



COLORADO

Parks and Wildlife

Department of Natural Resources

6060 Broadway
Denver, CO 80216

To: Colorado Parks and Wildlife Commission

From: Dan Prenzlöw, Director

Date: March 5, 2021

Re: Division recommendation to deny the November 18, 2020, petition to ban trapping for recreational and commercial purposes

On November 18, 2020, the Humane Society of the United States on behalf of 20 organizations petitioned the Parks and Wildlife Commission to ban “all traps, including box traps, for the purposes of recreation, sport or commerce.” The petitioners ask the Commission to amend its regulations to prohibit all trapping for these purposes because they claim the regulations are inconsistent with the North American Model of Wildlife Conservation; are inconsistent with Amendment 14 to the Colorado Constitution; are cruel, inhumane, and unpopular; and may jeopardize swift fox, bobcat, and lynx populations.

The Division of Parks and Wildlife recommends denying the petition for four reasons. First, the Commission’s strict trapping regulations are consistent with the North American Model. Second, Amendment 14 doesn’t prohibit live cage or box traps, which are the only trap designs the Commission allows. Third, the Commission recently considered a similar petition and has taken steps to address several of the petitioners’ concerns. And fourth, other regulatory priorities take precedence over the petitioners’ proposed rulemaking.

1. The Commission’s strict trapping regulations protect Colorado’s furbearers and are consistent with the North American Model of Wildlife Conservation.

The petitioners argue that the Commission’s regulations, which allow trappers to take furbearers and sell their pelts in limited circumstances, are inconsistent with the North American Model of Wildlife Conservation (Model). The Model is a set of principles that describes and may inform wildlife conservation and management in the United States and Canada.¹ Contrary to the petitioners’ argument, the Commission’s regulations are consistent with the Model.

The Model recognizes the general principle that markets for game are eliminated. But, as the United States Fish and Wildlife Service and other commentators have recognized, there is an

¹ The Model may inform the Commission’s decisions, but it isn’t binding. What do bind the Commission are the provisions of title 33, C.R.S., which direct the Commission to “offer the greatest possible variety of wildlife-related recreational opportunity” and “utilize hunting, *trapping*, and fishing as the primary methods of effecting necessary wildlife harvests.” § 33-1-101(1), (4), C.R.S. (emphasis added).

exception for certain highly-regulated markets.² A 2012 technical review of the Model noted that “in most jurisdictions some commercialization of wildlife is permissible under highly regulated legal regimes.”³ The review used furbearer trapping as an example of “an important wildlife conservation tool and a legitimate use of renewable wildlife resources” when there are “strict controls to limit harvest and to provide for legal commerce.”⁴

The Commission strictly regulates furbearer trapping, possession, and sale in Colorado. As with all wildlife in Colorado, taking and possessing furbearers is prohibited unless permitted by statute or Commission regulation.⁵ The Commission requires a license or permit to take furbearers and sets firm limits on the species trappers may take, when they may do so, and what trap designs they may use.⁶ Its restrictions on trap designs—which allow only live cage or box traps—are some of the strictest in the country.⁷ The Commission’s bobcat trapping regulations are especially stringent. They prohibit possessing and selling bobcat pelts without the Division’s inspection and seal,⁸ and require trappers who accidentally capture lynx to release them immediately unharmed and report the capture to the Division.⁹ These strict regulations protect Colorado’s furbearers and are consistent with the Model.

2. Amendment 14 doesn’t prohibit live cage or box traps, which are the only trap designs the Commission allows.

The petitioners argue the Commission’s regulations are inconsistent with Amendment 14 of the Colorado Constitution, which prohibits the use of certain trap designs. Specifically, the amendment provides: “[i]t shall be unlawful to take wildlife with any leghold trap, any instant kill body-gripping design trap, or by poison or snare.”¹⁰ The Commission doesn’t allow trappers to use these designs, so its regulations are consistent with Amendment 14.

As noted above, the Commission allows trappers to use only live traps, “limited to cage or box traps.”¹¹ Amendment 14 says nothing about these trap designs, but the petitioners argue the amendment was nevertheless intended to “prohibit recreational and commercial killing of wildlife using all traps, including box traps.” This argument finds no support in the language

² See <https://www.fws.gov/hunting/north-american-model-of-wildlife-conservation.html> (viewed February 13, 2021); Organ et al., *The North American Model of Wildlife Conservation, Technical Review 12-04*, 13-14 (Dec. 2012).

³ Organ et al., *supra* note 2, at 13.

⁴ *Id.*

⁵ See §§ 33-1-101(2); 33-6-109(1), C.R.S.

⁶ See 2 CCR 406-3:302-04, 323-26.

⁷ Colorado is one of only six states that prohibit foothold traps and one of only ten states that prohibit snares. See Exhibit A.

⁸ 2 CCR 406-3:324(B)(2)(a).

⁹ 2 CCR 406-10:1002(B)(3)(a).

¹⁰ Colo. Const. art. 18, § 12b(1); see also § 33-6-203(1), C.R.S. (implementing Amendment 14).

¹¹ See 2 CCR 406-3:303(E)(5).

of the amendment and at least one court has rejected it.¹² Specifically, the court in *Sinapu v. Colorado Wildlife Commission* concluded:

- 1) Amendment 14 does not prohibit or otherwise restrict the use of live traps to take wildlife in Colorado;
- 2) Amendment 14 does not prohibit recreational trapping or commercial trapping in Colorado;
- 3) Amendment 14 only prohibits or restricts take of wildlife using the methods specified in subsection (1) [leghold traps, instant kill body-gripping design traps, poison, or snares];
- 4) The reference to “traps” in subsection (2)(c) of Amendment 14 is most reasonably read as, and should be read as, a reference to the specific kinds of traps otherwise prohibited by subsection (1);
- 5) [The plaintiff did] not overcome the presumption of validity applicable to the WILDLIFE regulations in question or otherwise established their unconstitutionality beyond a reasonable doubt.

In short, the petitioners’ amendment would have been easy to write, but it isn’t the one the voters adopted. Amendment 14 doesn’t prohibit live cage or box traps, which are the only traps the Commission allows.

3. The Commission recently considered a similar petition and has taken steps to address several of the petitioners’ concerns. Devoting additional resources to the petitioners’ proposed rulemaking will divert limited resources from other regulatory and policy priorities.

The Commission and Division have limited resources. Within the last two years, the Commission has addressed a substantially similar petition to ban bobcat trapping, banned wildlife contests for all furbearer species, and adopted rules designed to improve the Division’s ability to monitor furbearer harvests. These recent efforts, coupled with the pressing regulatory and policy priorities described below, weigh against devoting additional resources to the petitioners’ proposed rulemaking.

In 2019, the Commission considered a petition to ban bobcat trapping that raised many of the same arguments the petitioners do.¹³ The Division prepared a detailed biological response¹⁴ and the Commission heard extensive public comment before denying the petition.¹⁵

¹² See *Sinapu v. Colo. Wildlife Comm’n*, No. 06CV8933, Order (Denver Dist. Ct. April 10, 2008).

¹³ See Exhibit B.

¹⁴ See Exhibit C; Exhibit D.

¹⁵ May 9, 2019, Commission meeting, available at: https://www.youtube.com/watch?v=OzdzG6fvZrY&feature=emb_err_woyt (2:46:00-3:28, 4:44:00-6:47:20).

In 2020, the Commission adopted some of the wildlife management practices the petitioners support by prohibiting contests for “black-tailed, white-tailed and Gunnison’s prairie dogs, Wyoming (Richardson’s) ground squirrel, [and] furbearers.”¹⁶

Also in 2020, the Commission addressed the petitioners’ concern that the furbearer harvest is inadequately monitored by requiring a furbearer-specific license or permit to take all but one furbearer species.¹⁷ The purpose of this regulatory change was to improve furbearer harvest estimates and the Division believes it will.

In short, the Commission has recently addressed several of the petitioners’ concerns. Doing so yet again will divert limited resources from the regulatory and policy priorities described below.

4. Other regulatory and policy priorities take precedence over the petitioners’ proposed rulemaking.

The Commission has several pressing, resource-intensive regulatory priorities. For example, the Commission must develop a wolf restoration and management plan by the end of 2023, and has been urged to develop a strategy to reintroduce wolverines.¹⁸ The Commission is also exploring changes to the method of allocating resident and nonresident big game licenses, and revising regulations governing access to State Wildlife Areas.¹⁹

Each of these priorities is a time and resource-consuming endeavor. Wolf reintroduction alone will require the Commission to hold longer, and probably more, meetings each year and occupy many of the same Division staff who would inform the Commission’s decision on the petitioners’ proposed rulemaking.²⁰ In response to recent petitions to ban trapping, the Division has thoroughly examined the biological evidence and advised the Commission that its trapping regulations do not prevent it from maintaining sustainable bobcat, lynx, and swift fox populations.²¹ Re-evaluating the evidence and examining the petitioners’ newest claims

¹⁶ 2 CCR 406-3:303(A)(1).

