



August 14, 2009

Jim McClintic, Chair
New Mexico Game Commission
New Mexico Department of Game and Fish
P.O. Box 25112
Santa Fe, NM 87504

Re: Request for Rulemaking & Management Changes for Wildlife known as “Furbearers”

Dear New Mexico Game Commission:

Thank you for allowing WildEarth Guardians, the Rio Grande Chapter of the Sierra Club, and Animal Protection of New Mexico, whose collective supporters number 20,000, this opportunity to comment on the New Mexico State Game Commission’s 2009 rulemaking process on New Mexico’s wildlife known as “furbearers”.¹ New Mexicans appreciate viewing and knowing that these species are allowed to flourish in complex ecosystems. Because New Mexico’s regulations for these species are too lenient, we request that:

- The Game Commission establish a public rulemaking and review of furbearer regulations in 2009, and every two years thereafter;
- The Game Commission direct the New Mexico Department of Game and Fish (NMDGF) to write management plans for bobcats and gray foxes. The plan should include developing scientifically-valid population indices, setting hunting/trapping subquotas by newly-established hunting districts, and gathering carcass data to establish the age and gender of the species.
- We request that the seasons for kit foxes and swift foxes cease;

¹ Some species are referred to as “furbearers” by NMDGF because they are trapped and killed for their fur. *New Mexico Big Game and Trapper Rules and Information* (2009), p. 56, defines “furbearers” in two classes: “Protected furbearers that may be taken during open season are raccoon, badger, weasel, fox, ringtail, bobcat, muskrat, beaver and nutria. There are other protected furbearers, but their take is prohibited. These include but are not limited to pine marten, river otter, black-footed ferret, and coatimundi Unprotected furbearers are coyote and skunk.”

Manner of “take” (kill) includes using dogs, firearms, archery, traps and snares, and calling devices. Trappers are required to check traps every 24 hours and release non-target animals including pets or wildlife not defined as a “furbearer”.

Seasons for 2009-10: 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.

- That trappers comply with state reporting requirements, or lose trapping privileges;
- That trapping and snaring mitigation measures be put into place in certain areas to prevent harm to non-target species, especially Mexican gray wolves (*Canis lupus baileyi*); and
- That setbacks for traps be 50 yards from all public travel ways.

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

The New Mexico Game Commission (Game Commission) reviews other species such as cougars, bears, and deer every two years. For species defined as “furbearers” however, the Game Commission has not conducted a complete review of its regulations since 2006.² That year, the Game Commission set rules for the 2007-08 and 2008-09 seasons. Those seasons have now expired. If the Game Commission waits until 2010 to review its “furbearer” regulations, five years will have passed before an open public process can inform their conservation.³

The Game Commission’s reviews of wildlife regulations should involve the public’s input and be held in a consistent, timely manner. NMDGF and the Game Commission should review New Mexico’s “furbearer” regulations in 2009, and those regulations should be subject to regular two-year review intervals hereafter. Failure to conduct a full review precludes the public’s participation and appears arbitrary, capricious, and undemocratic.

***New Mexican Wildlife Should Enjoy Adequate State Protections—
Wildlife Management Must be Based on Science, not Market Prices for Pelts***

Currently, bobcat pelts are worth several hundred dollars. Data show that pelt prices on the commercial market drive the magnitude of trapping. 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.

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 species that can be killed without causing harm to the population. It is comprised of a range of numbers. See Figure 1.

New Mexico’s “sustainable kill limit” system is inherently flawed, unsupported by information from the field, and contested by biologists:

² In 2008, the Game Commission conducted a partial review of furbearer regulations, which only pertained to reporting deadlines for sportsmen and commercial interests.

³ For the past 15 years, the Game Commission conducted regular public reviews of its furbearer regulations: 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.

