



February 5, 2020

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Ms. Collette Adkins  
Carnivore Conservation Director  
Senior Attorney  
Center for Biological Diversity  
P.O. Box 595  
Circle Pines, Minnesota 55014-0595

Dear Ms. Adkins:

**Re: Notice of Intent to Sue for Alleged Incidental Take of Canada Lynx in Minnesota**

We are in receipt of your letter dated December 4, 2020, in which you notice the Minnesota Department of Natural Resources (DNR) of your intent to sue the DNR for the illegal “take” of Canada lynx (*Lynx canadensis*)(Lynx) in violation of the Endangered Species Act (ESA). You specifically allege that “[d]espite a previous court order establishing the State’s liability for incidentally taking lynx, the State still authorizes trapping that continues to kill and injure lynx without any permit from the U.S. Fish and Wildlife Service (USFWS).”

The DNR is acting in full compliance with the previous court’s order and is not in violation of said court order. Specifically, your organization sued the DNR in 2008. As a direct result of said litigation, the DNR agreed to apply to the USFWS for an incidental take permit (ITP) and submitted a Habitat Conservation plan that included modification to the state trapping program in conformance with a proposal that was modified and approved by the Court. The Court found that, so long as the state implemented “the regulatory and programmatic changes set for in the State’s Proposal, the State will be in compliance with Section 9 of the ESA”. *Animal Protection Institute et al. v. Mark Holsten, in his official capacity as Commissioner of the DNR et al*, Civ. No. 06-3776 slip. Op. at 4 (July 13, 2008)(July 2008 Order) and *Animal Protection Institute et al. v. Mark Holsten, in his official capacity as Commissioner of the DNR et al.*, Civ. No. 06-3776 Proposal of the Minnesota Department of Natural Resources to Restrict, Modify, or Eliminate the Incidental Take of Canada Lynx (April 30, 2008).

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The DNR has complied with all aspects of the Court's July 2008 Order. Specifically, the DNR:

- 1) Submitted an ITP application to the USFWS on April 21, 2008, said ITP application was filed by the DNR in the above referenced matter as Document 146.
- 2) Notified the parties and the USFWS of all relevant lynx takes that have occurred since July 13, 2018.
- 3) Implemented and maintained required regulatory changes or administrative protocols as required by the July 2008 Order with respect to lynx take, and trapping regulations in the "Lynx Management Zone". These include:
  - a. Required large body-gripping traps, defined as those traps with jaw openings when set of greater than 5 inches and less than 7.5 inches, to be prohibited unless used as water sets or set in one of the following two fashions:
    - i. Elevated at least 3 feet above the ground or snow-level in a tree or on a leaning pole 6 inches or less in diameter; or
    - ii. If set on the ground, the trap must be placed in a "cubby box," with the trap recessed at least 7 inches from the box opening. The opening must be less than 50 square inches in area. The cubby box may be constructed of any material, but it must be constructed and set in a manner that only allows an animal to enter through the box opening.
  - b. Restricted allowable snare cable diameter to not less than 5/64 inches when such trap is set on land.
  - c. Restricted snare loop diameter to not less than 8 inches when set on land.
  - d. Required all foothold traps be securely staked or otherwise secured to prevent trapped animals from moving the trap.
  - e. Required all foothold traps be secured by tethering chains or cables of not more than 18 inches in length to reduce entanglement and reduce momentum force generated if an animal lunges.
  - f. Required all foothold traps set on land have two or more swivels in the tethering chain or cable to reduce entanglement and allow the trap to rotate in line with the animal's foot and leg should the animal roll.
  - g. Prohibited the use of fresh meat, rabbits, and/or hares or their parts as bait for traps.
  - h. Prohibited the use of suspended flags or other sight attractants within 20 feet of a set trap.
  - i. Required trappers to report to DNR Enforcement all incidental Canada lynx takes, including those takes that result in uninjured release by the trapper

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- j. Completed an Initial Complaint Report for reported Canada lynx takes, documented relevant facts in each case, and then made information available to the USFWS.
- k. Implemented and advertised use of the DNR's existing telephone tipline, available 24 hours daily, 7 days per week, year-round, for the reporting of accidental and illegal taking of Canada lynx.
- l. Developed and implemented, through a licensed veterinarian, by October 25, 2008, a program to assess Canada lynx injuries resulting from incidental take and to conduct treatment and rehabilitation of individual Canada lynx when necessary. A written summary of the program was filed with the Court in the fall of 2008 and provided to all parties prior to implementation.
- m. Incorporated information on the new Canada lynx trapping rules and requirements into the mandatory trapper-education program and the DNR's hunting and trapping regulations handbook.