¹⁷ 2 CCR 406-3:304(B).

¹⁸ See § 33-2-105.8(2)(a), (d), C.R.S.; January 13, 2021, Commission meeting, available at: https://www.youtube.com/watch?v=nL7T41_cpxc&feature=youtu.be (06:31:00 - 06:58:00); January 14, 2021, Commission meeting, available at: <https://www.youtube.com/watch?v=qKTUrazqiY0&feature=youtu.be> (26:40 - 1:08:43, 03:10:15 - 05:30:00, 06:00 - 06:39:43); *see generally*, February 24, 2021, Commission workshop, available at: <https://www.youtube.com/watch?v=MbSDKXkhH7Q&feature=youtu.be>.

¹⁹ See, e.g., January 13, 2021, Commission meeting, available at: https://youtu.be/nL7T41_cpxc (05:29:00 - 06:31:00); January 14, 2021, Commission meeting, available at: <https://youtu.be/qKTUrazqiY0> (07:41:28 - 08:00:25)

²⁰ The Commission plans to devote additional time in all of its 2021 meetings to discussing wolf reintroduction and may add a meeting if additional discussion is required. See February 24, 2021, Commission workshop, available at: <https://www.youtube.com/watch?v=MbSDKXkhH7Q&feature=youtu.be> (02:47:00 - 02:56:25).

²¹ See Exhibit C; Exhibit D; Exhibit E.

(including those involving public attitudes toward trapping) will divert the Division's limited resources from the Commission's other priorities.

In addition to the Division's resources, any resources the Commission devotes to the petitioners' proposed rulemaking cannot go to its other regulatory priorities. Especially because the Commission has recently addressed many of the petitioners' concerns, the Division believes the Commission's other priorities should take precedence.

Exhibit A

Snare and Foot-Hold Trap Regulations by State					Foot-Hold Traps			Snares		
					Allow foot-hold traps on all lands	Allow foot-hold traps, with restrictions (private land only, only in water, certain species, etc.)	Prohibit foot-hold traps	Allow snares on all lands	Allow snares, with restrictions (private land only, only in water, certain species, etc.)	Prohibit Snares
State	Allow Snares and Foot-Hold Traps?	Relevant Regulation	Source	TOTAL=	38	6	6	22	18	10
Arizona	Allowed on private land only, with restrictions. Prohibited on public lands.	See R12-4-307 Trapping Regulations: Licensing; Methods; Tagging of Bobcat Pelts. Also see A.R.S. 17-301(D) Exceptions; Methods of Taking	https://azgfd-portal-wordpress-pantheon.s3.us-west-2.amazonaws.com/wp-content/uploads/archive/2020-21-Trapping-Regulations_200901.pdf			1			1	
Alabama	Foot-hold traps are permitted. Snares are only permitted in water, except powered foot snares may be used on land.	Regulation 220-2-.30(1)	https://www.outdooralabama.com/sites/default/files/Hunting/Trapping/Fur%20Catcher%20Code-Regs%201-18.pdf		1				1	
Alaska	Yes	See 'General Information' and 'Methods for Trapping'	https://www.adfg.alaska.gov/static/regulations/wildliferegulations/pdfs/trapping.pdf		1			1		
Arkansas	Yes	See 'Trapping Regulations'	https://www.agfc.com/en/hunting/furbearers/		1			1		
California	No	§465.5.c Prohibition on Trapping for the Purposes of Recreation or Commerce in Fur.	https://fgc.ca.gov/Regulations/Current/Mammals#465_5				1			1
Colorado	No	#303.E.5	https://cpw.state.co.us/Documents/RulesRegs/Regulations/Ch03.pdf				1			1
Connecticut	"Padded and Unpadded Metal Traps" may be used with restrictions. Snares are prohibited.	See 'Legal Traps and Methods'	https://portal.ct.gov/-/media/DEEP/hunting_trapping/pdf_files/guide2021.pdf			1				1
Delaware	Yes	See 'Trapping Prohibitions'	http://www.eregulations.com/delaware/hunting/furbearer-trapping-hunting/		1			1		
Florida	Foot-hold traps are prohibited, except by permit. Snares are permitted.	See Furbearer Regulations>Methods of Take	http://www.eregulations.com/wp-content/uploads/2020/06/20FLHD-LR3.pdf				1	1		

Georgia	Foot-hold traps are permitted, though not explicitly referenced in regulation. See references to jaw size limits and reference in statute to body-gripping traps "as opposed to a leg-hold trap". Snares are permitted only for beaver in, or within 10 feet of, water.	See 'Trapping Regulations' and § 27-3-63(a)(11)	https://georgiawildlife.com/regulations/trapping			1				1	
Hawaii	No	§13-123-22(b)(10)	http://dlnr.hawaii.gov/hunted/files/2013/05/MammalHuntingRegs_Chap123.pdf					1			1
Idaho	Yes	See definition of 'trap' and 'Method of Take - Trapping'	https://idfg.idaho.gov/sites/default/files/seasons-rules-upland-furbearer-2020-2021.pdf?updated=9-20			1			1		
Illinois	Foot-hold traps are permitted. Snares are prohibited, except when partially submerged in water.	See 'Trap Size Restrictions' and 'Snares'	https://www2.illinois.gov/dnr/hunting/Documents/Trapping%20Info.pdf			1				1	
Indiana	Foot-hold traps are permitted. Snares are prohibited on public land, except when partially submerged in water. Snares are permitted on private land.	See 'Trapping Regulations'	http://www.eregulations.com/indiana/hunting/furbearer-trapping/			1				1	
Iowa	Yes, except "mechanical snares" are prohibited unless underwater.	See 'Hunting and Trapping Furbearers' in the regulatory brochure	https://www.iowadnr.gov/Hunting/Trapping-Fur-Harvesting			1				1	
Kansas	Yes	See Legal Equipment for Furbearer and Coyote Trapping	https://ksoutdoors.com/Hunting/Hunting-Regulations/Furbearers/Legal-Equipment			1			1		
Kentucky	Yes	See 'Legal Methods and Equipment for Trapping Furbearers'	https://fw.ky.gov/Hunt/Pages/Furbearer-Hunting-and-Trapping.aspx			1			1		
Louisiana	Yes	See 'METHODS OF TAKING FURBEARERS'	https://www.wlf.louisiana.gov/assets/Resources/Publications/Regulations/2020-2021-Trapping-Regulations.pdf			1			1		
Maine	Foot-hold traps are permitted. Snares are prohibited, except for taking beaver in water, and black bear.	See 'Regulations for Specific Types of Traps'	https://www.maine.gov/ifw/hunting-trapping/trapping-laws/regulations.html#specifictraps			1				1	

Maryland	Yes, with restrictions by county.	See 'Legal Trapping Devices'	http://www.eregulations.com/maryland/hunting/furbearer-hunting-trapping/			1			1	
Massachusetts	No	See 'Traps'	https://www.mass.gov/service-details/trapping-information				1			1
Michigan	Foot-hold traps are permitted. Snares are prohibited, except for beaver and otter in water; as well as fox, and coyote during winter season on private land.	See 'Trapping Equipment Regulations'	https://www.michigan.gov/documents/dnr/michigan_fur_harvester_digest_625943_7.pdf			1			1	
Minnesota	Yes	See Trap Setting and Tending	https://files.dnr.state.mn.us/rlp/regulations/hunting/full_regs.pdf?updated=20201229&view=fit&page=mode=bookmarks			1		1		
Mississippi	Yes	See 'Trapping - General Regulations'. Regulations are vague, but indicate foot-holds and snares are permitted, with restrictions.	https://www.mdwfp.com/wildlife-hunting/furbearer-trapping/trapping-regulations.aspx			1		1		
Missouri	Foot-hold traps are permitted. Snares are prohibited, except underwater.	See 'Traps'	https://huntfish.mdc.mo.gov/hunting-trapping/regulations/trapping-regulations			1			1	
Montana	Yes	See definition of 'trap' and references to snares and body-gripping traps throughout regulations	https://fwp.mt.gov/hunt/regulations/furbearer-trapping			1		1		
Nebraska	Yes	§001.03A2	https://www.nebraska.gov/rules-and-regs/regsearch/Rules/Game_and_Parks_Commission/Title-163/Chapter-4.pdf			1		1		
Nevada	Yes	See 'Manner of Hunting Furbearing Mammals', definition of trap, and references to leg-hold traps and snares throughout	http://www.ndow.org/Hunt/Seasons_and_Regulations/Furbearer/Trapping_in_NV/			1		1		
New Hampshire	Foot-hold traps are permitted. Snares are prohibited, except for taking beaver and otter in water.	See 'General Trapping Regulations'	http://www.eregulations.com/wp-content/uploads/2020/08/20NHHD-LR.pdf			1			1	

