

BEFORE THE MONTANA FISH AND WILDLIFE COMMISSION  
OF THE STATE OF MONTANA

In the matter of the adoption of New     ) RULEMAKING PETITION  
Rules pertaining to the trapping of     )  
fishers in Montana                         )  
   )

TO: All Concerned Persons

**1. PETITIONERS**

- a. The Center for Biological Diversity, Andrea Santarsiere, P.O. Box 469, Victor, ID, 83455;
- b. Friends of the Bitterroot, Larry Campbell, P.O. Box 442, Hamilton, MT, 59840;
- c. Friends of the Wild Swan, Arlene Montgomery, P.O. Box 103, Bigfork, MT, 59911;
- d. Friends of the Clearwater, Gary Macfarlane, P.O. Box 9241, Moscow, ID, 83843;
- e. Western Watersheds Project, Josh Osher, P.O. Box 1135, Hamilton, MT, 59840.

**2. PETITIONERS WILL BE AFFECTED**

The **Center for Biological Diversity** is a non-profit conservation organization dedicated to the conservation of native species and their habitats through science, policy, and environmental law. The Center is supported by more than 1 million members and supporters, including in Montana. The Center has been working to protect the Northern Rockies fishers for over a decade and believes the trapping of fishers is harming the Northern Rockies fisher population.

**Friends of the Bitterroot** is a 31-year-old non-profit grassroots conservation organization working to protect wildlife and wildland habitat in the Northern Rockies Region. We have been actively involved with Northern Rockies fisher protection for a decade and have been active in camera monitoring for fisher in the Bitterroot for five years.

**Friends of the Wild Swan**'s mission is to preserve the water quality, fish, wildlife and old-growth forests in northwest Montana. Since 1987 we have been actively protecting fisher habitat in old-growth and riparian forests on state and federal lands. We believe that trapping represents a real threat to this rare and imperiled animal.

**Friends of the Clearwater** is a 501(c)(3) grassroots conservation organization dedicated to preserving the wild lands and ecological integrity of the Clearwater River Basin and surrounding areas. The Clearwater Basin and immediate surroundings, including land in Montana where fisher trapping is allowed, represent perhaps the most important habitat for fishers in the Northern Rockies. Friends of the Clearwater members and the organization have been active in public processes where decisions are made that affect fisher habitat. We participate in public involvement processes through comments, public meetings, and open houses.

**Western Watersheds Project** ("WWP") is a nonprofit group working to protect and restore watersheds and wildlife on public lands throughout the West. With over 2,00 members and supporters in western states, WWP has a 25-year history in advocating for native species, including the Northern Rockies fisher population. WWP has an interest in restoring native ecosystems to full health and function, which includes recovery of rare species whose ecological roles are currently vacant, causing ecological imbalance.

All Petitioners are actively involved in seeking ways to protect the fishers in the Northern Rockies. As proponents of the conservation and protection of fishers, Petitioners are negatively affected by the intentional trapping of fishers in Montana.

### **3. REASONS FOR PROPOSED AGENCY ACTION**

The fisher (*Pekania pennanti*) is a medium-sized, cat-like carnivore with a long, slender brown body, short legs and a long, bushy tail. An opportunistic predator, a fisher's diet generally consists largely of snowshoe hares, squirrels, small rodents, and birds, but carrion and berries are also consumed. (Powell 1993, p. 18, 102; Jones 1991, p. 87). Fishers are also one of few predators that successfully prey upon porcupines. (Powell 1993, p. 135). Fishers are estimated to live up to 10 years of age. (Powell *et al.* 2003, p. 644). However, fishers generally have slow reproductive rates: they may not start breeding until 2 years, with birth occurring nearly 1 year after copulation. (Powell *et al.* 2003, p. 639). Reproductive rates are also impacted by the amount of prey available in any given year. (Powell and Zielinski 1994, p. 13). It takes kits approximately 1 year from birth to leave their mothers and establish their own home range. (Powell *et al.* 2003, p. 640).

Scientists believe that the Northern Rockies fisher once ranged from eastern British Columbia and southwestern Alberta through northeast Washington, Idaho, Montana, and may have occupied portions of northwest Wyoming and north-central Utah.<sup>1</sup> (Hagmeier 1956, entire; Hall 1981, pp. 985-987; Gibilisco 1994, p. 64). As a result of overtrapping, predator control, and habitat destruction and fragmentation, fishers were considered extirpated from the Northern

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<sup>1</sup> Because evidence of historical fisher presence in Wyoming and Utah is largely anecdotal, recently the Fish and Wildlife Service has declined to include these states in the Northern Rockies fisher's historical range. U.S. Fish and Wildlife Service, Species Status Assessment Report for the Northern Rocky Mountains Fisher, Version 2.0 (July 27, 2017), at p. 9 [hereinafter, "SSA"].