- New Mexico’s current furbearer population estimates do not come from empirical study, but from a 17-year-old report, the *Ecologically-Based Management Evaluation for Sustainable Harvest and Use of New Mexico Furbearer Resources*, authored by the New Mexico Cooperative Fish and Wildlife Research Unit, U.S. Fish and Wildlife Service (1992). This document, a literature review of “furbearers,” specifically discounted the use of the “sustainable kill limit” system because of a lack of population data.
- The range of numbers in the “sustainable kill limit” system is so large as to be meaningless (i.e. the gray fox range is between 5,587 and 16,761). 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 put a break on 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.

Trapping and hunting of “furbearers” is unevenly distributed across New Mexico and kills are concentrated, likely resulting in population harms. NMDGF has not established a mechanism such as a quota system⁴ (which it employs for all other huntable species). A subquota by hunting district would help limit kills and help to distribute the amount of hunting or trapping of “furbearers” in New Mexico. Without subquotas and the establishment of hunting districts, New Mexico’s wildlife can be over-exploited in some regions. Without a quota system in place, no mechanism stops the killing, even when the sustained kill limit is exceeded. Too much killing can harm populations or even cause localized extirpations.

Figure 1. Kill Numbers for Sample Species in New Mexico (2006-2009)				
Species	“Sustainable Kill Limit”	Numbers Killed*		
		06-07	07-08	08-09
Bobcats	3,627-5,440	3,410	4,240	2,958
Gray foxes	5,587-16,761	3,907	6,234	4,178
Kit foxes	2,450- 4,143	77	142	120
Swift foxes	2,221- 3,702	107	264	133

*Pursuant to CITES, bobcats must be tagged and counted by the state. Fox kill data come from trappers’ self reports; therefore those data are unreliable.

Bobcats (Lynx rufus)

Problems with the Bobcat Regulations:

- 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.
- New Mexico boasts the longest bobcat season in the West, from November through March, 135 days. In comparison, Colorado’s seasons runs for 90 days. See Figure 2.

⁴ “Quota” refers to the number of animals allowed to be killed in one season.

- During the 2007-08 season, more bobcats were killed in New Mexico than in any other western state. The following year, the 2008-09 season, the number of bobcats killed declined by one third. New Mexico sold virtually the same number of furbearer licenses for both years. The 2008-09 decline may be a result of overexploitation of the bobcat population—but because New Mexico has no reliable empirical data for its bobcat population, the truth will remain unknown.

Solutions to Protect Bobcats—Undertake Writing a Defensible Management Plan:

Develop reliable maps of potential bobcat densities or an index thereof based on empirical data. Include information on habitat potential (i.e., terrain roughness and cover), travel corridors, road access, human habitation, and prey availability. (NMDGF conducted such an undertaking with the New Mexico State University for cougars (*Puma concolor*).)

Estimate Bobcat Populations, Establish Hunting Districts and Set Subquotas. Because New Mexico lacks empirical population data for bobcats, the precautionary principle must be employed. The statewide “sustainable kill limit” may not be sustainable, and is certainly scientifically invalid. The result: tremendous pressures on certain subpopulations. The remedy: create hunting districts with science-based subquotas to protect New Mexico’s bobcats for future generations.

Set bag limits. Montana, Oregon, and Utah have bag limits, which can fluctuate, depending on populations.

Reduce the season. New Mexico should only set the bobcat season for the time when fur is at its prime and most valuable—during cold winter months.

Collect teeth (for aging purposes) and gender data (to protect breeding females). Current monitoring efforts by NMDGF are woefully inadequate and sporadic. Since NMDGF must tag bobcats, collecting teeth for the purposes of aging individuals and recording gender provide more data indices for the state and other states have used these data to allow the bag limit to fluctuate. Currently, Oregon and Utah collect these data, and NMDGF already has expertise in this because it does the same for cougars.