New Jersey	Only enclosed foot-hold traps are permitted. Snares are permitted only after completing trapper education.	See 'Trapping Regulations'	https://www.njfishandwildlife.com/pdf/2020/trapping_summary20-21.pdf			1			1	
New Mexico	Yes	See 'Legal methods of Taking Furbearers'	http://www.wildlife.state.nm.us/download/publications/rib/2020/furbearer/2020_2021-New-Mexico-Furbearer-Rules-and-Info.pdf			1		1		
New York	Foot-hold traps are permitted. Snares are prohibited.	See 'Legal Traps'	https://www.dec.ny.gov/outdoor/9209.html			1				1
North Carolina	Foot-hold traps are permitted. Snares are permitted only for beaver.	See 'Legal Trap Types'	https://www.ncwildlife.org/Portals/0/Trapping/Documents/Legal_Trap_Types.pdf			1			1	
North Dakota	Yes	See 'Cable Device Restrictions' and 'Trap Set Restrictions'	https://gf.nd.gov/gnf/regulations/docs/furbearer/furbearer-guide.pdf			1		1		
Ohio	Foot-hold traps are permitted. Snares are prohibited on public land, except for beaver and otter. Snares are permitted on private land.	See 'Trapping Regulations'	https://ohiodnr.gov/static/documents/wildlife/laws-regs-licenses/Ohio%20Hunting%20and%20Trapping%20Regulations%20ENGLISH.pdf			1			1	
Oklahoma	Foot-hold traps are permitted. Snares are prohibited.	See 'Legal Means of Taking'	http://www.eregulations.com/oklahoma/hunting/furbearer-regulations/			1				1
Oregon	Yes	See 'Traps and Trapping'	https://www.dfw.state.or.us/resources/hunting/small_game/regulations/docs/Furbearer_Regulations.pdf			1		1		
Pennsylvania	Foot-hold traps are permitted. Snares are permitted only for fox and coyote in late winter, with a 'cable restraint certification'.	See 'Traps' and 'Cable Restraint Regulations'	http://read.nextbook.com/pg/huntingtrapping/20202021/trapping_traps.html			1			1	
Rhode Island	No, except enclosed "Species Specific Traps" may be used with restrictions.	See 'Types of Traps Permitted'	http://www.eregulations.com/rhodeisland/hunting/trapping/				1			1
South Carolina	Foot-hold traps are permitted. Snares are prohibited, except in water.	See 'Legal Traps'	http://www.eregulations.com/southcarolina/huntingandfishing/trapping-commercial-fur-harvesting/			1			1	

South Dakota	Yes	See references to Snares and Body Grip Traps (no explicit reference to foot-hold traps)	https://gfp.sd.gov/trapping/		1			1		
Tennessee	Yes	See 'Legal Trapping Devices and Definitions'	http://www.eregulations.com/tennessee/hunting/manner-means/		1			1		
Texas	Yes	See 'Fur-bearing animals may be legally taken with'	https://tpwd.texas.gov/regulations/outdoor-annual/hunting/fur-bearing-animal-regulations/means-methods		1			1		
Utah	Yes	See R657-11-9. Trapping Devices.	https://wildlife.utah.gov/r657-11.html		1			1		
Vermont	Foot-hold traps are permitted. Snares are prohibited.	See 'What types of traps may be used in Vermont'	https://vtfishandwildlife.com/sites/fishandwildlife/files/documents/Learn%20More/Library/FACTSHEET%20S/FURBEARER%20AND%20TRAPPING/TRAPPING-FURBEARER%20MANAGEMENT%20IN%20VT%20BROCHURE.pdf		1					1
Virginia	Foot-hold traps are permitted. Snares are only permitted with landowner permission.	See 'General Trapping Regulations'	https://dwr.virginia.gov/hunting/regulations/furbearertrapping/		1				1	
Washington	No	See information beneath 'It is unlawful to trap for wild animals'. Prohibited traps include padded foot-hold traps, unpadded foot-hold traps, all snares, and conibear-type traps	https://wdfw.wa.gov/hunting/regulations/trapping				1			1
West Virginia	Yes	See 'Trapping Regulations'	https://www.wvdnr.gov/hunting/Regs2021/Generalregs.pdf		1			1		
Wisconsin	Foot-hold traps are permitted for certain species. Snares are prohibited, except when partially submerged in water.	See 'Trap Size and Placement Restrictions' and 'Methods'	https://p.widencdn.net/rqdpio/WM0002			1			1	

Wyoming	Yes	See Section 2 - Definitions, Section 7 - Authorization to Trap, and Section 9 - Check Period for Leg-Hold Traps, Live Traps, Snares and Quick-Kill Body-Grip Traps	https://wgfd.wyo.gov/Regulations/Regulation-PDFs/REGULATIONS_C_H4.pdf		1				1	
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CITIZEN-PROPOSED ISSUE PAPER

Date: Revised 01/24/2019

ISSUE:	Petition CPW to prohibit recreational and commercial trapping of bobcats in Colorado. The information in this petition references <u>Colorado Parks and Wildlife Regulations: Chapter W-03 - Furbearers and Small Game</u> #300.B “Furbearers” which currently includes bobcats #302.A and #302.B which includes hunting and trapping hours for bobcats #303.E and #17122.A which cover the manner of take of bobcats #324 which includes season dates and bag and possession limits for bobcats
DISCUSSION (FACTS AND FIGURES, EXPLANATION OF ISSUE):	

1. Recreational and commercial hunting and trapping of bobcats severely threatens the safety of Canada Lynxes in Colorado. Bobcats exist and overlap in endangered Canada Lynx territory in Colorado. Both species are elusive, strikingly similar in appearance, and attracted to the same prey such as snowshoe hares, mice, and other rodents. They are medium sized cats with ear tufts, and short, bobbed tails.¹ Their coat colors may vary from reddish brown to gray. Although lynxes are typically thought to have more gray coloration, bobcat coat color can change from brown to gray in the winter² causing them to appear almost identical in appearance to lynxes, which is one of the only features a hunter can use to differentiate a bobcat from a lynx, especially when at a distance or in deep snow. Ear tufts and facial ruffs are not a reliable means of distinguishing the two species either, since heavily furred bobcats will have longer ear tufts and prominent facial ruffs similar to lynxes.³ Furthermore, regulation #302.A and #302.B allow hunting and trapping of bobcats during periods of limited visibility and at night, which makes distinguishing the two species virtually impossible.
2. Canada Lynxes are listed as threatened and have been protected by the federal Endangered Species Act since 2000. Indeed, it is illegal to harm or kill a Canada Lynx. The species was reintroduced into CO with radio collars starting in 1999 after they had been extirpated due to trapping and the fur trade.⁴ Trapping continues to be a significant cause of mortality of Canada lynxes: In areas where trapping of Canada lynxes is permitted, mortality rates have been noted to range from 50 to 90%, and in areas where Canada lynxes are protected, mortality rates have been noted to range from 0 to 27%, increasing when mothers with dependent young are trapped.⁵ Lynxes are attracted to bait set for bobcats, and can be harmed, injured or killed when caught in traps. Trappers are only required to check traps once every 24 hours. Lynxes can suffer from dehydration, exposure to the elements, trauma, fractures, wounds, stress, anxiety, and/or capture myopathy (severe muscle damage as a result of struggling and exertion) and harm may not be immediately apparent or may take days to weeks to manifest.^{6 7} In addition, after the reintroduction of lynxes in Colorado, CPW follow up monitoring revealed gunshot to be one of the leading causes of death between 1999 and 2007.⁸ Although CPW did not have any details regarding these gunshot incidents when I submitted a Colorado Open Records Act (CORA) request, it is likely that some of the shot lynxes were mistaken for bobcats since they had been federally protected since 2000.
3. Persons obtaining a small game license in order to hunt in Colorado are only required to have gun safety education but are not required to read the United States Fish & Wildlife Service's brochure How to Avoid Incidental Take of Lynx While Trapping or Hunting Bobcats and other Furbearers or have any training regarding differentiating a lynx from a bobcat. Hunters and even trained professionals can have great difficulty differentiating bobcats from lynxes.
4. Since lynxes are commonly caught in traps set for bobcats, a district judge recently ruled in federal court that the USFWS must take action to prevent threatened Canada lynxes from being killed by trapping.⁹ The USFWS acknowledges that "incidental take of lynx will be difficult to detect because there is little likelihood that trappers would report bycatch of lynx."¹⁰ Furthermore, trappers are not even remotely qualified to determine if lynxes are harmed or injured when caught in traps. Lynxes may suffer from exposure or injuries that can ultimately be life threatening and not immediately obvious. Finally, regulation #324.B allows unlimited bag and possession of bobcats, which creates more of an incentive for hunters and trappers and threatens the safety of lynxes.¹¹ Similar to USFWS, Colorado Parks and Wildlife needs to be taking a proactive role in protecting Canada lynxes from injury and death that occur as a result of hunting and trapping.
5. Regulation #324.A which allows bobcat hunting annually from December 1st until the end of February threatens pregnant bobcats, bobcats with dependent young, and lynxes with dependent young. Bobcat breeding season occurs in early winter, may occur as early as December¹² and extends until April or later.¹³ After a gestation period of approximately 63 days, female bobcats give birth to an average of two to three kittens, producing only one litter per year.¹⁴ The young

are weaned at two months, but stay with their mothers until they are one year old learning how to survive.¹⁵ Bobcats have low reproductive rates, are not sexually mature until one to two years of age, and provide extended parental care for their young, thus making their population extremely vulnerable to the effects of hunting and trapping. Canada lynxes breed in March or April, giving birth to only 1 or 2 kittens in May, June, or July. Lynx kittens also remain with their mothers for extended periods, at least 9 to 10 months, learning crucial survival skills such as where and how to find shelter and food. Mother lynxes who are injured or killed during bobcat hunting and trapping season would cause orphaned, dependent lynx kittens to die of starvation or exposure to the elements.¹⁶

