

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

CENTER FOR BIOLOGICAL
DIVERSITY, FOOTLOOSE MONTANA,
FRIENDS OF THE CLEARWATER,
GALLATIN WILDLIFE ASSOCIATION,
GLOBAL INDIGENOUS COUNCIL, THE
HUMANE SOCIETY OF THE UNITED
STATES, INTERNATIONAL WILDLIFE
COEXISTENCE NETWORK, NIMIIPUU
PROTECTING THE ENVIRONMENT,
SIERRA CLUB, TRAP FREE MONTANA,
WESTERN WATERSHEDS PROJECT,
WILDERNESS WATCH, and WOLVES OF
THE ROCKIES,

Plaintiffs,

v.

BRAD LITTLE, Governor of Idaho; ED
SCHRIEVER, Director of Idaho Department
of Fish & Game; and DERICK
ATTEBURY, DAVE BOBBITT, GREG
CAMERON, LANE CLEZIE, RON
DAVIES, DON EBERT, TIM MURPHY,
Members of the Idaho Fish and Wildlife
Commission,

Defendants.

Case No. 1:21-cv-00479-CWD

**MEMORANDUM DECISION AND
ORDER**

INTRODUCTION

Plaintiffs, a diverse group of conservation and animal welfare organizations, allege that the Governor of Idaho, the Director of the Idaho Department of Fish and Game, and members of the Idaho Fish and Game Commission have implemented a regulatory scheme that continue to authorize, and have expanded, the ability to trap and snare gray wolves. Specifically, Plaintiffs contend that Idaho’s gray wolf trapping and snaring laws and regulations are reasonably certain to cause the unlawful “take” of grizzly bears and Canada lynx in violation of Section 9 of the Endangered Species Act (ESA), 16 U.S.C. §§ 1531-1544.

The Court has before it Plaintiffs’ motion for temporary restraining order and preliminary injunction to halt Defendants’ continued, and recently expanded, authorization of wolf trapping and snaring in Idaho’s grizzly bear habitat,¹ which comprises the Panhandle, Clearwater, Salmon, and Upper Snake regions. Plaintiffs contend immediate relief prior to a decision on the merits is essential to avoid future unlawful trapping and snaring of grizzly bears in violation of the ESA. Plaintiffs’ motion is most specifically related to the expansion of Idaho’s gray wolf trapping laws and regulations.

¹ The motion before the Court does not implicate Plaintiffs’ second cause of action, which alleges Idaho’s wolf trapping and snaring laws and regulations violate the ESA because they cause the unlawful take of Canada lynx.

The Court heard oral argument on Plaintiffs’ motion and took it under advisement. After considering the parties’ written briefs, arguments, and relevant authorities, the Court will deny Plaintiffs’ motion.

FACTS

The grizzly bear, *Ursus arctos horribilis*, was listed as threatened under the ESA in 1975, in response to dwindling numbers resulting in an estimated population in the lower 48 states of 700 to 800 individuals. To aid grizzly bear recovery, the United States Fish and Wildlife Service (“FWS”) designated six areas as grizzly bear recovery zones. Idaho encompasses portions of four designated recovery zones in the Selkirk, Cabinet-Yaak, Greater Yellowstone, and Bitterroot ecosystems. Grizzly Bear Recovery Zones and Estimated Distributions—U.S. Fish and Wildlife Serv., SPECIES STATUS ASSESSMENT FOR THE GRIZZLY BEAR IN THE LOWER-48 STATES: A BIOLOGICAL REPORT 62 (Jan. 2021).² Idaho’s grizzly bear populations are concentrated in and around northern Idaho’s Cabinet-Yaak, Selkirk, and Greater Yellowstone ecosystems. Plaintiffs claim grizzly bears have “increasingly been confirmed near” the Bitterroot ecosystem. However, Defendants deny that there are any known grizzly bear populations in the Bitterroot ecosystem, and contend that, while bears have been observed there, they are likely transient young males that have not remained in the ecosystem.

² The map depicting Grizzly Bear Recovery Zones referenced in Plaintiffs’ complaint and Defendants’ answer may be found on the FWS’s website, www.fws.gov, and accessed at the following link: <https://ecos.fws.gov/ServCat/DownloadFile/196991>. The same map is attached as Ex. A to the Scrimshaw Declaration. (Dkt. 6-13.)

Grizzly bears are habitat generalists that may, at times, be found on private land. However, private land is often unsuitable habitat for grizzly bears in Idaho and, because of the potential for bear/human conflict, grizzly bears found on private land are often removed. *See* Scrimshaw Decl., Ex. G. (Dkt. 6-13) (table documenting grizzly bear/human conflicts in Idaho between 2009 – 2020). Grizzly bears are also a conservation reliant species. Defendants contend that the State of Idaho has put substantial resources into grizzly bear conservation.

In 2020, two grizzly bears were killed in incidents directly or indirectly involving wolf snares in northern Idaho’s panhandle region. Bear number one was a subadult male grizzly. According to the Idaho Fish & Game Report of Investigation, a report was received from a mushroom picker who found a dead grizzly bear on or about May 3, 2020. Niemeyer Decl., Ex. C. (Dkt. 6-11.) The bear was found in a ravine, with a wolf snare “very tightly around its neck and another wolf snare wrapped around its front left paw.” Investigation revealed that the young male grizzly died from an “unlawful wolf snare around its neck.” The snares had been set “side by side hanging below a log,” and an elk carcass had been left behind the log as bait. The report indicated that the snares were “standard wolf snares with kill springs” that “did not have trap identification tags as required by Idaho state law.” It was reported also that the state of the elk remains indicated the snares “had been set quite some time ago,” possibly “during the winter,” and that the bear had been dead for several days.

The case remains under investigation, with violation charges noted as: “killing of a closed season grizzly bear – a threatened species; wolf trapping during a closed season;

trapping with unmarked traps.” Niemeyer Decl., Ex. C. According to Brian Johnson, the investigating officer, the grizzly bear “was captured at a time when there were no open wolf seasons. In addition, these ground snare sets were unlawful in Idaho because they were: (1) set within 30 feet of visible bait (elk parts); (2) they did not contain a breakaway device or a cable stop incorporated in the loop of the snare; and (3) they did not have identification tags indicating they were set by a licensed trapper.” Johnson Decl. ¶ 9. (Dkt. 19-3.) Johnson surmised that “[t]he condition of the grizzly bear and other observation of the site also indicated the snares were not checked at least once every 72 hours, and the capture was not reported to the Department as required by Commission rules.” *Id.* There remains insufficient evidence to prosecute any person for the violations. *Id.* ¶ 10.

Bear number two was a subadult male bear shot and killed in Boundary County in August of 2020 by a hunter who mistook it for a black bear. Niemeyer Decl., Ex. D. (Dkt. 6-11.) According to the Idaho Department of Fish and Game Case Report, officer Brian Johnson received a telephone call on August 31, 2020, about a bear that had been shot and killed on trail number 35 above Spruce Lake. *Id.*; Johnson Decl. ¶ 11. The hunter who shot the bear met officer Johnson later that day, and relayed that he mistook the bear for a black bear. Neimeyer Decl., Ex. D; Johnson Decl. ¶ 12. The bear was located and found with a broken wolf snare around its neck, and an ear tag from British Columbia. Neimeyer Decl., Ex. D; Johnson Decl. ¶ 13. The bear was noted to be an adult male in good physical condition. Neimeyer Decl., Ex. D; Johnson Decl. ¶ 15.

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