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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,

vs.

BRAD LITTLE, Governor of Idaho; ED  
SCHRIEVER, Director of Idaho Department of  
Fish & Game; and DERICK ATTEBURY, DAVE

Case No. 2:21-cv-00479-DCN

**PLAINTIFFS' MEMORANDUM IN  
SUPPORT OF MOTION FOR  
TEMPORARY RESTRAINING  
ORDER AND PRELIMINARY  
INJUNCTION [Dkt. 6]**

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BOBBITT, GREG CAMERON, LANE CLEZIE, )  
RON DAVIES, DON EBERT, TIM MURPHY, )  
Members of the Idaho Fish and Wildlife )  
Commission, )  
 )  
Defendants. )  
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## INTRODUCTION

Plaintiffs Center for Biological Diversity, et al. (together, “Plaintiffs”) seek a temporary restraining order (“TRO”) and preliminary injunction to halt Defendants’ continued—and recently expanded—authorization of wolf trapping and snaring in Idaho’s grizzly bear habitat, which is reasonably certain to cause the future unlawful trapping and snaring of grizzly bears in violation of the Endangered Species Acts (“ESA”). 16 U.S.C. § 1538(a)(1)(B).

Plaintiffs’ requested TRO and injunction should be granted. Plaintiffs are likely to prevail on the merits of their ESA claim that the challenged activity is reasonably certain to cause the unlawful “take” of threatened grizzly bears. Experience from Idaho and neighboring Montana, British Columbia, and Alberta show that—where wolf trapping occurs—grizzly bears are incidentally captured and harmed. Indeed, two grizzly bears were killed in incidents involving snares in north Idaho just this past year. Furthermore, immediate relief is essential to avoid irreparable harm to Idaho’s grizzly bears and Plaintiffs’ and their members’ interests. Finally, under the ESA, the equities and public interest support protection of threatened species such as grizzly bears. As such, this Court should issue a TRO and preliminary injunction prohibiting Defendants from authorizing wolf trapping and snaring in Idaho’s grizzly bear habitat, including all of the Panhandle, Clearwater, Salmon, and Upper Snake regions.

## FACTUAL BACKGROUND

After generations of federal and state eradication efforts and precipitous population declines, grizzly bears now remain in only a few states in the Mountain West. Idaho is home to three of the last four populations of grizzly bears in the contiguous United States. Idaho’s grizzly bears and wolves inhabit similar geographic ranges and habitat. This substantial overlap and Defendants’ authorization of widespread wolf trapping and snaring mean that wolf trapping

and snaring frequently occurs in areas inhabited by ESA-protected grizzly bears. In recent years, wolf trapping and snaring in Idaho has captured at least three grizzly bears, two of which were ultimately killed. Despite these incidents, the Idaho Fish and Game Commission (“Commission”) recently issued new rules further incentivizing and expanding wolf trapping and snaring statewide, which went into effect on July 1, 2021.