6. The current regulations that CPW has in place to protect lynxes are inadequate because lynxes have large home ranges, do not stay within artificial boundaries, and a complete assessment of lynx habitat is largely unknown in Colorado. The habitats known to be used by the reintroduced lynxes in Southwest Colorado have been studied by CPW, but the ability to monitor dispersal and habitat use of offspring and future generations of lynxes is limited.¹⁷ Although CPW has a designated “Canada Lynx Recovery Area” in the San Juan and Rio Grande National Forests and associated lands in this area above 9,000 feet, lynxes can migrate long distances, juveniles disperse and migrate through various habitats before establishing home ranges, and habitat use can vary based on prey availability. Regulation #302.B.2.a which prohibits the use of certain lures to attract felids within the lynx core recovery area and areas known to be occupied by Canada lynxes is insufficient since lynxes migrate and exist outside of these areas. Furthermore, there is no plausible method in which to enforce this regulation, and lynxes can be attracted to any bait that is used to attract bobcats. In addition, although CPW has regulations that restrict bobcat hunting at night in/around the lynx core recovery area in the event a hunter takes a lynx, as mentioned above—and acknowledged by the USFWS—incidental takes of lynxes likely go unreported. This regulation does nothing to protect lynxes from the dangers of bobcat hunting and trapping that occur during daylight hours. As habitats change in Colorado, physiological and behavioral adaptations of Canada lynxes will alter their habit ranges and diet. The lynx core recovery area that has been established would change with the plasticity of the species. CPW can greatly increase protections for Canada lynxes in Colorado by prohibiting recreational and commercial bobcat hunting and trapping throughout the state.

7. Hunting and trapping of bobcats is threatening the genetic diversity, demographics, and long term survival of the bobcat population. In fact, bobcat numbers have historically declined dramatically in several areas of the United States due to poor management and unlimited hunting and trapping.^{18 19} The population status of bobcats in Colorado is unknown and CPW does not currently have a reliable method for evaluating bobcat demographics and population trends within the state. The only recent research done on bobcats is a non-invasive genetic sampling study that was conducted mostly in Boulder County in which data is still being analyzed.²⁰ There are no recent studies in other areas of the state, such as the southeast or southwest regions, which have been experiencing higher 3-year average mortality densities than the northeast region. Evaluating bobcat abundance by Harvest per unit effort (HPUE) is unreliable due to variability of data and reporting errors. *Since 2002 there has been a significant increase in annual bobcat mortality in Colorado, which is mostly due to harvesting by hunters and trappers.* During the 2002-03 season 562 bobcats were harvested, and during the 2016-17 season 1811 bobcats were harvested. The most recent data regarding Bobcat Mortality Density in Colorado indicates that the 3-year average mortality density has increased statewide and within all four geographic regions (NE, NW, SE, SW) from the preceding 3-year average.²¹ The current management of bobcats by CPW appears to be based largely on bobcat population data that was collected from 2009 to 2011²² and is not taking into account the increased pressure that bobcats are facing due to high harvest levels in recent years. Bobcat hunters and trappers are also preferentially selecting larger animals, specifically older males. The most recent data indicates that there is indeed a higher percentage of males being harvested in Colorado. Bobcats are slow reproducers, and male bobcats don’t reach sexual maturity until they are 18 months of age,²³ which makes their selective removal a severe threat to the overall stability of the population.

Scientific evidence shows that the selective removal of large, older, breeding males from the population prevents valuable genes from being passed on to future generations, is known to alter social dynamics, sex ratios, age structure, and negatively affects population growth.^{24 25} The bobcat gene pool is being artificially altered and reduced which severely threatens and destabilizes the long term viability of the species. In addition, the negative impacts of human development, habitat loss, and fragmentation need to be considered in long term planning in Colorado since wide ranging carnivores such as bobcats are significantly impacted by these factors.^{26 27}

8. Other states prohibit hunting and/or trapping of bobcats for valid reasons and Colorado should do the same. New Hampshire has protected bobcats since 1989²⁸ due to declining populations and recently rejected a proposal to allow bobcat trapping and hunting due to fierce public opposition and since the proposal would endanger federally protected Canada lynxes.²⁹ In 2015, California banned recreational and commercial bobcat trapping after residents were angered when learning that the industry was still alive when a bobcat trap was found near Joshua Tree National Park.³⁰
9. Very few people are hunting and trapping bobcats in Colorado. Based on information I received during a recent Colorado Open Records Act (CORA) request, only 751 hunters/trappers harvested bobcats during the 2017 season. Of these, 730 were Colorado residents. In the 2016 season, only 728 hunters/trappers harvested bobcats, the 2015 season had 531, the 2014 had 552, and the 2013 had 632.³¹ In 2017, the population of Colorado was estimated to be 5.5 million,³² therefore an extremely small percentage of the population (0.01%) is hunting/trapping bobcats. *However, this minority of the population are killing a very large number of bobcats each year.* In the 2013 season, 1945 bobcats were killed; in the 2014 season, 1634 bobcats were killed; in the 2015 season, 1352 bobcats were killed; and in the 2016 season, 1811 bobcats were killed by hunters and trappers.³³ Anyone with a small game or furbearer license (which are \$21 for residents and \$56 for nonresidents) and a \$10 Habitat Stamp can kill an unlimited number of bobcats. This equates to very little revenue generated specifically for bobcat hunting and trapping.
10. Bobcats should not be killed by the minority for fun or profit. Colorado's natural resources are a public trust to be preserved for present and future generations, instead of being exploited by a few. This is one of the concepts of The North American Model of Wildlife Conservation, a model that most wildlife agencies, including CPW, purport to follow. The Model also states: "The concept of a sportsman can be summarized as one who, when hunting game: • does so primarily for the pursuit or chase; • affords game a "sporting" chance (fair chase); • seeks knowledge of nature and the habits of animals; • derives no financial profit from game killed; • will inflict no unnecessary pain or suffering on game; and • will not waste any game that is killed." ³⁴ The current management system of bobcats in Colorado is not compatible with this Model.
11. Bobcats in Colorado are worth more alive than dead. Colorado generates far more revenue in wildlife viewing than in hunting. Colorado is a popular tourist destination. A 2016 census by USFWS, revealed that 86 million U.S. residents 16 years old and older participated in wildlife watching, as opposed to 11.5 million participating in hunting. A 2011 Survey by USFWS of fishing, hunting, and wildlife watching in Colorado revealed that of those who participated in the survey, 1.8 million participated in wildlife watching, while only 259 thousand participated in hunting. Another study published in 2013 by Southwick Associates revealed that wildlife watching contributed \$2.2 billion to the local economy and supported about 19,000 jobs, while hunting contributed \$919 million and supported about 10,000 jobs. A recent study in Yellowstone estimated a bobcat frequently seen by tourists near the Madison River had an economic value of over \$300,000 due to tourism and visitor activity. This is 1000 times the value had the bobcat been killed and the pelt sold for approximately \$185.³⁵
12. Public attitudes are shifting regarding hunting and trapping, especially with respect to trophy hunting and killing animals for their fur. Hunters usually kill bobcats in order to sell the fur on

the foreign market or keep for themselves as trophies. Bobcats killed for their fur are typically skinned and the rest of the carcass is discarded. The vast majority of Americans vehemently oppose trophy hunting, trapping, and killing animals for their fur, and recent battles over whether to allow bobcat hunting in various states show that many Americans are extremely concerned about the species and oppose bobcat hunting and trapping.³⁶ Some cities such as San Francisco and Los Angeles have even banned the sale of fur. CPW regulations need to reflect the current views of most Americans and Coloradans.