The fact that the USFWS has declined to undertake the necessary environmental review under the National Environmental Policy Act (NEPA) or to otherwise act on DNR's permit application, despite the DNR's repeated requests that it do so, is not a basis on which to premise a lawsuit against the DNR where, as here, the DNR is in full compliance with the July 2008 Court Order.

In addition to the elements required by the July 2008 Order, the DNR has continued to engage in other efforts related to lynx monitoring and conservation. These efforts include: completion (in 2010) of a 7-year collaborative lynx research project, ongoing receipt of lynx sightings by the public and maintenance of any resulting data on confirmed lynx sightings in our Natural Heritage Information System, and collaborative efforts with the U.S. Forest Service (USFS) and USFWS to collect potential lynx genetic samples for identification (annual report produced by USFS). In addition, the DNR annually sends a memorandum to all its wildlife staff that includes information on lynx identification and makes a brochure on avoidance of lynx accidental takes available for distribution to the public and trappers that visit registration stations. The DNR also provides educational materials on how to avoid lynx accidental takes to both timber and mining operators and requires said operators to provide them to their employees and contractors.

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Finally, the DNR has had an opportunity to review your list of takes that you allege were caused by traps and snares legally set under Minnesota's trapping laws and we have identified several errors, as outlined below.

- Lynx #3 on your list was captured by a tribal trapper operating under tribal trapping regulations. This take did not occur under Minnesota trapping law.
- Lynx #6 on your list was captured by a tribal trapper operating under tribal trapping regulations. This take did not occur under Minnesota trapping law.
- Lynx #8 on your list is an accidental duplicate of Lynx # 6. This lynx was reported twice because it was reported separately to the USFWS by both the DNR and USFS. Again, Lynx #6 take did not occur under Minnesota trapping law.
- Lynx #13 on your list was not trapped under Minnesota's trapping regulations but was captured and released by USGS wolf researchers as part of a federal wolf research project.
- Lynx #14 on your list was not trapped under Minnesota's trapping regulations but was captured and released by USGS wolf researchers as part of a federal wolf research project.

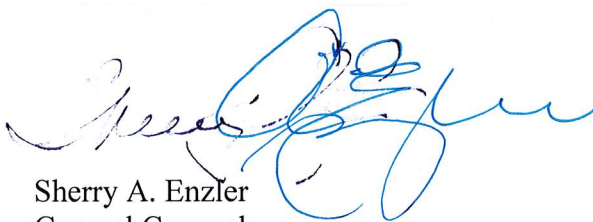
In sum, the DNR is in full compliance with the Court's July 2008 Order and, therefore, is in full compliance with the ESA. Implementation of that order has resulted in a reduction of incidental lynx takes under state trapping laws. The DNR notes that the take level has dropped to an average of one deceased lynx every two years since 2008.

Very truly yours,



David P. Olfelt, Director  
Division of Fish and Wildlife  
DNR Building – 500 Lafayette Road  
Saint Paul, Minnesota 55155-4020  
651-259-5180

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Sherry A. Enzler  
General Counsel  
DNR Building – 500 Lafayette Road  
Saint Paul, Minnesota 55155-4050  
651-259-5066

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Commissioner



CENTER for BIOLOGICAL DIVERSITY

Because life is good.

*Via Email and Certified Mail/Return Receipt Requested*

December 4, 2019

Sarah Strommen, Commissioner  
Minnesota Department of Natural Resources  
500 Lafayette Road  
Saint Paul, MN 55155  
[commissioner.dnr@state.mn.us](mailto:commissioner.dnr@state.mn.us)

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**Re: Illegal Incidental Take of Canada Lynx in Minnesota: Notice of Intent to Sue for Violations of the Endangered Species Act**

Dear Commissioner Sarah Strommen:

On behalf of the Center for Biological Diversity, we hereby provide notice that the Center intends to bring a lawsuit against you (in your official capacity) and the Minnesota Department of Natural Resources ("DNR") (collectively, "the State") for violating the Endangered Species Act ("ESA"), 16 U.S.C. §§ 1531-1544. Specifically, the State authorizes trapping that has caused and will continue to cause unlawful "take" of Canada lynx (*Lynx canadensis*), an animal protected under the ESA. 16 U.S.C. §§ 1538(a)(1)(B), 1533(d); 50 C.F.R. § 17.40(k). Despite a previous court order establishing the State's liability for incidentally taking lynx, the State still authorizes trapping that continues to kill and injure lynx without any permit from the U.S. Fish and Wildlife Service ("FWS").