Figure 2. Bobcat Kills & Regulations Comparison for 11 Western States (07-08 Season)⁵											
	NM	CO	AZ	WY	MT	ID	UT**	CA	OR	WA	NV
Licenses sold	2,095	2,107	1,200	1,844	4,400	1,150	1,688	339	2,616	836	1,000
Bobcats killed	4,240	1,847	1,000	3,066	2,480*	1,450	2,926	125	3,144	836	2,811
Season	Nov 1 -Mar 15	Dec 1- Feb 28	Nov 1 - Feb 28	Nov 15 Mar 1	Dec.1- Feb 15	Dec 14- Feb 16	Nov 12 Feb 8	Nov 24 Jan 31	Dec 1- Feb 28	Nov15 Feb28	Nov 1- Feb29**
Bag limits	No	No	No	No	Yes (4-7)	No	Yes (5)	Yes (5)	Yes (5) in east	No	No

⁵ Compiled by Mary Katherine Ray, Rio Grande Chapter Sierra Club.

- The only states that use track surveys are NM, MT and ID. MT and ID conduct in snow. Unlike NM, MT runs surveys over the same transect multiple times in one season.
- MT, ID, UT, and NV collect trap effort information. MT, UT, OR, NV collect a tooth for age. MT, ID, OR, UT, NV note gender.

* MT sets bobcat quotas.

**NV has shortened its bobcat season for 2009-10 to Dec 1- Feb 19 because of over-exploitation.

Kit Foxes (Vulpes macrotis) & Swift Foxes (Vulpes velox)

New Mexico's kit and swift fox populations are in dramatic decline because of historic predator and rodent control, and currently from a variety of anthropogenic threats. Because these species are likely imperiled in New Mexico, the Game Commission should close the seasons for kit and swift foxes and implement conservation strategies as part of a management plan.

Smaller than swift foxes, kit foxes range in the West in habitats characterized by desert shrub, saxicoline brush, juniper-sagebrush, and rimrock habitats (Fitzgerald 1994). Like swift foxes, they dig their own dens and diet on lagomorphs, rodents, and birds (Fitzgerald 1994). Kit fox populations are in decline because of historic predator and rodent control (Meaney et al. 2006). NatureServe, considered a definitive source by the U.S. Fish and Wildlife Service, indicates kit foxes are "critically imperiled" in Colorado, Idaho, Oregon; "vulnerable" in California, Nevada, and Utah; and "apparently secure" in Arizona, New Mexico, Texas—although no populations studies have been conducted in these states (Meaney et al. 2006). Their populations continue to decline because of fragmentation of habitat, oil and gas development, ORV usage, and domestic livestock grazing (Meaney et al. 2006). They are still hunted and trapped in Arizona, New Mexico, and Texas (Meaney et al. 2006). Because their fate in New Mexico is unknown and unstudied, and because they are likely in peril, the Game Commission should close their season.

Swift foxes are a tiny, rare grassland species, weighing between 1.5 and 3 kilograms (3.3 to 6.6 pounds) (Fitzgerald et al. 1994). Adequate den sites seem to be a primary factor limiting swift fox populations (Kintigh and Andersen 2005). In a northeastern New Mexico study, preferred den sites were at higher elevations than the surrounding area—to allow for drainage—and in close proximity to prairie dog towns (Kintigh and Anderson 2005).

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 fox 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). In 1995, the 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. As a result, in 2001 the FWS removed swift fox as a candidate for listing under the ESA despite its precarious status in most states.

Currently, the core area for swift fox populations is found in Colorado, Kansas, and Wyoming—although they are patchily distributed (Schauster et al. 2002a). NatureServe considers them “presumed extirpated” in Manitoba and Minnesota; “critically imperiled in parts of Alberta, Saskatchewan, North Dakota, South Dakota, and Oklahoma; “imperiled” in Wyoming, Nebraska, and New Mexico; and “vulnerable” in Montana, Colorado, Kansas, and Texas.

Researchers consistently comment that swift foxes are naïve and easily trapped (Boggis 1977, Fitzgerald et al. 1994, Fitzgerald 1994). Swift foxes tolerate humans, and research animals have walked into traps over and over again, and when released would not panic, but would walk away a few meters and then sit and groom themselves (Loy 1981). In a study on the Pawnee National Grasslands of Colorado, trappers were an important cause of mortality (Fitzgerald et al. 1983). Researchers caught animals that had missing feet as a result of swift foxes being caught in traps intended for coyotes (Fitzgerald et al. 1983).