13. Trappers often kill bobcats by illegal and cruel methods that cause the animals to experience unnecessary, prolonged suffering, and pain. Trappers report strangling bobcats to death using a “choke stick” which is a pole with a snare on the end. Trappers state the fur is worth more. One trapper’s father stated to me in a phone conversation on March 26, 2017 that his son strangled a bobcat. He reported that it was “gruesome” and “it takes 3 minutes” and “that’s how trappers do it around here.” Amendment 14 of the Colorado Constitution states: “It shall be unlawful to take wildlife with any leghold trap, any instant kill body-gripping design trap, or by poison or snare in the state of Colorado.”³⁷ Strangulation, or any other method that deprives an animal of oxygen (such as drowning), causes extreme suffering, distress, and pain. As carbon dioxide (which is normally exhaled) accumulates in the brain, it triggers a feeling of “air hunger” and fear, which is extremely painful and intensifies as the condition progresses.³⁸ CPW officials do not appear to have the capacity or resources necessary to regulate the manner in which trappers are killing or taking bobcats. Furthermore, regulation #324.B.2.a requires bobcat pelts to be presented for inspection. In order to be issued the legal possession seal, the regulation requires bobcats to be taken legally in Colorado. Currently, trappers are being issued seals on bobcats taken illegally and there is no way to enforce this without the use of extensive resources.
14. Bobcats naturally reduce rodent populations which is beneficial for the majority of Colorado residents. This helps eliminate the need for toxic rodenticides that recent literature shows are significantly and indiscriminately poisoning non-target species such as domestic pets and wildlife.^{39 40}

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WHO MIGHT BE INTERESTED IN THIS ISSUE? HAVE YOU COMMUNICATED WITH ANY OTHER INTERESTED PARTIES? WHAT INPUT HAVE YOU RECEIVED?

Colorado residents, visitors to Colorado, and animal welfare groups are interested in this issue. I have communicated with hundreds of citizens in the past year and a half (CO residents and nonresidents) who are interested in this issue. Almost all of the parties I have spoken to had no idea that bobcats were legally allowed to be hunted or trapped in the state of Colorado. These parties were appalled that recreational and commercial bobcat hunting was permitted in Colorado and eagerly support a ban. In addition, I have spoken to dozens of people in southwestern Colorado—where there is habitat suitable for lynxes—who are extremely concerned with protecting the species from the detrimental effects of recreational and commercial bobcat hunting and trapping. These parties also support a ban on recreational and commercial bobcat hunting in Colorado.

ALTERNATIVES: PLEASE INDICATE THE PROBABLE OUTCOME IF THIS PETITION IS ACCEPTED, AS WELL AS THE IMPACT OF ALTERNATIVES TO THIS PETITION:

1. Bobcat populations will likely stabilize and become more genetically diverse in Colorado if the petition is accepted. According to the CPW Furbearer Management Report 2016-2017 Harvest Year bobcat populations appeared to be increasing in some regions of Colorado, while decreasing in others between 2012 to 2016, but this is not based on scientific data and the overall status and demographics of the population is unknown. Scientific evidence shows that wild animal populations self-regulate based on food availability and carrying capacity of the environment.^{41 42}
2. Preferential selection of bobcat harvests by hunters and trappers negatively impacts the population and is unsustainable.
3. Lynx populations would likely increase in Colorado if the petition is accepted. CPW estimates there are currently only as few as 150 to 250 Canada lynxes in the state. If the petition is not accepted, lynxes will likely continue to be harmed or killed in violation of federal law.
4. CPW will be able to eliminate the resources currently required for issuing seals for bobcat pelts and monitoring illegal methods of take if the petition is accepted.
5. The current management system is not consistent with the North American Model of Wildlife Conservation. Bobcats are being killed by methods that inflict prolonged, unnecessary pain and suffering. They are also being commercialized for their pelts so hunters and trappers can derive financial profit.

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PETITION PROPOSED BY:	Christine Capaldo, DVM
PETITION WRITTEN BY:	Christine Capaldo, DVM
DATE SENT TO THE COMMISSION:	November 23, 2018



COLORADO

Parks and Wildlife

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Exhibit C

April 26, 2019

To: Members of the Colorado Parks and Wildlife Commission

From: Colorado Parks and Wildlife Terrestrial Section

Subject: Summary of Colorado's Canada Lynx Status, Reintroduction and Monitoring Program, and Bobcat Status and Harvest Management

In preparation for the 2019 May Commission Meeting agenda item: "Petition CPW to prohibit recreational and commercial trapping of bobcats in Colorado," Colorado Parks and Wildlife (CPW) provides the following briefing on Colorado's Canada lynx status, reintroduction and monitoring program, and bobcat status and harvest management program.

Canada Lynx (*Lynx canadensis*)

Status

Lynx were listed as a threatened species under the Endangered Species Act (ESA) in 2000. After conducting a Species Status Assessment, the United States Fish and Wildlife Service (USFWS) wrote a memo in 2017 indicating that they believe that the species should be delisted from the ESA. While the Proposed Rule to delist has not yet been published in the Federal Register, it is anticipated that this will occur during Fall 2019.

Reintroduction Program

Beginning in 1999, lynx captured in Canada and Alaska were released into the remote San Juan Mountains in southwest Colorado. From 1999 to 2006, a total of 218 Canada lynx were reintroduced to the state. By monitoring radio- and satellite-collars that each animal was equipped with, biologists assessed the status of the species and the progress toward re-establishing a self-sustaining population of lynx to Colorado.

Monitoring Program

Reintroduced lynx were monitored by CPW for over a decade to track the population's progress. In the summer of 2010, all of CPW's benchmarks for successful lynx reintroduction were met. Monitoring of the lynx population in southwest Colorado continues using trail cameras and snow tracking. CPW biologists are able to assess the population trend of the species in the region, which appears to be stable.

Conservation Plan

In 2002, a conservation plan adopted by CPW and the USFWS created a mechanism where both bobcat hunters and landowners would be protected from prosecution if their hunting or livestock depredation control activities resulted in the take of a lynx in Colorado. Up to 2 animals per year per activity (hunting or livestock protection) were permitted; this level has never been exceeded in Colorado.



CPW also has developed numerous regulations to minimize the likelihood of incidental take of lynx by bobcat hunters including education, timing, geography, and notification responses to take if a lynx is accidentally captured or killed. To date, there has not been any reported incidental take of lynx from traps or snares.

Bobcat (*Lynx rufus*)

Status

Bobcats are not listed as a federally protected species under the Endangered Species Act. Approximately 1.4-2.6 million bobcats are estimated to live in the United States (Roberts, 2008), an estimate referenced by the USFWS to explain the population status of the species.

Colorado requires all harvested bobcats to be checked by CPW, which allows collection of a significant amount of biological, spatial and law enforcement information. Based on this information, Colorado's statewide bobcat population is stable or increasing.

Harvest Management

Bobcats are a small-game furbearer species in Colorado. The harvest season for bobcats is set for Dec 1-Feb 28 of each year. The bulk of the season occurs before the onset of bobcat mating behavior and the season closes 2 months in advance of female bobcats giving birth. Bobcat kittens are typically born in late April/May and accompany their mother until dispersing in later fall and early winter.

Annual bobcat harvest has ranged from a low of around 1,300 animals to just under 2,000 animals over the last 10 years. Bobcats may be harvested with the use of hounds, predator calls, opportunistically, and with cage traps (live traps).

In 2012, the Parks and Wildlife Commission approved a series of 5 bobcat management guidelines (Annual Mortality Density, Harvest Gender Composition, Harvest Per Successful Unit Effort, Prey Abundance, CPW Manager Knowledge-Professional Judgment) to maintain long-term, self-sustaining bobcat populations in suitable and occupied habitat in Colorado, while also providing diverse recreational opportunities for bobcat harvest. Bobcat population trajectory is based on a "preponderance of data" standard among the 5 guidelines. No more than 2 of the 7 bobcat management areas may exceed a majority of the monitoring guidelines in a given year. If this were to occur, then the regulations governing bobcat seasons, harvest methods, and/or bag limits will be reexamined and harvest constraints may be proposed.

Colorado's bobcat populations are considered stable or increasing, based on examination of population performance against the monitoring guidelines. Colorado's bobcat season timing and length, limitations on method of take, and the annual data collected from mandatory check of every harvested bobcat supports the management of a viable bobcat population. There is no evidence that bobcat harvest must be reduced or eliminated to sustain bobcat populations at any spatial scale in Colorado.