To prevent further harm to lynx and comply with the law, the State must immediately prohibit or adequately restrict the use of snares and traps in areas that may be occupied by Canada lynx. If you do not do so within the next 60 days, we will file suit in the United States District Court to enjoin State-authorized trapping that may cause incidental take of Canada lynx. We provide this letter pursuant to the citizen suit provision of the ESA. 16 U.S.C. § 1540(g)(2).

**BACKGROUND**

**I. The Endangered Species Act Prohibits Unpermitted "Take" of Canada Lynx**

Under Section 9 of the ESA, it is unlawful for any person to "take" an endangered species. 16 U.S.C. § 1538(a)(1)(B). To "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. 16 U.S.C. § 1532(19). "Take" includes direct as well as indirect harm and need not be purposeful. *See* 50 C.F.R. § 17.3 (definitions of "harass" and "harm"); *Babbitt v. Sweet Home Chapter of Cmty. for a Great Or.*, 515 U.S. 687, 704 (1995). In fact, a take may even be the result of an accident. *See Nat'l Wildlife Fed'n v. Burlington N. R.R.*, 23 F.3d 1508, 1512 (9<sup>th</sup> Cir. 1994). "Take" is defined in the broadest possible manner to include every conceivable way in which a person can



‘take’ or attempt to ‘take’ any fish or wildlife.” *Defs. of Wildlife v. Adm’r, EPA*, 882 F.3d 1294, 1300 (8<sup>th</sup> Cir. 1989).

The Canada lynx is protected as “threatened” under the ESA and receives the same protections as an “endangered” species through operation of a special rule promulgated under Section 4(d) of the ESA. 16 U.S.C. § 1533(d) (“The Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 1538(a)(1) of this title.”); 50 C.F.R. § 17.40(k) (“All prohibitions and provisions of 50 C.F.R. 17.31 and 17.32 apply to wild lynx found in the contiguous United States.”). As such, the lynx is fully protected from take under the ESA.

This is true even if that take is committed by a state agency. It is unlawful for any person to “cause [an ESA violation] to be committed.” 16 U.S.C. § 1538(g). The term “person” includes “any officer, employee, agent, department, or instrumentality . . . of any State, municipality, or political subdivision of a State . . . [or] any State, municipality, or political subdivision of a State . . .” 16 U.S.C. § 1532(13). As a leading case explains, a “governmental third party pursuant to whose authority an actor directly exacts a taking . . . may be deemed to have violated the provisions of the ESA.” *Strahan v. Cox*, 127 F.3d 155, 163 (1<sup>st</sup> Cir. 1997) (holding that by issuing licenses and permits authorizing gillnet and lobster pot fishing, activities known to incidentally injury Northern right whales, Massachusetts officials had exacted a taking); *see Animal Prot. Inst. v. Holsten*, 541 F. Supp. 2d 1073, 1078 (D. Minn. 2008) (summarizing cases and holding the Minnesota DNR liable for its trapping program that incidentally takes Canada lynx).<sup>1</sup>

The ESA has a broad citizen suit provision that reaches state agencies: “any person may commence a civil suit on his own behalf to enjoin any person, including [any] governmental instrumentality or agency . . . who is alleged to be in violation of any provision of [the ESA].” 16 U.S.C. § 1540(g); *see Ex parte Young*, 209 U.S. 123, 159-60 (1908) (authorizing lawsuits for prospective relief against state officials acting in violation of federal law). A plaintiff can seek to enjoin both present activities that constitute an ongoing take and future activities that are reasonably likely to result in take. *See Burlington N. R.R.*, 23 F.3d at 1511.

