these canids have proved incredibly adaptable. Killing coyotes does not work, and these expensive control programs are not supported by empirical science. Studies indicate that coyotes compensate for population losses using several strategies, such as emigration (Knowlton 1972, Crabtree and Sheldon 1999), producing more breeders (Knowlton 1972, Crabtree and Sheldon 1999), and compensating with larger litter sizes (Goodrich and Buskirk 1995).

Despite over a century of persecution, coyotes have expanded their range three-fold (Crabtree and Sheldon 1999), and the sheep industry has not benefited from millions of dollars of coyote killing operations, because the biggest cost to sheep producers is labor, hay, and lamb prices, not predation (Berger 2006). Killing coyotes to benefit other species is often a disguise used to justify predator control. Empirical studies show that coyote-killing operations result in a change in coyote breeding and migration strategies, which can overcome killing operations.

Statutory Authority and Public Trust Duty to Protect Coyotes:
Failure will Result in the Invocation of Animal Cruelty Laws

Because coyotes have proved to be so resilient in the face of relentless persecution, it makes little economical or biological sense to rely solely on lethal measures to protect livestock or to "grow" ungulates for hunters (see e.g., Pojar and Bowden 2004). Not only does it make little economical or biological sense to persecute coyotes in New Mexico, the State must afford them protections or be subject to the State's anti-cruelty law.

We therefore request that coyote and skunks' status be changed to "protected furbearers," pursuant to the Game Commission's broad authority to manage and regulate New Mexico's wildlife (NMSA § 17-1-26; and "furbearers" defined at 19.32.2.8). We further note that any trap set for a coyote and skunk can and will trap protected species. Therefore we request that all commercial and recreational traps on public lands be banned.

At present, coyotes and skunks enjoy little to no protections, even arguably, the 24-hour trap-check time (NMSA 17-5-5 (D)).[11] "Licensed" trappers must check their traps every 24 hours (19.32.2.11). One could argue, therefore, that unlicensed resident trappers who trap coyotes and skunks do not need to check their traps within 24 hours. But this contention would immediately run afoul of the Code if any other species is held by a trap intended for a coyote or skunk, even if it is an inadvertent capture. Furthermore, non-resident coyote and skunk trappers must obtain a license and therefore their traps are automatically subject to the 24-hour trap check time. (See: NMSA §17-5-5 (B) and

[11] If coyotes are not considered a "protected furbearer" species, than we assert they should be given protections pursuant to state and federal animal anti-cruelty regulations.

19.32.2.11). Therefore, it makes sense to put coyotes and skunks into the "protected" category for this reason. It prevents unlicensed coyote and skunk hunters and trappers from having to face the dilemma of inconsistent regulations that can put them afoul of the law if they inadvertently capture a protected species but do not release it within 24 hours from the time the trap was last visited.

All traps set in New Mexico regardless of species for which they are set must follow the State's code regarding trap size, offset, and placement because any species (including protected "furbearers") could reasonably be caught in them because traps are nonspecific.

NMDGF has taken the untenable position that it does not regulate coyotes. If NMDGF continues to take the absurd stance that it does not regulate them, or if the State will not consider them a protected species, then we assert that they should enjoy protection under state and federal anti-cruelty laws—especially because they have been left in unchecked traps, as one of the undersigned authors personally witnessed. Leaving them in traps renders them "reduced to captivity."

The State owes citizens the duty of giving coyotes, skunks, and other native wildlife protected status under the public trust doctrine (Horner 2000, Jacobson et al. 2010). Second, the State incorrectly asserted it has no authority to regulate coyotes while objecting to the ban on trapping in the range of the Mexican wolf. That position holds no merit.

The NMDGF's principal objection to implementing the Game Commission's ban on commercial and recreational trapping for coyotes in the wolf recovery area springs from the omission of coyotes from the definition of fur-bearing animals in N.M.S. § 17-5-2 and protected wildlife species in N.M.S. § 17-5-3. Additionally, NMDGF points to the provisions in N.M.S. § 17-5-5 that provide that a resident does not need a trapper's license to engage in commercial or recreational trapping for coyotes (N.M.S. § 17-5-5(A)) and that trapping of fur-bearing and nongame animals by a resident to protect livestock or domestic animals shall not be subject to the trapping regulations and license requirements. N.M.S. § 17-5-5(F). Accordingly, NMDGF believes it lacks authority to regulate the trapping of coyotes.