Despite their removal from the ESA candidate list, swift foxes are far from recovered, and they continue to face persecution. Again, their fate in New Mexico is unknown, but likely imperiled, therefore, the Game Commission should end seasons on swift foxes.

Gray Foxes (Urocyon cinereoargenteus)

The Problems for Gray Foxes:

New Mexico’s gray fox population faces heavy exploitation that goes largely undocumented because of lax compliance by trappers to report kills—although they are required to do so by state law. Sportsmen and commercial interests kill thousands of gray fox annually, but the numbers are under-reported because trapper reporting compliance is at 58%.⁶

Yet, NMDGF knows that thousands of gray foxes are being killed each year – as part of one of the longest seasons in the West, with unlimited bag limits, and no hunting districts. Gray fox kills are concentrated to the southwestern part of New Mexico. The same subpopulations are hammered over and over again.

While the number of furbearer licenses remained the same between the 2007-08 and 2008-09 seasons, the number of gray foxes killed declined statewide by about one third. The number of gray foxes killed in Grant County fell by 53% between the two seasons. Because of enormous exploitative pressures, New Mexico’s gray fox population may be headed toward jeopardy, and the Game Commission should take steps to protect this species.

Solutions for Gray Foxes:

- Because of the high number of trappers targeting foxes in southwestern New Mexico, hunting districts, subquotas, and bag limits should be established until better data have been gathered to monitor population trends as part of a statewide gray fox management plan.

⁶ From the 2008-09 harvest report

- New Mexico should base kill quotas on scientifically-defensible population indices, use the precautionary principle to establish subquotas by hunting district (see discussion *supra*), institute bag limits, and reduce the season as part of a statewide gray fox management plan.
- Given the likely excessive kill of gray foxes, and the fact that it is unlikely that fur is considered prime or valuable during the beginning and end of each season, the Game Commission should shorten the season on gray foxes.

Improve Reporting Compliance through Meaningful Sanctions

Compliance with reporting requirements must be drastically improved. Trapping privileges should be denied to those not in compliance.

Mandatory trapper reporting was implemented with the 2006-07 season. Initially, 75% of trappers complied with the reporting mandate, but now compliance has dropped to 58% for the two subsequent seasons. Other states that require reporting have a much higher compliance rate and more severe penalties for noncompliance. Trappers who don't comply in New Mexico are unable to apply for a big game draw license but if they do not hunt big game, they are still permitted trap. This is an inadequate remedy.

Increase Distance Between Roads & Trails and Traps

Too many domestic animals, and even people, are caught in traps in New Mexico. The current requirement for traps to be 25 yards from roads and trails puts the public and their pets at risk of injury or mortality. The allowable distance should be at least 50 yards.

Protect Non-Target Species from Indiscriminate Trapping

The Game Commission must take steps to ensure non-target species are not accidentally trapped. It can regulate the size of traps, the use of tension devices, and stops for snares. It can regulate where trapping can occur. Particular attention must be paid in the Mexican wolf recovery area and where other rare species such as lynx (*Lynx canadensis*) occur.

Mexican gray wolves are highly endangered—only 52 individuals remain. Yet, they have sustained trap injuries from fur trappers' traps. At least two living wild wolves are missing a foot—two other individuals (now dead) lost feet to traps as well. Reducing allowable trap size in the recovery area and requiring padded traps would mitigate this danger for an endangered species. Snares should not be allowed in wolf recovery areas.

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Conclusion:

Thank you for considering our concerns. Again we request that the Game Commission establish a public rulemaking and review of furbearer regulations in 2009, and every two years thereafter; that the NMDGF write management plans for bobcats and gray foxes, and the seasons for kit foxes and swift foxes close to prevent their extirpation from New Mexico; that trappers are made to comply with state reporting laws; and that trapping and snaring mitigation measures ensue.

Sincerely yours,



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