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<sup>1</sup> *See also Defs. of Wildlife v. Adm’r, EPA*, 688 F. Supp. 1334 (D. Minn. 1988), *aff’d by Defs. of Wildlife v. Adm’r, EPA*, 882 F.3d 1294 (8<sup>th</sup> Cir. 1989) (holding the U.S. Environmental Protection Agency liable for take associated with the registration of strychnine, which was known to poison endangered species, even though third parties used the pesticides); *Loggerhead Turtle v. Cty. Council of Volusia Cty.*, 148 F.3d 1231 (11<sup>th</sup> Cir. 1998), *cert. denied*, 526 U.S. 1081 (1999) (holding that plaintiff had standing to proceed against Volusia County for take of threatened and endangered sea turtles, which were harmed by the private, artificial light sources permitted by the County’s regulations); *Sierra Club v. Lyng*, 694 F.Supp. 1260 (E.D. Tex. 1988), *aff’d by Sierra Club v. Yeutter*, 926 F.2d 429 (5<sup>th</sup> Cir. 1991) (holding the U.S. Forest Service liable for take because its even-aged management plan allowed private companies to harvest timber in a way that degraded the habitat of the endangered red-cockaded woodpecker); *Unites States v. Town of Plymouth, Mass.*, 6 F. Supp. 2d 81 (D. Mass. 1998) (holding the Town of Plymouth liable for the take of endangered piping plovers that had either been run over or isolated from their food source by off-road vehicles, which were allowed on the beach under the Town’s policies); *Pac. Rivers Council v. Brown*, No. 02-243, 2002 U.S. Dist. LEXIS 28121 (D. Or. Dec. 23, 2002) (finding that state forester’s authorization of private logging operations that are likely to result in a take is itself a cause of a take); *Seattle Audubon Soc’y v. Sutherland*, No. 06-1608, 2007 U.S. Dist. LEXIS 31880 (W.D. Wash. May 2, 2007) (by regulating logging on private lands, the State has injected itself into a position in which it may be the proximate cause of an ESA take).

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The taking of a threatened or endangered species that is “incidental” to the purpose of otherwise lawful activity may be allowed if permitted under Section 10 of the ESA. 16 U.S.C. § 1539(a)(1)(B). As a prerequisite to receiving an incidental take permit (“ITP”) from FWS, the applicant must submit a habitat conservation plan that specifies “(i) the impact which will likely result from such taking; (ii) what steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps; (iii) what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized; and (iv) such other measures that the Secretary may require as being necessary or appropriate for purposes of the plan.” *Id.* § 1539(a)(2)(A). Thereafter, FWS must find, with respect to the permit application and the habitat conservation plan, that the applicant will “minimize and mitigate” the impacts of take “to the maximum extent practicable,” that the applicant has adequate funding to carry out the plan, and that the incidental take will not appreciably reduce the likelihood of survival of the species. 16 U.S.C. § 1539(a)(2)(B).

## **II. Court Holds State Liable for Illegal Incidental Take Yet State Still Lacks ITP**

In 2006, the Animal Protection Institute and the Center for Biological Diversity brought a case against the State for authorizing trapping that results in illegal incidental take of Canada lynx. The wildlife protection groups offered evidence of “at least 13 reported instances of the trapping or taking of Canada Lynx in Minnesota since 2002 that have resulted in either injury or death to the subject lynx.” *Animal Prot. Inst. v. Holsten*, 541 F. Supp. 2d 1073, 1075-76 (D. Minn. 2008).

The Court held that the State “has violated and remains in violation [of] Section 9 of the Endangered Species Act by authorizing trapping and snaring within the range of Canada Lynx in Minnesota.” *Id.* at 1081. It reasoned that the State’s application for an ITP did not moot the case, and that the plaintiffs could seek relief “until such time as the permit is issued.” *Id.* at 1077. In rejecting the defendants’ arguments that conduct of the trappers is an independent, intervening cause that relieves the State of liability, the Court held that “the DNR’s licensure and regulation of trapping is the ‘stimulus’ for the trappers’ conduct that results in incidental takings.” *Id.* at 1079. The Court also held that the Tenth Amendment did not bar “an order directing the DNR to bring its trapping scheme into compliance with federal law.” *Id.* at 1081.