This is incorrect. In the first instance, N.M.S. § 17-5-5(F) only exempts trapping by residents for livestock or domestic animal protection from regulation and license requirements. This statute does not exempt commercial or recreational trapping. Additionally, the statute implicitly recognizes that coyotes must fall under the definition of nongame animals (as they are not included in the definition of fur-bearing animals) otherwise Section 17-5-5(F) does not serve to exempt coyote trapping for livestock protection purposes. Furthermore, the statute does recognize NMDGF's authority over the trapping of coyotes by providing that non-residents must have a trapping license to trap coyotes. N.M.S. § 17-5-5(B). This was enacted by the legislature and not the Game Commission. Accordingly, NMDGF's reading of its statutory authority is parsimonious and selective. The fact that the statute requires non-residents to have a trapping license to take coyotes indicates some level of authority.

Additionally, as pointed out above, NMDGF's position that it simply has no authority to regulate the trapping of coyotes is inconsistent with its public trust responsibility to regulate all wildlife for benefit of the people. Carried to its extreme, this position is obviously incorrect. NMDGF could not completely abdicate management responsibility for a native wildlife species without running afoul of its public trust responsibilities.

More importantly, NMDGF is ignoring its authority under the WCA. Though NMDGF complains that the WCA does not give it any specific authority to restrict the take of one species (coyotes) to

benefit another (Mexican wolves) this phrasing of the issue is misleading. The WCA authorizes the Game Commission "to establish such regulations as it may deem necessary to carry out all the provisions and purposes of the Wildlife Conservation Act." N.M.S. § 17-2-43. Accordingly, if the Game Commission determines that a trapping closure is necessary to protect Mexican wolves under the WCA that is the end of the issue. The fact that the traps that pose the risk to Mexican wolves may be set as part of the commercial and recreational trapping of coyotes is not the issue. The traps are harming Mexican wolves. The WCA provides all the authority necessary to protect Mexican wolves from these traps. If it were possible to trap for coyotes without also necessarily trapping for Mexican wolves, NMDGF's analysis might make some level of sense, but on the facts of this case it does not. The same traps set to take coyotes pose a risk of trapping Mexican wolves even if that is not the subjective intent of the trapper.

If NMDGF were correct that the trapping of coyotes by residents is entirely outside the purview of game and fish regulation an interesting problem arises. In State v. Cleve, 980 P.2d 23 (1999) the New Mexico Supreme Court determined that New Mexico's statute prohibiting cruelty to animals, N.M.S. § 30-18-1, did not apply to conduct regulated by New Mexico's game and fish laws. However, if the trapping of coyotes is not regulated by New Mexico's game and fish laws as NMDGF contends, it follows that coyote trapping is not exempt from New Mexico's statute prohibiting cruelty to animals. Though in State v. Cleve, the New Mexico Supreme Court further determined that the legislature only intended to apply New Mexico's statute prohibiting cruelty to animals to apply to domestic animals and wild animals reduced to captivity, it could be argued that a trapped coyote has been reduced to captivity. Accordingly, it would follow that trappers capturing coyotes in traps risk running afoul of the statute prohibiting cruelty to animals – while the coyotes remain caught in the traps. Obviously, trappers would have great difficulty ensuring that trapped coyotes are treated in accordance with the animal cruelty law, which requires, among other things the provision of adequate food and water during captivity. N.M.S. § 30-18-1. Indeed, absent daily even more frequent trap checking time, it would be impossible for trappers to avoid depriving trapped coyotes of necessary food and water. In short, NMDGF's interpretation of the game and fish laws as being inapplicable to coyotes may have unintended and poorly thought out consequences.

Regardless, we request that recreational and commercial coyote trapping on public lands cease.