Rocky Mountains by 1930. (Williams 1963, p. 9; Newby and McDougal 1964, p. 487; Weckwerth and Wright 1968, p. 977).

In 1959, Montana initiated a reintroduction program for fishers by transplanting fishers from British Columbia; in 1962, Idaho followed suit and did the same. (Weckwerth and Wright 1968, p. 979; Williams 1963, p. 9). Not long thereafter, trappers were reporting inadvertent captures of fishers in Montana and Idaho. (Newby and McDougal 1964, p. 487; Weckwerth and Wright 1968, p. 979; Jones 1991, p. 1). The current fisher population in the Northern Rockies is limited to a small population in the Cabinet Mountains and the Bitterroot Mountains along the border of western Montana and northern Idaho.<sup>2</sup> (Albrecht 2010; Lofroth *et al.* 2010).

In 2011, the U.S. Fish and Wildlife Service recognized the Northern Rockies fisher as a Distinct Population Segment due to distinctive genetic characteristics suggesting this fisher population is isolated from other fisher populations in the United States and Canada.<sup>3</sup> Idaho has designated the fisher as a species of greatest conservation need, and the BLM considers fisher in Idaho a sensitive species.<sup>4</sup> Similarly, in Montana, fishers are considered a species of concern by both the U.S. Forest Service and the Bureau of Land Management.<sup>5</sup>

Fishers generally select mature forest cover and late-seral forests with adequate canopy cover. Large trees and canopy cover provide protection from predation, vertical escape from

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<sup>2</sup> The U.S. Fish and Wildlife Service has asserted that it is possible that some Northern Rockies fishers reside in northeast Washington. SSA at 3.

<sup>3</sup> 76 Fed. Reg. 38,504, 38,518 (June 30, 2011).

<sup>4</sup> See Idaho Department of Fish and Game, Species of Greatest Conservation Need, at <https://idfg.idaho.gov/species/taxa/list.sgcn> (last visited Dec. 20, 2018); Idaho Department of Fish and Game, Idaho Species, Fisher, at <https://idfg.idaho.gov/species/taxa/18029> (last visited Dec. 20, 2018).

<sup>5</sup> See Montana Natural Heritage – SOC Report, Animal Species of Concern, at [mtnhp.org/SpeciesofConcern/?AorP=a&OpenFolders=S&Species=Mammals](https://mtnhp.org/SpeciesofConcern/?AorP=a&OpenFolders=S&Species=Mammals) (last visited Dec. 18, 2018).

predators, and microhabitats suitable for thermoregulation. (Naney *et al.* 2012; Raley *et al.* 2012; Aubry *et al.* 2013; Schwartz *et al.* 2013). Due to their need for dense and contiguous canopy cover, fishers are especially vulnerable to habitat fragmentation and will avoid open areas without dense canopy cover. (Powell and Zielinski 1994, p. 39; Buskirk and Powell 1994, p. 286; Schwartz *et al.* 2013, p. 109). Moreover, fishers require structural characteristics of late-successional forests—such as large-diameter trees, large logs, and tree cavities—for resting and denning. (Buskirk and Powell 1994, p. 295; Schwartz *et al.* 2013, p. 103, 108). Thus, fishers are negatively impacted by logging and other forest management practices that remove canopy cover or otherwise fragment mature forests.

While loss of habitat has negatively impacted Northern Rockies fisher and continues to do so, trapping also presents one of the greatest threats to the persistence of this small population. Fishers are highly vulnerable to trapping because they are easily trapped. (Douglas and Strickland 1987, p. 523). Trapping of fishers can be targeted or incidental. Idaho prohibits trapping of fishers, but Montana has allowed trapping for fishers since 1983. In Montana, the Montana Fish and Wildlife Commission sets annual quotas for trapping of fishers in two trapping districts encompassing four fisher management units: the Bitterroot, Cabinet, Yaak, and Continental Divide Fisher Management Units. The trapping season for fishers has generally run from December 1 through February 15, or until quotas are reached.<sup>6</sup> While quotas remain low, targeted trapping could lead to the removal of two female fishers annually from the population.<sup>7</sup>

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<sup>6</sup> See Montana Fish, Wildlife & Parks, 2018 Furbearers and Trapping, Montana Trapping and Hunting Regulations, at 10, *found at* [fwp.mt.gov/hunting/planahunt/huntingGuides/furbearer/](http://fwp.mt.gov/hunting/planahunt/huntingGuides/furbearer/) (last visited Jan. 4, 2019).