The Court directed the State to “promptly take all action necessary to insure no further taking of threatened Canada Lynx by trapping or snaring activities within the core Canada Lynx ranges, including, but not limited to” the following: (1) applying to the FWS for an ITP for Canada lynx for the State’s trapping program, on or before April 30, 2008; and (2) developing and preparing a proposal to be submitted to this Court on or before April 30, 2008, “to restrict, modify, or eliminate ... the incidental taking of Canada Lynx through trapping activities in the core Canada Lynx ranges.” *Id.* at 1081.

The State timely applied for an ITP by submitting to FWS an ITP application and draft habitat conservation plan. *Animal Prot. Inst. & Ctr. for Biological Diversity v. Holsten*, No. 06-3776, 2008 U.S. Dist. LEXIS 53396 (D. Minn. July 13, 2008). In addition, the State timely filed with the Court a “Proposal of the Minnesota Department of Natural Resources to Restrict, Modify, or Eliminate the Incidental Take of Canada Lynx.” *Id.* In response to objections from

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the wildlife protection groups, the State modified its proposal. The Court concluded that the State's modified proposal, as well as its ITP application and habitat conservation plan, were "adequate and in compliance with this Court's Order of March 28, 2008." *Id.* The Court ordered the State to promulgate rules consistent with the modified proposal prior to the 2008-2009 trapping season. *Id.*

As further explained below, the State has promulgated several sets of "expedited emergency rules" that implement its modified proposal. But it failed to obtain an ITP from FWS even though lynx continue to be killed and injured by trapping.

In January of 2019, we submitted a Freedom of Information Act request to FWS asking for "the records generated in connection with the application from the Minnesota Department of Natural Resources ('MN DNR') for an Incidental Take Permit ('ITP') for Canada lynx covering the state trapping program." We received no records showing any progress processing the ITP application. By email dated October 17, 2019, John Erb of the DNR explained: "Per the court order, we changed regulations, applied for the ITP, and appropriately report take when it occurs. To my knowledge we haven't heard anything back from FWS on the ITP application." By email dated November 5, 2019, Tamara Smith of FWS confirmed with us that the ITP application is "currently inactive."<sup>2</sup>

### **III. Natural History and Status of the Canada Lynx**

The Canada lynx (*Lynx canadensis*) is a rare wild cat, similar in appearance to a bobcat but characterized by tufted ears, hind legs that appear longer than front legs, and a pronounced goatee under the chin. Its large paws work like snowshoes and enable walking on top of deep, soft, snows. This cold-loving cat feeds predominantly on snowshoe hares but also eats birds and small mammals and scavenges carcasses. Mating occurs in late winter, and up to five kittens are born approximately sixty-five days later. Kittens remain with and depend on their mother for one year before dispersing to their own home range.<sup>3</sup>

Declining population numbers and inadequate regulatory mechanisms led FWS to list Canada lynx as a threatened species under the ESA in 2000. 65 Fed. Reg. 16,052 (Mar. 24, 2000). FWS designated critical habitat in 2006 with revisions in 2009 and 2014. 79 Fed. Reg. 54,781 (Sept. 12, 2014). The critical habitat designation includes northeastern Minnesota.

Trapping, habitat destruction, climate change, and other threats continue to harm the Canada lynx today. Minnesota is one of the few places left in the United States with lynx habitat

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<sup>2</sup> In an email dated May 12, 2014, Tamara Smith explained, "There hasn't been much talk of the HCP here, but I think that is only because we have been swamped with other high priority things." In an email dated May 13, Lisa Mandell, Deputy Field Supervisor for the Twin Cities Field Office of FWS clarified, "FYI – on the HCP for MN, my understanding is that it stalled because the RO thought MDNR should prepare the NEPA and MDNR did not think that was their responsibility. As far as I know, the trapping HCP for lynx in MN is sitting on Tom Magnuson's desk and no progress has been made for at least the last few years."

<sup>3</sup> MN DNR, Canada Lynx (undated), available at <https://www.dnr.state.mn.us/mammals/canadalynx.html>.