New Mexico's "Protected Furbearers"
Protected Furbearers Have Little to No Protections in NM

Bobcat (*Lynx rufus*)

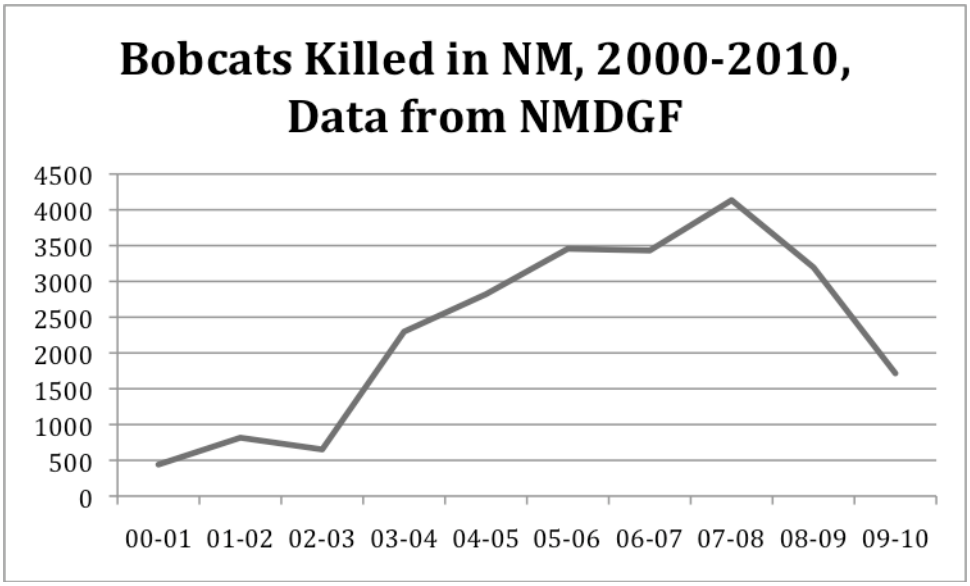
Despite New Mexico's lack of empirical data or even reliable population indices for bobcats, New Mexico offers sportsmen and commercial interests unlimited opportunity to kill as many bobcats as they can– that is, there are no "bag limits" on individuals, nor does the State establish quotas.

Trapping is cruel. Trapping in unpopular. Trapping benefits a few against the wishes of the majority. For that reason, we request that all public lands recreational and commercial bobcat trapping cease.

During the 2007-08 season, more bobcats were killed in New Mexico than in any other western state, 4,240. The following year, during the 2008-09 season, the number of bobcats killed declined by one third, 3,218. The year after that, in the 2009-10 season, the number of bobcats killed declined again by another 47%, 1,715. New Mexico sold a very similar number of furbearer licenses for all three years. Figure 2.

These declines are likely the result of overexploitation of the New Mexican bobcat population but the State lacks any adequate monitoring system. Even if one was in place, it has no way to shut down the overkill because the regulations for bobcat management are too lax. Therefore, we request that bobcat trapping on public lands for the purposes of recreation and commerce in New Mexico cease.

Figure 2.



Protect Bobcats—Defensible Management Plan Needed

With whatever trapping remains (such as private lands trapping) – after a public lands trap ban for commercial and recreational trapping, we request the following mitigation measures for bobcats:

A good plan is an empirically defensible program that monitors exploited populations either in the field or from the carcasses, proposes a desired management outcome, and specifies actions based on outcomes. Utah offers New Mexico a model plan.[12]

In Utah, four parameters are monitored from bobcat carcasses and trapper reports. These include trapper effort (number of set days required per bobcat, which is the number of traps multiplied by the number of days they were set, divided by the number of bobcats caught); the ratio of males to females, the ratio of juvenile to adult cats; and adult survival.

Trapper effort: In Utah, the desired target is an average of 197 set days per bobcat and allowances are made in the amount of 5% above and below the target. If the number of trapping-set days increases, it is an indication that bobcats are becoming scarcer. New Mexico could gather these data from trapper/hunter reports.