## **I. GRIZZLY BEARS**

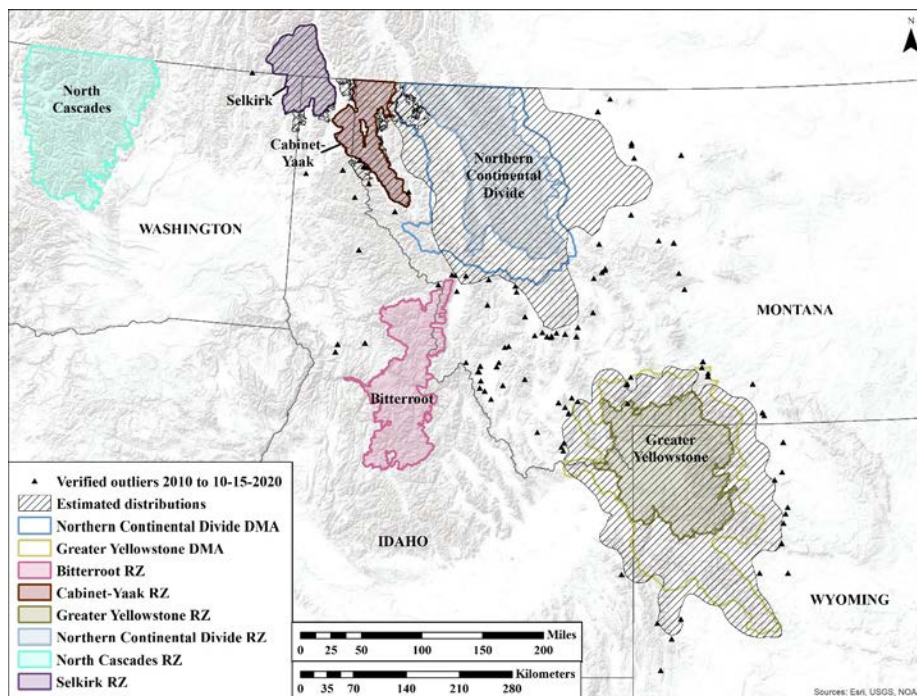
Grizzly bears once numbered approximately 50,000 individuals in the western United States, but only 700 to 800 remained when the U.S. Fish & Wildlife Services (“FWS”) listed the species as threatened in the lower-48 under the ESA in 1975. FWS, Species Status Assessment for the Grizzly Bear in the Lower-48 States: A Biological Report 3-4 (2021) (“Status Assessment for the Grizzly Bear”) (attached to Scrimshaw Decl. as Exhibit A). Prior to listing, grizzly bears were “shot, poisoned, and trapped wherever they were found,” eliminating them from all but a few isolated areas. Crow Indian Tribe v. United States, 343 F. Supp. 3d 999, 1004 (D. Mont. 2018) (quotation omitted).

Currently, grizzly bears in the contiguous States are confined to a few remnant populations in Montana, Wyoming, and Idaho. FWS has designated six areas as Grizzly Bear Recovery Zones for these remnant populations. FWS, Status Assessment for the Grizzly Bear, at 37 (Scrimshaw Decl., Ex. A). Idaho is home, in part, to four of these recovery zones: (1) the Selkirk Ecosystem; (2) the Cabinet-Yaak Ecosystem; (3) the Greater Yellowstone Ecosystem; and (4) the Bitterroot Ecosystem. Id. The grizzly population in the Bitterroot Ecosystem is considered functionally extirpated; however, multiple bears have been confirmed in the area immediately surrounding this recovery zone in the past 15 years. Id. at 12, 55; Servheen Decl. ¶ 11. According to FWS, grizzly bears’ current known distribution includes and extends beyond



the occupied, designated zones. FWS, Status Assessment for the Grizzly Bear at 56-58; see Figure 1 (Map from FWS, Status Assessment for the Grizzly Bear at 62 (Scrimshaw Decl., Ex. A)).

**Figure 1: Estimated Grizzly Bear Distributions**



Idaho's grizzly bear populations are concentrated in north Idaho's Cabinet-Yaak and Selkirk Ecosystems (Panhandle Region) and the Greater Yellowstone Ecosystem. Servheen Decl. ¶¶ 6, 7, 11; Proulx Decl. ¶ 14. The grizzly bear populations in the Panhandle Region are highly vulnerable. Servheen Decl. ¶ 7; Proulx Decl. ¶ 15. The minimum population of grizzlies in the Cabinet-Yaak is 40, and the minimum population in the Selkirk is 53. Servheen Decl. ¶ 7. These populations have low and moderate resiliency, respectively, due to the "very low number of bears." FWS, Status Assessment for the Grizzly Bear at 12, 220-21 (Scrimshaw Decl., Ex. A). Most recovery targets for the grizzly bear populations in the Panhandle Region have not been met. Id. at 88-92; Servheen Decl. ¶¶ 8-9. The recovery plan for these populations establishes the goal of zero human-caused mortality until grizzly population numbers reach 100

in the Cabinet-Yaak, and 90 in the Selkirk. FWS, Status Assessment for the Grizzly Bear at 220-21 (Scrimshaw Decl., Ex. A). Thus, any human-caused mortality from trapping and snaring in these populations threatens recovery. Servheen Decl. ¶ 10.

Similarly, because only small numbers of dispersing grizzly bears are currently present in the Bitterroot, they are “very vulnerable to human caused mortality.” Servheen Decl. ¶ 11. Consequently, wolf trapping and snaring in Idaho present a significant risk to the “recovery of grizzly bears in the Bitterroot ecosystem.” Id.