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COLORADO

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Exhibit D

May 9, 2019

To: The Colorado Parks and Wildlife Commission

From: Terrestrial Section, Colorado Division of Parks and Wildlife

Subject: Division response to citizen petition to prohibit bobcat trapping in Colorado

The Petitioner makes a variety of allegations supporting her request to prohibit recreational and commercial trapping, and hunting of bobcats in Colorado. Many of the allegations relate to matters within the Division's biological and game-management expertise. In this response, we identify significant allegations we believe are inaccurate or incomplete, and provide additional evidence to inform the Commission's decision. We offer no response to allegations outside the Division's expertise.

To the extent the Commission is interested in the Division's opinion, we do not believe there is adequate scientific evidence to support the Petition.

Citizen Petition Paragraph 1:

Recreational and commercial hunting and trapping of bobcats severely threatens the safety of Canada Lynxes in Colorado. Bobcats exist and overlap in endangered Canada Lynx territory in Colorado. Both species are elusive, strikingly similar in appearance, and attracted to the same prey such as snowshoe hares, mice, and other rodents. They are medium sized cats with ear tufts, and short, bobbed tails. Their coat colors may vary from reddish brown to gray. Although lynxes are typically thought to have more gray coloration, bobcat coat color can change from brown to gray in the winter causing them to appear almost identical in appearance to lynxes, which is one of the only features a hunter can use to differentiate a bobcat from a lynx, especially when at a distance or in deep snow. Ear tufts and facial ruffs are not a reliable means of distinguishing the two species either, since heavily furred bobcats will have longer ear tufts and prominent facial ruffs similar to lynxes. Furthermore, regulation #302.A and #302.B allow hunting and trapping of bobcats during periods of limited visibility and at night, which makes distinguishing the two species virtually impossible.

Division Response:



- 1) There is no evidence that hunting and trapping bobcats severely threatens the safety of Canada lynx in Colorado.
 - a. There are no records of a bobcat hunter or trapper taking a lynx in Colorado after the species was reintroduced in 1999. The Commission's regulations require bobcat hunters and trappers to present any bobcats or their pelts to the Division for inspection. Ch. W-3, #324(B)(2)(A). The regulations also require bobcat hunters and trappers (among others) to report any lynx accidentally captured, injured, or killed. Ch. W-10, #1002(B)(3). Despite these requirements, there are no records of bobcat hunters or trappers taking lynx in Colorado.
 - b. There is no evidence that incidental trapping significantly threatens Colorado's lynx population. In a 2017 species status assessment, the United States Fish and Wildlife Service (FWS) reported "there is no evidence that incidental trapping has had population-level impacts on lynx in the DPS range," which includes Colorado.¹ In discussing western Colorado's lynx population, the FWS cited an Interagency Lynx Biology Team finding that "[i]ncidental capture of lynx is possible, but unlikely."² The FWS summarized its analysis of the current conditions for lynx in western Colorado by stating, "there are currently many more resident lynx in this unit than likely occurred historically, and many more than were known or suspected at the time the [population segment] was listed."³ Notably, the FWS allows incidental take of two lynx per year by bobcat hunters in Colorado. This limit was set in 2002 and has never been met.
- 2) The Commission's regulations minimize the risk of mistaking lynx for bobcat at night. Specifically, the regulations establish a Canada lynx recovery area, Ch. W-3, #300(A), and provide that "night hunting permits for bobcat will not be issued on public lands in the Canada lynx recovery area where Canada lynx are known to be present," Ch. W-3, #303(E)(8).

¹ Species Status Assessment for the Canada Lynx Contiguous United States Distinct Population Segment (p. 59) (https://www.fws.gov/mountain-prairie/es/species/mammals/lynx/SSA2018/01112018_SSA_Report_CanadaLynx.pdf).

² *Id.* at 166.

³ *Id.*

Citizen Petition Paragraph 2:

Canada Lynxes are listed as threatened and have been protected by the federal Endangered Species Act since 2000. Indeed, it is illegal to harm or kill a Canada Lynx. The species was reintroduced into CO with radio collars starting in 1999 after they had been extirpated due to trapping and the fur trade. Trapping continues to be a significant cause of mortality of Canada lynxes: In areas where trapping of Canada lynxes is permitted, mortality rates have been noted to range from 50 to 90%, and in areas where Canada lynxes are protected, mortality rates have been noted to range from 0 to 27%, increasing when mothers with dependent young are trapped. Lynxes are attracted to bait set for bobcats, and can be harmed, injured or killed when caught in traps. Trappers are only required to check traps once every 24 hours. Lynxes can suffer from dehydration, exposure to the elements, trauma, fractures, wounds, stress, anxiety, and/or capture myopathy (severe muscle damage as a result of struggling and exertion) and harm may not be immediately apparent or may take days to weeks to manifest. In addition, after the reintroduction of lynxes in Colorado, CPW follow up monitoring revealed gunshot to be one of the leading causes of death between 1999 and 2007. Although CPW did not have any details regarding these gunshot incidents when I submitted a Colorado Open Records Act (CORA) request, it is likely that some of the shot lynxes were mistaken for bobcats since they had been federally protected since 2000.

Division Response:

- 1) In 2000, the FWS listed the contiguous United States distinct population segment (DPS) of the Canada lynx as a threatened species under the Endangered Species Act. In its most recent five-year review, the FWS recommended removing this lynx DPS from the list of endangered and threatened species.⁴
- 2) There is no evidence that trapping is a significant cause of mortality of Canada lynx in Colorado.
 - a. As noted above, there are no records of a lynx being captured in a bobcat trap since the species was reintroduced.

⁴ Canada Lynx (*Lynx Canadensis*) 5-Year Review: Summary and Evaluation (p. 7) (https://www.fws.gov/mountain-prairie/es/species/mammals/lynx/SSA2018/01112018_5YR_Signed_CanadaLynx.pdf).

- b. The Petitioner cites lynx mortality rates in areas outside Colorado, and there is no evidence these mortality rates apply in Colorado. Unlike some areas outside Colorado, the only furbearer trapping allowed in Colorado is live trapping with cage or box traps. Ch. W-3, #303(E). Under the Commission's regulations, hunters are required to check traps every 24 hours and certain lures and baits "meant to attract felids are not permitted in the Canada lynx recovery area or on properties known to be occupied by Canada lynx." Ch. W-3, #302(B)(2). In the course of a 12-year study in Maine, researchers documented 52 lynx "caught in cage traps multiple times (339 captures) without any injuries requiring veterinarian care."⁵
- c. Between 1999 and 2007, there were 102 recorded deaths of Canada lynx in and around southwestern Colorado. Of those, 14 were caused by gunshot. There is no evidence that any of the gunshot-related deaths was the result of otherwise lawful bobcat hunting or trapping.

Citizen Petition Paragraph 3:

Persons obtaining a small game license in order to hunt in Colorado are only required to have gun safety education but are not required to read the United States Fish & Wildlife Service's brochure How to Avoid Incidental Take of Lynx While Trapping or Hunting Bobcats and other Furbearers or have any training regarding differentiating a lynx from a bobcat. Hunters and even trained professionals can have great difficulty differentiating bobcats from lynxes.

Division Response:

- 1) The Division provides educational materials to alert hunters of the presence of lynx and to help citizens, sportsmen, and sportswomen correctly identify the species to avoid accidental take. These materials include:
 - a. a color photo of Canada lynx in the Division's small game brochure;
 - b. a webpage dedicated to identifying lynx; and
 - c. a brochure titled "Avoiding Incidental Lynx Take While Trapping and Hunting."⁶

⁵ Incidental Take Plan for Maine's Trapping Program (p. 68) (https://www.fws.gov/mainefieldoffice/PDFs/Lynx_ITP_submitted_to_USFWS_10_28_14_with_FINAL_minor_amendments_09242015.pdf).

⁶ <http://cpw.state.co.us/Documents/Hunting/SmallGame/AvoidLynxTake.pdf>

- 2) The Division's biological field staff (biologists, wildlife managers) have been trained to identify and distinguish lynx from bobcats. Each bobcat mortality form used at mandatory CITES checks includes information for distinguishing lynx and bobcat, and a color photo and similar information are given to all Division staff that check and seal harvested bobcats. We have no records of any misidentification of lynx as bobcat during these checks.

Citizen Petition Paragraph 5:

Regulation #324.A which allows bobcat hunting annually from December 1st until the end of February threatens pregnant bobcats, bobcats with dependent young, and lynxes with dependent young. Bobcat breeding season occurs in early winter, may occur as early as December 12 and extends until April or later. After a gestation period of approximately 63 days, female bobcats give birth to an average of two to three kittens, producing only one litter per year. The young are weaned at two months, but stay with their mothers until they are one year old learning how to survive. Bobcats have low reproductive rates, are not sexually mature until one to two years of age, and provide extended parental care for their young, thus making their population extremely vulnerable to the effects of hunting and trapping. Canada lynxes breed in March or April, giving birth to only 1 or 2 kittens in May, June, or July. Lynx kittens also remain with their mothers for extended periods, at least 9 to 10 months, learning crucial survival skills such as where and how to find shelter and food. Mother lynxes who are injured or killed during bobcat hunting and trapping season would cause orphaned, dependent lynx kittens to die of starvation or exposure to the elements.