The ratio of males to females: In Utah, the desired target is to achieve no more than 43% of females in the total kill, with a 5% range. Because male bobcats travel more widely, they are more vulnerable

[12] See Utah's bobcat management plant here: http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1572&context=icwdm_usdanwrc.

to traps (Hansen 2007). If the females in the hunter/trapper kill exceeds the target, it indicates that the population is too heavily exploited.

The proportion of kittens and yearlings in the harvest: Many states require that trappers turn in a tooth or lower jaw from the bobcat when the pelt is tagged. Examining these to determine whether the animal is a juvenile or adult provides information about the animals being killed. Even without human exploitation, many juveniles do not survive to their second year. In Utah, State wildlife managers' goal is to have 49% of the carcasses come from this age class. If the juvenile offtake is lower than 49% (with an allowance for a small deviation), it means more older animals are being killed from the breeding population which means recruitment into the population will be compromised.

Bobcat

Courtesy, David C. Jones

Adult survival: New Mexico should strive to obtain a certain ratio of adult survival so that it can ensure that recruitment into the population is occurring at a sustainable level. In Utah, wildlife managers monitor tooth data, and employ life-table calculations. Utah hopes to achieve a 68% adult survival rate (within a 5% range). If this number decreases, it indicates population impairment, the fourth parameter used by Utah to put the brakes on offtake.

The Utah plan uses a 6 bobcat per trapper bag limit, and sets the season at 80 days (compared with New Mexico's 135-day season). If any two of the parameters listed above indicate population harm, then the bag limit is reduced the following year by one or two tags (conversely, the bag limit can also be raised if objectives are being exceeded).

If any three of Utah's four parameters indicate problems, then the season is shortened by one or two weeks. If all four of the desired targets are not being met, the number of tags available is capped at 80% of those issued the previous year.

Since the plan was implemented in 2007, excessive bobcat kill in Utah, fueled by market demand, has caused all of the restrictions to be triggered. Currently, Utah's bag limit is 3 bobcats per trapper.

Montana also set quotas and bag limits on bobcats and it has reduced them in recent years.

Nevada, in addition Utah's four parameters, also examines the ratio of kittens and juveniles to adult females in the kill. Nevada's bobcat season has been shortened from 120 to 81 days in recent years because of high kill levels.

Unlike these Western states, New Mexico pays no attention to market-driven demands and has no measures in place to protect the State's bobcats. It has no population monitoring in place,[13] and yet New Mexico had record high bobcat kills in recent years, which cannot be sustainable, nor justifiable. Simply put, New Mexico's season and lack of limits on bobcat take is extreme. Table 3.

Table 3. Western States Bobcat Season Lengths by Number of Days.

NM	CO	AZ	WY	MT	ID	UT	CA	OR	NV	WA
135	90	120	105	91 or 77 depending on zone	64	68	68	90	80	150

In order to pay for additional surveillance, New Mexico can impose a fee for every CITES tag it issues, as is done in Nevada, California and Idaho. These states charge a fee, from $3 to $5. Non-New Mexico residents could be charged more. This has the added advantage of requiring those who profit from killing the most bobcats to pay a higher share of the cost of bobcat monitoring.

In sum, while we request that a public lands trap ban for the purposes of commercial and recreational trapping in New Mexico be enacted, we also seek to gain the adoption of a bobcat management plan for those areas where trapping will still be legal, such as on private lands.

Gray Fox (*Urocyon cinereoargenteus*)

New Mexico's gray fox population faces heavy exploitation that goes largely undocumented because trappers have increasingly failed to report their kills (Table 1), in violation of the State's wildlife code. Yet, New Mexico's gray fox season is one of the longest in the West. Moreover, New Mexico has no bag limits nor hunting districts for gray foxes. Trappers that kill gray foxes, concentrate their efforts in the southwestern part of the State. The same subpopulations are hammered over and again. NMDGF's lack of monitoring gray foxes not only violates its public trust obligations, it shows little concern for species' conservation. For these reasons, we seek a ban on commercial and recreational trapping of gray foxes on public lands.

While the number of furbearer licenses sold remained virtually unchanged between the 2006 to 2010 seasons, the number of reported gray foxes killed has declined statewide and the drop is even more precipitous in the Gila region. Figure 3.

