



Montana Fish, Wildlife & Parks

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Ref: DO228-12
September 21, 2012

Matthew Bishop
The Western Environmental Law Center
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Helena, MT 59601

Shiloh Hernandez
The Western Environmental Law Center
103 Reeder's Alley
Helena, MT 59601


Re: Petition to End the Trapping of Wolverine (Gulo gulo) in Montana

Dear Mr. Bishop and Mr. Hernandez:

This letter is in response to your petition to end the trapping of wolverine, dated July 31, 2012, and submitted on behalf of Friends of the Wild Swan, Helena Hunters and Anglers Association, Montana Ecosystems Defense Council, George Wuerthner, Native Ecosystems Council, The Alliance for the Wild Rockies, Swan View Coalition, WildEarth Guardians, and Footloose Montana ("Petitioners"). As you are aware, Fish, Wildlife & Parks' (FWP) seasonal hunting, fishing, and trapping rules adopted annually or biennially are exempt from the Montana Administrative Procedures Act (MAPA) under § 2-4-102(11)(b)(iv) MCA. The subject of your proposed rulemaking is a trapping rule that is exempt from rulemaking authority under this exception.

FWP understands that petitioners argue that this petition represents a request to initiate a new rule extending beyond the annual or biennial seasons rather than a seasonal rule. However, it is FWP's position that treating the submitted petition as something other than what it is; which is a request for a rule on trapping that is exempt from rulemaking, would undermine the legislative purpose behind exempting seasonal rules from the MAPA process. Because the proposed rule would directly necessitate a modification or repeal of an exempted seasonal hunting rule currently and would usurp the authority of the FWP Commission to adopt the seasonal trapping regulations into the future, it cannot be properly considered under the §2-4-315 MAPA petition process. The FWP Commission's rulemaking authority for trapping extends only two years (i.e., a biennial rule). In addition, the Department does not have statutory authority and cannot usurp the authority granted to the FWP Commission for rulemaking on trapping. Therefore, the contents of this petition cannot be considered properly under FWP Commission or Department authority in the manner you've requested. Petitioners' concerns would have been more properly brought before the FWP Commission during the public comment period for the wolverine trapping season.

Sincerely,


Joe Maurer
Director

c: FWP Commissioners