Division Response:

- 1) The literature indicates the majority of bobcat mating in the Rocky Mountain states takes place in March.⁷
- 2) The bobcat season in Colorado is December 1 to February 28. Bobcat literature from other Rocky Mountain states (namely, Wyoming, Idaho, Montana, and Utah) suggests bobcats generally give birth in April and May, with a small proportion of new kittens observed in March and later in the summer.⁸

⁷ Crowe, D. M., *A model for exploited bobcat populations in Wyoming*, J. Wildlife Mgmt. 39(2), 409 (1975).

⁸ Bailey, T., *Den ecology, population parameters and diet of eastern Idaho bobcats*, Proceedings of the Bobcat Research Conference, Front Royal, Virginia (Oct. 16-18, 1979);

- 3) Lynx parturition (birth) dates occur well after the close of bobcat season. From 2003-2007 (when lynx reproduction was intensely monitored during the Colorado reintroduction project) all dens and newborn kittens were detected in May and June.⁹ There are no known instances of lynx being captured in bobcat traps in Colorado, or of any loss of young dependent lynx resulting from orphaning from hunting or trapping.

Citizen Petition Paragraph 7:

Hunting and trapping of bobcats is threatening the genetic diversity, demographics, and long term survival of the bobcat population. In fact, bobcat numbers have historically declined dramatically in several areas of the United States due to poor management and unlimited hunting and trapping. The population status of bobcats in Colorado is unknown and CPW does not currently have a reliable method for evaluating bobcat demographics and population trends within the state. The only recent research done on bobcats is a non-invasive genetic sampling study that was conducted mostly in Boulder County in which data is still being analyzed. There are no recent studies in other areas of the state, such as the southeast or southwest regions, which have been experiencing higher 3-year average mortality densities than the northeast region. Evaluating bobcat abundance by Harvest per unit effort (HPUE) is unreliable due to variability of data and reporting errors. Since 2002 there has been a significant increase in annual bobcat mortality in Colorado, which is mostly due to harvesting by hunters and trappers. During the 2002-03 season 562 bobcats were harvested, and during the 2016-17 season 1811 bobcats were harvested. The most recent data regarding Bobcat Mortality Density in Colorado indicates that the 3-year average mortality density has increased statewide and within all four geographic regions (NE, NW, SE, SW) from the preceding 3-year average. The current management of bobcats by CPW appears to be based largely on bobcat population data that was collected from 2009 to 2011 and is not taking into account the increased pressure that bobcats are facing due to high harvest levels in recent years. Bobcat hunters and trappers are also preferentially selecting larger animals, specifically older males. The most recent data indicates that there is indeed a higher percentage of males being harvested in Colorado. Bobcats are slow reproducers, and male bobcats don't

Brainerd, S. M., *Reproductive ecology of bobcats and lynx in western Montana*, Thesis, University of Montana (1981); Crowe, D. M., *A model for exploited bobcat populations in Wyoming*, J. Wildlife Mgmt. 39(2), 408-415 (1975); Gashwiler, J. S., et al., *Breeding habits of bobcats in Utah*, J. Mammalogy 42(1):76-84 (1961).

⁹ Shenk, T.M., *Post-release monitoring of lynx reintroduced to Colorado*, Job Progress Report July, 1-57, Colo. Div. of Wildlife (2007).

reach sexual maturity until they are 18 months of age, which makes their selective removal a severe threat to the overall stability of the population. Scientific evidence shows that the selective removal of large, older, breeding males from the population prevents valuable genes from being passed on to future generations, is known to alter social dynamics, sex ratios, age structure, and negatively affects population growth. The bobcat gene pool is being artificially altered and reduced which severely threatens and destabilizes the long term viability of the species. In addition, the negative impacts of human development, habitat loss, and fragmentation need to be considered in long term planning in Colorado since wide ranging carnivores such as bobcats are significantly impacted by these factors.

Division Response:

- 1) The literature suggests bobcat populations in North America are increasing.¹⁰ Bobcat are adaptable carnivores. They are the most common North American wild cat species, and are widespread in North America and throughout Colorado.
- 2) Since 2012, the Division has used five bobcat management guidelines to maintain long-term, self-sustaining bobcat populations in Colorado:
 - a. Annual mortality density. As a guideline, annual mortality density should not exceed 2.55 bobcat mortalities per 100 km². We assume an average population density of not more than 15 bobcat per 100 km² across modeled habitat; a mortality threshold of 2.55 bobcat per 100 km² equates to 17% of that average population density. Colorado's three-year average mortality density through 2016-2017 is approximately 1.3 bobcats per 100 km², which is well below the mortality density threshold.
 - b. Harvest gender composition. As a guideline, female harvest composition should not equal or exceed 50% for more than two consecutive years at any spatial scale. Data suggest males are more vulnerable to harvest than females and are usually more prevalent in harvest records. As harvest rate increases, females become more prevalent in harvests as the relative number of males declines. Managers focus on harvest strategies that maintain females in the population rather than males because reproducing females are most important for sustaining populations. Because an increase in the proportion of females harvested would

¹⁰ Roberts, N. M., et al., *Bobcat population status and management in North America: evidence of large-scale population increase*, J. Fish & Wildlife Mgmt. 1(2), 169-74 (2010).

presumably decrease productivity, this is a method of monitoring population impacts. The 50% threshold is not currently met at any monitoring scale.

- c. Harvest Per Successful Unit Effort (HPSUE). As a guideline, there should be no more than two consecutive year-to-year increases in the hunt days per bobcat harvested at any spatial scale. The HPSUE measures the effort hunters need to put forth to harvest each bobcat. Presumably, increasing or decreasing effort per bobcat harvested should be related on a broad scale to the relative abundance of bobcats. Since cage-trapped bobcats can be released and bias the HPSUE, we will use hunted bobcat data and not live-trapped animal information. The HPSUE required five years to collect baseline data, so the upcoming 2017-2018 analysis will be the first year this is applied.
 - d. Prey abundance. As a guideline, statewide three-year cottontail rabbit harvest and cottontail rabbit harvest per hunter should not drop more than 10% below the fifteen-year average. Cottontail rabbits are a primary prey item for bobcat. Although a wide variety of factors can influence cottontail rabbit harvest in Colorado, there is a moderate correlation between rabbit harvest and bobcat harvest. Rabbit harvest can provide information regarding food availability for bobcats and therefore some indication of bobcat population trends. Data through the 2016-2017 season places the most recent three-year average cottontail rabbit harvest at just below the fifteen-year average, while the harvest per hunter is 6% below the fifteen-year average. Therefore, recent cottontail rabbit abundance appears to be average and probably not influencing bobcat population trends.
 - e. CPW manager knowledge and professional judgment. During the course of work activities, wildlife managers and biologists gain anecdotal information about the status of bobcat populations based upon their own observations and the observations of landowners, hunters, trappers, other agency personnel, and other recreationists. On an annual basis, managers and biologists are polled regarding their perceptions of bobcat population status. Polling responses are converted to numeric values ranging from +2 (increasing) to -2 (decreasing), averaged, then analyzed at different geographic scales. No survey results were available in 2016-2017, and 2015-2016 survey results showed only one bobcat unit with a declining manager survey average.
- 3) These metrics are designed to provide information on the size and health of bobcat populations. We do not consider any single metric conclusive, but

evaluate them together to determine overall population trends. To safeguard Colorado's bobcat populations, if the majority of these metrics exceed the management guidelines in more than two of the seven bobcat management areas in a given year, we will re-examine and may recommend adjusting the regulations governing bobcat seasons, harvest methods, or bag limits.

- 4) As explained in the 2016-2017 Colorado Furbearer Management Report,¹¹ these metrics do not exceed the management guidelines at any spatial scale (and have not since 2012). Indeed, the guidelines suggest Colorado's bobcat populations are stable and may be increasing in some areas. Colorado's bobcat season timing and length, limitations on methods of take, and the annual data collected from mandatory check of every harvested bobcat supports the management of a viable bobcat population. There is no evidence that bobcat harvest must be reduced or eliminated to sustain bobcat populations at any spatial scale in Colorado.

Citizen Petition Paragraph 10:

Bobcats should not be killed by the minority for fun or profit. Colorado's natural resources are a public trust to be preserved for present and future generations, instead of being exploited by a few. This is one of the concepts of The North American Model of Wildlife Conservation, a model that most wildlife agencies, including CPW, purport to follow. The Model also states: "The concept of a sportsman can be summarized as one who, when hunting game: • does so primarily for the pursuit or chase; • affords game a "sporting" chance (fair chase); • seeks knowledge of nature and the habits of animals; • derives no financial profit from game killed; • will inflict no unnecessary pain or suffering on game; and • will not waste any game that is killed." The current management system of bobcats in Colorado is not compatible with this Model.