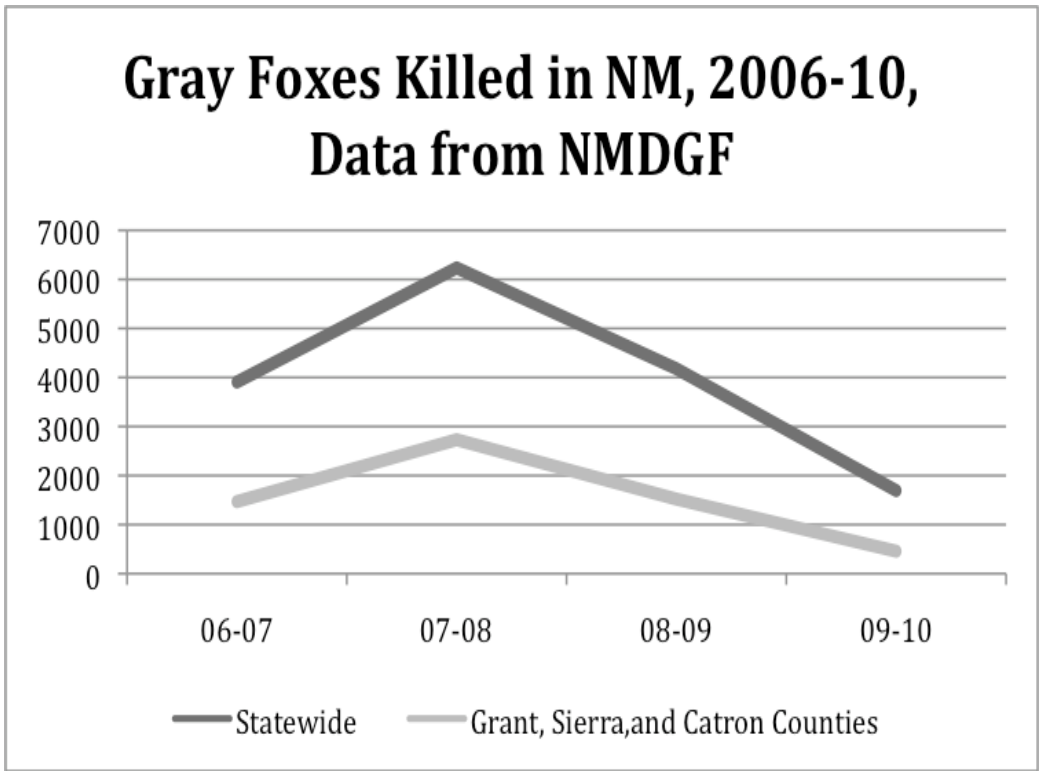
The Gila region is comprised of the Counties of Grant, Catron and Sierra, where a large portion of gray foxes are killed. The number of foxes killed is declining Statewide and in the heavily exploited Gila Region, it is declining precipitously. It may be getting harder for trappers to find grey foxes because of heavy exploitation.

In addition to the high human offtake of gray foxes in the Gila region, foxes have endured two disease outbreaks in recent years, canine distemper and rabies. Trapping may contribute to the severity and spread of these diseases because it can lead to an influx of newly diseased animals. Trapping disrupts the social, territorial boundaries of foxes because it causes these boundaries to constantly be in flux, which results in increased physical contact between foxes as they are constantly re-establishing territorial boundaries and then defending them.

[13] New Mexico employs scent-post surveys, but they are not extensive enough to establish trends; the State may not notice that large population fluctuations have occurred. They offer no clue as to the demographics of the population or even to population levels. At best, these surveys can only establish that a species is present.

On top of disease and too much exploitation, these fox populations have had to face several drought years, heavy snows, and low winter temperatures. Because no one is adequately monitoring these populations, they could be headed toward jeopardy.

Figure 3.



Solutions for Gray Foxes

While we request a trap ban for gray foxes on public lands of New Mexico, where trapping remains such as on private lands, we offer these mitigation measures.