<sup>7</sup> The annual quota in the Bitterroot Unit is 5 fishers, including a female subquota of 1, and 1 fisher in the Cabinet Unit. *See id.*; *see also* Montana Fish, Wildlife & Parks, Fisher Harvest Quota Status, at <https://myfwp.mt.gov/fwpPub/speciesHuntingGuide?wmrSpeciesCd=FR> (last visited Jan. 4, 2019).

This targeted trapping in Montana is in addition to high mortality from incidental trapping in Montana and Idaho. According to the Fish and Wildlife Service, from 2002 to 2016, 186 fishers have been reportedly killed in incidental traps in Idaho and Montana, while 243 fisher in Idaho were released alive or “unknown.” (FWS 2017, p. 43, Table 5). Montana does not record information on fisher trapped but released alive.

It is safe to assume that many of the fisher released alive or “unknown” in Idaho and Montana were killed or died from trapping-related injuries. As FWS notes, “[i]njuries to fishers that either escaped traps or were incidental captures that were released alive could affect the ability of that fisher to carry out many life functions, including foraging, mating, or escaping predation.” (FWS 2017, p. 42). *See also* FWS 2017, p. 44 (“the actual survival rate of trapped fishers that are released alive is unknown.”). Moreover, it is likely that many incidental trapping accidents go unreported. Thus, the number of fishers that die in traps in Idaho and Montana annually is likely higher than the numbers disclosed above. Trapping can create population sinks, limit gene flow, and inhibit the population growth of Northern Rockies fishers. (FWS 2017, p. 43).

While there is currently no population estimate for Northern Rockies fishers, making it difficult to determine population trends, populations trends may be revealed in part by trapping records in Montana and Idaho. Incidental captures numbers in Idaho have dropped dramatically since the 2013-2014 trapping season. For example, during the 2013-2014 trapping season, 58 fisher were incidentally trapped. (FWS 2017, p. 43, Table 5). Similarly, in years prior, 47 fisher were trapped in 2012-2013, 30 fisher in 2011-2012, 46 fisher in 2010-2011, and 38 in 2009-2010. Comparatively, during the 2014-2015 and 2015-2016 season, only 15 and 16 fishers were incidentally trapped, respectively. (FWS 2017, p. 43, Table 5). Such a dramatic decline likely

indicates a drop in the fisher population. Notably in the 2015-2016 season, Montana trappers did not even reach the fisher quota, showing a total of only 4 fishers trapped, which includes incidental and targeted trapping. (FWS 2017, p. 43, Table 5).

Indeed, it would make sense that the trapping of so many fishers from 2009-2014 — a total of 251 fishers — would negatively impact this small population. As noted above, fishers have slow reproductive rates, meaning it takes longer for the population to rebound from high mortality rates. (Powell *et al.* 2003, p. 639; Powell and Zielinski 1994, p. 45). Thus, the removal of adult fishers from this population can have wide-reaching impacts on the population. (Buskirk *et al.* 2012, p. 77). Scientists have concluded that even low levels of harvest-related mortality, when added to other causes of mortality, can negatively impact small populations like Northern Rockies fishers. (Powell and Zielinski 1994, p. 45, 64).

Without accurate population data and with indications that the population may be declining significantly, it is irresponsible for Montana to continue to permit trappers to target fishers. Thus, we propose the Montana Fish and Wildlife Commission modify its hunting and trapping regulations to prohibit the trapping of fishers throughout Montana. In addition, because fishers are easily trapped and vulnerable to being caught in traps set for other animals, we hereby propose that all mammal trapping be prohibited in areas where fisher are known to reside, including the Cabinet and Bitterroot Mountains.

#### **4. ADOPTION**

Section 2-4-315 of the Montana Code Annotated authorizes an interested person to petition an agency to adopt, amend, or repeal a rule. An “agency” is broadly defined under the Montana Code to include a “commission.” M.C.A. 2-3-102(1). In Montana, the Montana Fish

and Wildlife Commission has the authority to establish the trapping rules of the Montana Fish, Wildlife, and Parks Department. M.C.A. 87-1-301(b).

We hereby petition the Commission to adopt the following rules:

1. It is unlawful to trap fishers in Montana.
2. It is unlawful for any person to use traps or snares in the Cabinet and Bitterroot Mountains in Montana.

**5. PERSONS KNOWN TO HAVE AN INTREST IN THE PROPOSED AGENCY ACTION**

Persons known to Petitioners to have an interest in the proposed agency action include individual wildlife advocates, individual animal welfare advocates, environmental organizations, animal welfare organizations, individual trappers, and trapping associations.

WHEREFORE, the Petitioners request that the Montana Fish and Wildlife Commission promulgate a rule to prohibit the targeted trapping of fishers in Montana, and to prohibit trapping of other species in occupied fisher habitat, including the Cabinet and Bitterroot Mountains.

Signed on behalf of all Petitioners,



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Andrea Santarsiere

January 15, 2019

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