Division Response:

- 1) Bobcat harvest in Colorado is highly regulated and sustainable. The biological data collected from hunted and trapped bobcats (which could not be obtained otherwise without significant expense) provides conservation benefits by informing management decisions. We believe "trapping and furbearer managements play an important role in modern wildlife conservation and contribute not only to sustaining furbearer populations, but healthy populations of many other species as well."¹²

¹¹ https://cpw.state.co.us/Documents/Hunting/SmallGame/Statistics/2016-2017_Furbearer_Report.pdf

¹² White, H.B., et al., *Trapping and furbearer management in North American wildlife conservation*, Int'l J. Env'tl. Stud., Vol. 72:5, 756-69 (2015).

Citizen Petition Paragraph 14:

Bobcats naturally reduce rodent populations which is beneficial for the majority of Colorado residents. This helps eliminate the need for toxic rodenticides that recent literature shows are significantly and indiscriminately poisoning non-target species such as domestic pets and wildlife.

Division Response:

- 1) Bobcats are one of several mammalian, avian, and reptilian predators in Colorado that eat rodents. And as explained in the most recent Colorado Furbearer Management Report, bobcat populations are stable or increasing at all spatial scales and are found in nearly all habitat types in Colorado.



COLORADO

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Exhibit E

April 28, 2020

To: The Colorado Parks and Wildlife Commission

From: Krista Heiner, Regulations Manager

Subject: Division response to HSUS petition to prohibit trapping in Colorado

The Humane Society of the United States (HSUS) petitioned the Commission to amend regulations in Ch. W-3 to prohibit taking wildlife using all traps, including live cage or box traps. HSUS argues that a full trapping ban is necessary to comply with Colorado law and that swift fox (*Vulpes velox*) are particularly vulnerable to trapping. Because these arguments involve matters within the Division of Parks and Wildlife's expertise, we offer the following information to inform the Commission's decision on HSUS's petition.

Furbearer trapping as authorized by Commission regulation is consistent with the Colorado Constitution. Furthermore, the Commission has responsibly regulated trapping since Constitutional Amendment 14 was approved by voters. Regulated trapping is also consistent with the North American Model of Wildlife Conservation. Finally, all available data indicate that swift fox populations in Colorado are sustainable. For these reasons, the Division recommends the Commission deny the petition.

Colorado Law

The Commission's regulations allow hunters to use live traps, limited to cage or box traps, to take furbearers in limited circumstances. See Ch. W-3, #302-#303. HSUS argues these regulations are inconsistent with Amendment 14 to the Colorado Constitution, which provides: "It shall be unlawful to take wildlife with any leghold trap, any instant kill body-gripping design trap, or by poison or snare." Colo. Const. art. 18, § 12b(1); see also § 33-6-203(1), C.R.S. (implementing Amendment 14).

Amendment 14 does not expressly prohibit all traps, but only certain trap designs—namely, leghold traps and instant kill body-gripping traps. Colo. Const. art. 18, § 12b(1). Nevertheless, HSUS argues the amendment "was clearly intended to prohibit recreational and commercial killing of wildlife using all traps, including box traps." At least one court has rejected this argument. See *Sinapu v. Colo. Wildlife Comm'n*, No. 06CV8933, Order (Denver Dist. Ct. April 10, 2008).



Swift Fox

HSUS argues that swift fox are easily trapped and vulnerable to extirpation in Colorado. Although the species has no heightened legal protection, the Division has long participated in swift fox conservation efforts and closely monitored Colorado's swift fox population. The best available evidence indicates swift fox occupy a high percentage (71-87%) of suitable habitat in Colorado and the swift fox population is stable.

The swift fox is not federally listed, and the species is not on Colorado's endangered, threatened, or nongame wildlife list. In Colorado, swift fox are classified as "furbearers," § 33-1-102(17), C.R.S., and hunters with a small game or furbearer license may take swift fox from November through February, Ch. W-3, #304(B), #323(A). Among the lawful methods of taking swift fox are live traps, limited to cage or box traps. Ch. W-3, #303(E)(4).

Despite the absence of heightened legal protection, the Division participates in the Swift Fox Conservation Team (SFCT).¹ The SFCT has adopted a Conservation Assessment and Conservation Strategy (CACS), with the goal of maintaining or restoring range-wide swift fox populations to ensure long-term species viability (Dowd Stukel 2011). As part of its contribution to the CACS (Kahn et al. 1997), the Division monitors the status of swift fox in Colorado every five years. The next scheduled monitoring survey will be in 2021.

These surveys and other occupancy studies confirm that swift fox have consistently occupied a high percentage of suitable shortgrass prairie habitat in eastern Colorado. Specifically, Finley et al. (2005) estimated 82% occupancy in 1995; Martin et al. (2007) estimated 71% occupancy in 2004; and CPW estimated 87% occupancy in 2011 (Stratman 2012) and 85% occupancy in 2016 (Stratman 2017). In short, occupancy does not appear to have changed significantly since 1995. Notably, the Commission did not authorize a swift fox harvest from 1995 to 2009, which suggests post-2009 harvests have not decreased swift fox occupancy.

Occupancy estimates do not reveal species abundance or provide population estimates. However, the Division can roughly estimate swift fox abundance by applying densities recorded in the literature to estimates of occupied habitat in Colorado. In CPW's most recent survey, Stratman (2017) estimated that swift fox

¹ The Division, along with other several other state, tribal and federal agencies, formed SFCT in 1994. At that time, the United States Fish and Wildlife Service was evaluating a petition to list the swift fox under the Endangered Species Act. The swift fox has not been a candidate for listing since 2001, but the Division has continued to participate in the SFCT.

occupied 33,696 km² of eastern Colorado short-grass prairie in 2016. Range-wide, observed swift fox densities vary from 7-110 swift fox/100 km² (Fitzgerald et al. 1983, Harrison et al. 2002). In northern Colorado, Fitzgerald et al. (1983) recorded swift fox densities of 20-40/100 km² in poor habitats and densities of 70-110/100 km² in better conditions.² The literature suggests swift fox density on Colorado's eastern plains is high (Fitzgerald et al. 1983). But assuming a conservative density of 18-30 swift fox/100 km² (Shauster et al. 2002, Fitzgerald et al. 1983, Fitzgerald and Roell 1995, Fitzgerald 1997) with a mid-point density of 24/100 km² in occupied habitat, a projection of approximately 8,000 swift fox could be put forth for Colorado.

Taking this projection a step further, the Division can estimate an annual sustainable harvest rate. For Colorado's swift fox population, the Division believes an annual harvest rate of up to 15% is sustainable. Assuming a conservative population density of 24/100 km², this results in an annual harvest of 3.6/100km² (approximately 1,200 animals total). The Division has therefore set an annual harvest density threshold of 3.6 swift fox per 100km².

The Commission has allowed swift fox harvest since 2009. Following the inception of harvest, the Division used annual surveys to monitor the harvest but the available licensing structure made it difficult to estimate swift fox harvest totals with precision. Hunters may lawfully take swift fox (and other furbearers) with either a small game or furbearer license. Surveying every license-holder in this large pool was impractical, so the Division surveyed a sample. However, getting a representative sample was difficult (only a small proportion of small game and furbearer license-holders hunt swift fox), so the survey harvest estimates were highly variable and imprecise.³ Because harvest surveys resulted in imprecise estimates, the Division stopped conducting them after 2015 and has proposed changing the license structure to allow better harvest estimates.

An informal method of estimating swift fox harvest is inspecting pelts at the annual Trappers and Predator Hunters Association fur sale, which is the only fur sale in Colorado. The number of pelts varies significantly from year to year, but from 2009 to 2020 an average of 175 swift fox pelts were offered for sale each year—a small fraction of the sustainable harvest rate.

Despite the lack of precise harvest estimates, the occupancy and density studies described above indicate a widespread and stable swift fox population in Colorado. Indeed, Colorado's robust swift fox population has allowed the Division to help other SFCT members reestablish the species by providing donor animals for transplant. For example, from 2003 to 2006 CPW provided swift fox to Badlands National Park in

² The latter is one of the highest documented densities in the swift fox range.

³ The high 2015 estimate that HSUS cites in its petition is a good example of this variability and imprecision.

South Dakota, and in 2009 and 2010 CPW provided animals to the Oglala Sioux on the Pine Ridge Reservation. An informal indicator of high swift fox density in Colorado is the time required to fulfill these donor requests—in one case, it took only two nights for the Division to capture the donor animals requested.

This evidence indicates swift fox are widespread in Colorado's shortgrass prairie habitat and the population is stable in Colorado.

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