Because of the high number of trappers in southwestern New Mexico, that part of the State (Catron, Grant, and Sierra Counties) should be a separate hunting district, with quotas that have been derived using the best empirical models available. These models should be developed outside of NMDGF, which has a deplorable track record of extrapolating data recklessly (as it did with cougars in 2010).

Second, New Mexico should set a per person bag limit unless and until New Mexico can demonstrate this species is not being overexploited.

Next, trapper effort must be collected as part of the annual reports and the Department must commit to compiling and analyzing this information—not only for foxes, but all species. It may be that an unsustainable number of foxes have been culled in New Mexico—yet the State has not tracked these numbers adequately, if at all.

Additionally and most important, NMDGF should develop a credible plan that responds to indications of a declining gray fox population. As part of the plan, the agency should reduce bag

limits, season lengths, or simply shut down trapping altogether, especially in the Gila region where foxes may be in decline.

Again, these mitigation measures are intended for lands other than on public lands where we seek a ban on recreational and commercial trapping on New Mexico's public lands.

Swift Foxes (*Vulpes velox*)

Prior to settlement by Europeans, swift foxes were abundant across short-and mixed-grass prairies of North America (Schauster et al. 2002a, Kamler et al. 2003, Finley 2005). During the 19th Century, however, tens of thousands of swift fox pelts were bartered at trading posts (Schauster et al. 2002a). Later, the cultivation of the Great Plains and predator-killing activities (involving broadcast toxicants—such as Compound 1080, sodium cyanide, and strychnine—shooting, trapping, and predation by domestic dogs) forced swift foxes into dramatic decline (Schauster et al. 2002a, 2002b). They were largely extirpated (Fitzgerald et al. 1994). In the 1950s, swift fox populations reportedly began to recover after poisoning campaigns lessened (Schauster et al. 2002a).

In February 1992, swift foxes were petitioned for listing as endangered under the Endangered Species Act (ESA). In response, ten states formed the Swift Fox Conservation Team (SFCT) (Stuart and Wilson 2006).[14] In 1995, the U.S. Fish and Wildlife Service (FWS) determined that their listing was warranted, but precluded, citing other FWS priorities. In 1997, the SFCT wrote an assessment and drafted a conservation plan. In response, in 2001 the FWS removed swift fox as a candidate for listing under the ESA despite its precarious status in most states.

Surveys have been conducted for Swift foxes in New Mexico and they reveal that populations still exist in historic grassland habitat in the eastern part of the State. But to date there has not been sufficient data collection to determine how these populations are trending. As Dr. Harrison noted in his letter, the swift fox population monitoring was a disastrous effort.

In the past, NMDGF conducted swift fox surveys every three years—and it should continue to conduct those surveys at that interval; furthermore, New Mexico should continue to participate in the Swift Fox Conservation Team.

Swift fox pelts bring approximately $12 at fur auctions. An individual live fox is much more valuable as it contributes to its ecosystem services. Most assuredly, the cost of reintroduction per animal is many times higher in areas where they have been extirpated.[15]

For these reasons, we request a ban on public lands trapping of swift foxes – or other species – swift foxes are vulnerable to all sorts of traps that are not species specific.

[14] In New Mexico, Swift fox management was placed under the Conservation Division of the NMDGF, as opposed to the Wildlife Management Division.
http://wildlife.state.co.us/WildlifeSpecies/GrasslandSpecies/SwiftFoxConservationTeam.htm

[15] See Alberta, Canada's Recovery plan, for instance:
http://www.srd.alberta.ca/BiodiversityStewardship/SpeciesAtRisk/RecoveryProgram/documents/SF%20Recovery%20Plan%20Final%20Version_Jan%2030%202008.pdf

The Special Dangers Posed by Conibears and Neck Snares

Kill traps such as conibears and neck snares pose an inefficient and brutal death to its victims. Therefore, we request that they be banished in New Mexico – even on private lands.

Dog Strangled by a Conibear Trap

Of the 23 kill traps types reviewed by Iossa et al. (2007) as part of a synthesis on trap efficacy, 18 failed to render the animals unconscious in the recommended time. Other welfare restrictions involve injured animals escaping and mis-strikes. The latter refers to metal clamping down on an unintended body part (Iossa et al. 2007).