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in quality and quantity to sustain lynx populations. Currently, biologists estimate that 50 to 200 lynx may range in the northern part of Minnesota.<sup>4</sup>

#### IV. Trapping of Canada Lynx in Minnesota

The State oversees licensing and regulation of trapping in Minnesota by setting seasons, bag limits, and other restrictions. Minn. Stat. § 97B.605; MCAR Chapter 6234. While the State prohibits trapping of Canada lynx, MCAR 6234.1500, it continues to authorize trapping for bobcats, fishers, martens, fox, wolves (after removal of federal protections), and other species within lynx habitat. MCAR Chapter 6234. It also incentivizes the trapping of coyote and fox by providing compensation for such “predator control.” MCAR 6234.3400.

The trap types primarily used by trappers in Minnesota are: (1) “foothold” or “leghold” traps with spring-loaded jaws designed to clamp down and hold the animals by their leg or foot; (2) “conibear” or body-gripping traps designed to kill the animals by crushing their bodies; (3) “snares” made of wire or cable designed to catch animals by their foot, neck, or body, which tightens when the animals try to free themselves. *See Animal Prot. Inst. v. Holsten*, 541 F. Supp. 2d 1073, 1076 (D. Minn. 2008). The State permits use of all these types of traps. MCAR 6234.2200-2400. It allows some traps to remain unattended for up to three days. MCAR 6234.2200.

As a result of documented take of Canada lynx, the resulting litigation and 2008 court order, the State added some restrictions to the use of snares and traps in areas where lynx are known to live. Specifically, the State has promulgated several subsequent sets of “expedited emergency rules” that remain effective for no longer than 18 months. *See* Minn. Stat. § 84.027. Those rules temporarily amend MCAR 6234.1000 (DESCRIPTION OF FURBEARER ZONES), MCAR 6234.2200 (USE OF TRAPS), and MCAR 6234.2400 (SPECIAL RESTRICTIONS ON USE OF SNARES). *See* 2018 MN Regulation Text 3347 (Adopted Expedited Emergency, May 7, 2018).

In the Minnesota Hunting and Trapping Regulation booklet, these lynx-specific restrictions are summarized as the “Lynx Management Zone Regulations.” The Lynx Management Zone covers the arrowhead region of the state northeast of U.S. Highway 53. In that Zone, snare traps must be at least eight inches wide and at least 5/64 inches in diameter. All foothold traps must be staked or secured by cables less than eighteen inches long with at least two swivels. All traps must be secured in a way that prevents captured animals from removing the trap from the trap site. Using fresh meat, rabbits or hares, or parts of rabbits or hares is prohibited. Other meat may be used as bait if it has been unfrozen and exposed to air for at least twenty-four hours before being placed in a trap. Using suspended flags or other sight attractants within twenty feet of a trap is prohibited. Except when set underwater, a body-gripping (conibear-style) trap that has a maximum jaw opening, when set, of greater than five inches and less than 7 1/2 inches measured from the inside edges of the body-gripping portions of the jaws, must be set: (1) at least three feet above the ground or snow level in a tree or on a leaning pole

<sup>4</sup> U.S. Fish and Wildlife Service, *Species Status Assessment for the Canada Lynx (Lynx canadensis) Contiguous United States Distinct Population Segment* (2017), available at [https://www.fws.gov/mountain-prairie/es/species/mammals/lynx/SSA2018/01112018\\_SSA\\_Report\\_CanadaLynx.pdf](https://www.fws.gov/mountain-prairie/es/species/mammals/lynx/SSA2018/01112018_SSA_Report_CanadaLynx.pdf).

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six inches or less in diameter; or (2) in a cubby box recessed at least seven inches from the box opening, which must be less than 50 square inches in opening size.<sup>5</sup>

Despite the addition of these trapping restrictions, Canada lynx continue to be incidentally killed or captured in legally-set traps and snares in Minnesota. We are aware of the following trapping incidents since the start of the 2008-2009 trapping season:

1. On December 1, 2009, a male lynx was trapped in a leghold trap set for fisher and marten in St. Louis County. The lynx pulled itself out of the trap when the trapper approached.
2. On October 28, 2011, a female lynx was trapped in a leghold trap for fox in Lake County (LS). The lynx **died** during an attempted release with a catchpole around her neck. Necropsy report shows serious internal injuries incurred – unclear whether from her reaction to initial capture or catchpole.
3. On January 20, 2012, a male lynx was trapped with a snare (by a member of the Leech Lake Band) for bobcat in Cass County (LS). The lynx **died**.
4. On March 15, 2012, a female lynx was found **dead** near Armstrong Lake in St. Louis County. Necropsy showed that the lynx had been caught by its right hindleg for several days in a snare and died. Its right foreleg appeared to have been healing from a fracture, likely from recent capture in a leghold trap.
5. On November 24 or 25, 2013, a male lynx was trapped in a leghold trap for fox in Lake County (LS). The lynx was released alive.
6. On November 30, 2013, a lynx of unknown sex was trapped by its right front foot in a body-gripping trap set on a leaning tree in a meat-baited cubby box in Cook County. The lynx pulled itself out of the trap.
7. On December 21, 2013, a lynx of unknown sex was trapped in a cage trap set for bobcat in St. Louis County. The lynx was released alive.
8. On December 30, 2013, a lynx of unknown sex was trapped in a leghold trap set for marten in Cook County. The lynx released itself.
9. On February 15, 2014, a male lynx was trapped in a snare set for coyote in Koochiching County. The lynx **died**.
10. On November 30, 2014, a lynx of unknown sex was trapped in a leghold trap set for wolf in Rosseau County. The lynx was released alive.

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<sup>5</sup> Evidence from Maine shows that placing traps on leaning poles does not prevent incidental take of lynx. See Maine Dept. of Inland Fisheries and Wildlife, Meeting Minutes (2015), available at <https://www.maine.gov/ifw/about/advisory-council/minutes.html?id=762627> (“We received our incidental take permit from the USFWS and within a month we had two lynx that were taken in legally set conibear leaning pole sets in northern Maine.”); 2015 ME Regulation Text 10792 (“Within the first month of the 2014-2015 trapping season, two lynx were killed in legally set traps.”). Maine thereafter promulgated regulations that now require placement of traps in lynx exclusion devices. 09-137-017 Code Me. R. § 1 (<https://www.maine.gov/ifw/hunting-trapping/trapping-laws/lynx-protection.html>). Vermont and New Hampshire have also promulgated regulations to restrict incidental take of lynx. CVR 12-010-073 (Vermont, see <http://www.eregulations.com/vermont/hunting/furbearer-hunting-trapping/>); N.H. Code R. Fis 303.12 (New Hampshire, see <http://www.eregulations.com/newhampshire/hunting/lynx-protection-zone-trap-restrictions/>). Maine, Vermont and New Hampshire prohibit use of snares on land. Me. Rev. Stat. tit. 12, § 12252; Vt. Stat. Ann. tit. 10A, § 44; N.H. Code R. Fis 303.12. According to FWS: “It is well known in the trapping community that lynx are extremely susceptible to neck snares and most incidents result in death.” U.S. Fish and Wildlife Service, *Programmatic Consultation for Statewide Activities in Washington State* (July 21, 2014).

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11. On December 27, 2014, a male lynx was trapped by the torso in a deer-baited snare for coyote in Koochiching County (outside of Lynx Management Zone) (LS). The lynx **died**.
12. On December 29, 2014, a male lynx was trapped in a snare set in Koochiching County. The lynx **died**.
13. On June 25, 2015, a female lynx was trapped in a leghold set by researchers targeting wolves in Lake County. The lynx was released alive.
14. In August 23, 2016, a male lynx was trapped in a leghold set by researchers targeting wolves in Lake County. The lynx was released alive.
15. On December 1, 2017, a male lynx was trapped in a snare set for bobcat in Lake County (LS). The lynx **died**.
16. On November 25, 2018, a lynx of unknown sex was trapped in a deer-meat and skunk-scent baited leghold trap for marten on the ground in a natural cubby in St. Louis County (LS). The lynx escaped with the trap still attached to its foot. The trappers cornered the lynx in heavy cover and removed the trap using a notched plywood shield.

These are the **documented** cases of trapped Canada lynx in Minnesota since implementation of the new restrictions. Yet trapped lynx may go unreported by trappers concerned about liability or who want to profit from the pelt. Indeed, FWS noted concerns with unreported Canada lynx trapping when it listed the species under the ESA, stating:

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

65 Fed. Reg. 16,052, 16,080 (Mar. 24, 2000) (internal citations omitted). Also, in a 2001 biological opinion discussing impacts of furbearer trapping on Canada lynx, FWS estimated that for every reported incidental take of lynx, one incidental take remains unreported.<sup>6</sup>

Even though some trapped lynx may be released alive, they still experience harm and may not survive after release. Animals trapped for prolonged periods can experience reduced mobility and survivorship due to injury, limping, and tissue necrosis that may take days to appear, or an inability to catch prey due to broken teeth or claw loss. Even temporary immobility causes adverse physiological responses in trapped and struggling animals, including anxiety, stress, and pain that change hormone, enzyme, and electrolyte levels as well as muscle pH.<sup>7</sup>

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<sup>6</sup> U.S. Fish and Wildlife Service, *Biological Opinion on the CITES Export Program for Appendix-II Furbearer Species* (2001).