Iossa et al. (2007) found that mis-strikes occurred up to 10 percent of the time. In neck snares used on coyotes (*Canis latrans*), mis-strikes ranged from 8-14 percent, and the percentage of animals that remained alive in kill traps ranged from 17-86 percent. Furthermore, the authors found that coyotes escaped from kill traps from 3-13 percent of the time. These data show that kill traps are enormously inefficient at quickly killing as is intended. The American Veterinary Medical Association echoes these sentiments. It said that kill traps are controversial because they can produce a prolonged and stressful death that is not within the AVMA's criteria for euthanasia (2007).

New Mexico is home to several endangered or protected species (wolves, otter, lynx, black footed ferret and potentially jaguar) and fully-protected "furbearers" such as pine martens and coatimundis. Nevertheless, these species may wind up in traps set for other species, including conibears and neck snares.

The *Best Management Practices* developed by the Association of Fish and Wildlife Agencies do not include any kill traps as an acceptable method for trapping coyotes, foxes, and bobcats.[16] These three species are arguably the most trapped species in New Mexico. For the State to allow trappers to set lethal traps is unacceptable. Arizona's Game Commission prohibited snares statewide in 1982, twelve years before the citizen's initiative that prohibited all traps on public lands. Currently, twenty states prohibit snares and fourteen states prohibit conibears (and eight states prohibit leg-hold traps).

[16] See: http://www.macrwm.org/best.htm. Even though the standards for this development were not high and the resulting accepted protocols are somewhat questionable http://www.awionline.org/ht/display/ContentDetails/i/14155/pid/14136.

For all of these reasons, we request that commercial and recreational trapping cease on New Mexico's public lands, that kill traps be banished from the State of New Mexico—even on private lands.

NM's Trapping Regulations Are Inadequately Enforced

Trappers/Hunters Have Failed to Report to State

Most of New Mexico's trappers have failed to comply with the regulations pertaining to reporting their kill of animals. In the 2009-2010 season, only 29% of trappers reported to the State. See Table 1.

In response to this widespread failure, the State permits trappers and hunters of furbearers to pay an $8.00 late fee. This consequence is far too lenient. Late filings and no filings further impair the State's ability to collect data. Instead of a slap on the wrist, the State must get serious about consequences. If a trapper or hunter fails to file a report – they should lose their privilege for the next season.

We have asked for a ban on public lands trapping – because of the myriad problems associated. Wherever trapping remains, such as on private lands, we request not only do trappers file timely reports or lose the privilege to trapping in the next season, that more data be collected.

Trappers/hunters of "furbearers" should include information about trapper effort such as: how many traps were set; duration of trapping; name of the target species; whether they had capture success; and, if possible, the GPS locations of all traps – so that traps are not left forgotten. A trapper who sets 5 traps per night will likely have a different experience from a trapper who sets 40 traps per night.

Trappers should also report the number of pelts or mounts sold and price he or she received. We further request that non-target catches or protected furbearers caught out of season and their fates should also be reported. Idaho uses such a survey and so the precedent has been set.[17]

The information from these reports should be compiled and summarized annually prior to the following trapping season. That information must be presented annually to the Game Commission and to the public.

Protecting People and Pets

Many New Mexicans recreate out-of-doors, especially when compared with the number of trappers. Negative encounters between live traps and people have increased (Dyer 2011). Many incidents go unreported, and NMDGF has failed to collect these incidents. The Rio Grande Chapter of the Sierra Club has attempted to capture these incidents, however.[18]

Many victims had difficulty opening traps, if at all (Dyer 2011). Some recreationists report being bitten by their own dog while trying to open the trap. Several have incurred expensive veterinary

[17] See Idaho's trapper report survey questionnaire: http://fishgame.idaho.gov/apps/surveys/furtaker/.

[18] Sierra Club keeps record of human-trap conflicts: http://nmsierraclub.org/trapping-personal-stories-in-new-mexico.

fees along with having to seek medical attention themselves as a result of dog bites –while freeing their pets -- or injuries from the trap themselves.