<sup>7</sup> G. Iossa, C.D. Soulsbury & S. Harris, *Mammal Trapping: A Review of Animal Welfare Standards of Killing and Restraining Traps*, 16 *Animal Welfare* 345 (2007), [http://www.wolfmatters.org/uploads/2/4/0/2/24020064/mammal\\_trapping-1.pdf](http://www.wolfmatters.org/uploads/2/4/0/2/24020064/mammal_trapping-1.pdf)

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When mother lynx are trapped, the harm extends to yearling lynx or kittens dependent on their mothers for survival.<sup>8</sup>

## LEGAL VIOLATIONS

Trapping authorized by the State kills, harms, harasses, captures and otherwise “takes” individual Canada lynx. Such take has continued even after the State implemented restrictions in 2008 aimed at preventing incidental take. Since then, state and federal agencies documented 16 known instances of Canada lynx trapping, including six that resulted in the confirmed death of a lynx. But the State has failed to obtain an ITP that would permit such take of a federally-protected species.

The DNR Commissioner has the authority to stop the incidental take of Canada lynx. Until the State either ends its authorization of trapping that results in the incidental take of Canada lynx or obtains an ITP that mitigates impacts to the maximum extent practicable, the State is in violation of the ESA. 16 U.S.C. §§ 1538(a)(1)(B), 1533(d); 50 C.F.R. § 17.40(k).

## CONCLUSION

Despite its responsibility to act consistent with the ESA, the State is permitting trapping that results in take of listed Canada lynx. If the State does not act to correct the violations described in this letter, the Center will pursue litigation in U.S. District Court in sixty days. The Center will seek injunctive and declaratory relief, and legal fees and costs regarding these violations. If you have wish to discuss this matter or believe this notice is in error, please contact me at 651-955-3821.

Sincerely,

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Collette Adkins  
Carnivore Conservation Director, Senior Attorney  
Center for Biological Diversity  
P.O. Box 595  
Circle Pines, MN 55014-0595  
Tel: (651) 955-3821  
[cadkins@biologicaldiversity.org](mailto:cadkins@biologicaldiversity.org)

Marc D. Fink  
Public Lands Legal Director, Senior Attorney  
Center for Biological Diversity  
209 East 7th Street  
Duluth, Minnesota 55805

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<sup>8</sup> Elena Ulev, *Lynx canadensis*, in Fire Effects Information System, U.S. Department of Agriculture, Forest Service, (last revised July 18, 2013), <http://www.fs.fed.us/database/feis/animals/mammal/lyca/all.html>.

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Tel: 218-464-0539

[mfink@biologicaldiversity.org](mailto:mfink@biologicaldiversity.org)

cc:

David Bernhardt  
Secretary of the Interior  
U.S. Department of the Interior  
1849 C Street NW  
Washington, DC 20240  
[exsec@ios.doi.gov](mailto:exsec@ios.doi.gov)

Margaret Everson  
Principal Deputy Director  
U.S. Fish and Wildlife Service  
1849 C Street NW  
Washington, DC 20240  
[Margaret\\_Everson@fws.gov](mailto:Margaret_Everson@fws.gov)

Tamara Smith  
Fish and Wildlife Biologist  
U.S. Fish and Wildlife Service  
Minnesota Wisconsin Field Office  
4101 American Boulevard East  
Bloomington, MN 55425  
[tamara\\_smith@fws.gov](mailto:tamara_smith@fws.gov)

John Erb  
Furbearer/Wolf Research Scientist  
Minnesota DNR  
Forest Wildlife Populations and Research Group  
1201 E. Hwy 2  
Grand Rapids, MN 55744  
[John.erb@state.mn.us](mailto:John.erb@state.mn.us)