Universally people whose dogs have been trapped describe their dog as "screaming," and unlike anything they have ever heard. Many victims have described feeling violated and afraid because they may get caught in a trap and may not be able to get out.

After the *Albuquerque Journal* published the story, "Caught in Controversy," (Jessica Dyer, 1/16/11), the paper's editorial concluded, "Given the number of people taking to the woods these days, it also seems likely that trappers will have to accept more restrictions on their activities in deference to other wild country users."[19]

One deference would be to honor wildlife watchers, the majority of wildlife recreationists, by banning cruel traps on public lands.

The Game Commission Should Institutionalize a Democratic, Public Process for all Wildlife Policy-Making on a Regular Basis

The New Mexico Game Commission has not conducted a complete review of its "furbearer" regulations since 2006. During part of a furbearer stakeholder process, one NMDGF official argued that the "furbearer" rules were "permanent" pursuant to 19.32.2.4. His interpretation is wrong. This code is only "permanent" until it is changed or amended. Even the U.S. Constitution is not "permanent." Moreover, one Game Commission cannot make rules or regulations and then argue that future Game Commissions cannot make changes. This is especially so given the problems that plague New Mexico's "furbearers" – a complete lack of credible monitoring and control over the cull of these species, and even federally-protected species. Furthermore, people and their pets are routinely harmed by traps.

Further, international law requires that states certify they are not harming protected species, such as bobcats (CITES, Article IV).[20] NMDGF has failed to regulate the take of bobcats and their populations in New Mexico may have been harmed.

The Game Commission's regular reviews of wildlife regulations should involve the public's input and be held in a consistent, timely manner. The duration of the rule should be for four years, with annual reviews, as is done with other protected game species. Failure to conduct a periodic full review precludes the public's participation and is arbitrary, capricious, and undemocratic.

[19] Editorial: http://nmsierraclub.org/trapping-personal-stories-in-new-mexico (1/16/11); on 2/1/11 the *Journal* published eight letters to the editor decrying traps:
ABQJOURNAL NORTH/OPINION: Trap Review Justified http://www.abqjournal.com/cgi-bin/print_it.pl?page=/north/opinion/1623021northopinion01-16-11.htm#ixzz1DcW80Lfn.

[20] CITES provides that, "A Scientific Authority of the State of export has advised that such export will not be detrimental to the survival of that species," (CITES, Article IV (a)).

Conclusion

New Mexico's species trapped for their fur, called "furbearers," are heavily overexploited in New Mexico without regard for either their welfare or their populations. People and pets are routinely harmed in New Mexico because of the rampant trapping that goes on.

New Mexico's bobcats, foxes, wolves and coyotes are a part of our wild heritage and as such belong to all. New Mexicans have a right to vibrant and robust populations of all wildlife, including its native carnivores. And nature has a right to a complete cohort of predators and prey. People deserve to be able to recreate safely in the wild without being harmed by the actions of others.

In sum, we ask that:

The State Practice Wildlife Conservation and End Cruelty:

- That public lands trapping in New Mexico be banned because of the ongoing abuses to wildlife—even rare species, people, and pets.

- That coyotes and skunks be given "protected" status – or become subject to animal-cruelty laws.

Regular, Democratic Public Processes be Implemented in New Mexico:

- The Game Commission establishes a regular, periodic public rulemaking process for all species as is its statutory and public trust duty.

Sincerely yours,

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Senator Stephen Fischmann
Senator Mary Jane Garcia
Senator Eric Griego
Senator Timothy Keller
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Senator Cisco McSorley
Senator Michael Sanchez
Senator Peter Wirth
House Speaker Ben Lujan
Representative Gail Chasey
Representative Eleanor Chavez
Representative Brian Egolf
Representative Robertor "Bobby" Gonzales
Representative W. Ken Martinez
Representative Bill O'Neill
Representative Al Park
Representative Mimi Stewart

Enclosures:
Letter from Dr. Robert Harrison to NMDGF
Letter from NMDGF to Rep. Martin Heinrich (re: Cunningham)
Letter from NMDGF to Arifa Goodman

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