## **II. WOLF TRAPPING AND SNARING HARMS IDAHO GRIZZLY BEARS**

“[W]here wolves are found grizzly bears are found also.” Proulx Decl. ¶ 14. As with grizzly bears, Idaho’s gray wolf range extends across the northern and central portion of the state in the Cabinet-Yaak, Selkirk, and Bitterroot Ecosystems, as well as the eastern corner of the State within the Greater Yellowstone Ecosystem. Removing the Gray Wolf (*Canis lupus*) From the List of Endangered and Threatened Wildlife, 85 Fed. Reg. 69,778, 69,789 (Nov. 3, 2020) (map showing wolf range). Because of their overlapping ranges in Idaho—and the indiscriminate nature of traps and snares, Proulx Decl., ¶ 8—where wolf trapping occurs, grizzly bears are captured and harmed. Data from Idaho and neighboring Montana, British Columbia, and Alberta show multiple grizzly bear captures and mortalities in wolf traps and snares.<sup>1</sup>

In 2020 in north Idaho, two grizzly bears were killed in incidents involving wolf snares. In the first instance, Idaho Department of Fish and Game (“IDFG”) enforcement reported that a young male grizzly was killed in Boundary County—in the Panhandle Region—found with “a

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<sup>1</sup> Additionally, IDFG data from 2012 through 2019 shows that forty-seven percent of animals reported caught by Idaho wolf trappers were non-target species, with at least fifty-seven percent of these captures resulting in mortality. Ken Cole, The Carnage of Wolf Trapping in Idaho: New Public Records Request Shows High Non-Target Capture and Mortality, *The Wildlife News* (Apr. 13, 2020) (attached to Vickers Decl. as Ex. B).

wolf snare very tightly around its neck and another wolf snare wrapped around its front left paw.” IDFG, Enforcement Report (May 2020) (attached to Niemeyer Decl. as Ex. C). The second report, from August 31, 2020, details the incidental snaring of another young, male grizzly bear, which was subsequently killed by hunters—again in Boundary County—who mistook the grizzly for a black bear at just 30 yards away. IDFG, Enforcement Report FG2020-E1695 (August 2020) (attached to Niemeyer Decl. as Ex. D). IDFG Enforcement noted that the dead grizzly bear had a “wolf snare around it’s [sic] neck but had managed to break the snare and survive.” Id. at 2; see Image 1 (below). “This grizzly bear would never have been able to get this wolf snare off its neck.” Servheen Decl. ¶ 16. IDFG staff also recalled another instance of a grizzly caught in “a foothold wolf trap” during research trapping for wolves sometime before 2016, but IDFG failed to provide additional details. See E-mail from Jeremy Nicholson, IDFG, to Katherine Oelrich, Wildlife Staff Biologist, IDFG (Apr. 30, 2021, 10:14 MDT) (attached to Scrimshaw Decl. as Ex. B).

**Image 1: Photograph of snared grizzly bear from north Idaho in 2020<sup>2</sup>**



<sup>2</sup> IDFG, Photograph accompanying IDFG Enforcement Report FG2020-E1695 (August 2020) (attached to Scrimshaw Decl. as Ex. C).

In neighboring Montana, Montana’s Fish, Wildlife and Parks Department (“FWP”) reported seven grizzly bears among non-target captures since 2010—including three caught in leghold traps intended for wolves and four in similar traps intended for coyotes. MT Fish, Wildlife, & Parks, Incidental Captures by Public (2021) (attached to Scrimshaw Decl. as Ex. D). In one instance, FWP found two grizzly bear toes caught in the wolf trap. Id. FWP records do not indicate whether these animals were monitored following release. Without those additional data, it is impossible to determine the extent to which these animals experienced harm from capture. Vickers Decl. ¶ 31. Grizzly bears have been caught and killed in wolf traps and snares in British Columbia and Alberta as well. Proulx Decl. ¶¶ 10, 13 & Ex. B at 7.

In addition to reported non-target captures, numerous non-target animals captured in traps and snares are not reported. Proulx Decl. ¶ 13. This is illustrated by the two grizzlies caught in wolf snares in north Idaho in 2020, neither of which was reported by the trapper. Instead, IDFG learned of these incidents only after the snared grizzly bears were discovered by a mushroom picker and a hunter, respectively. IDFG, Enforcement Report (May 2020) (Niemeyer Decl., Ex. C); IDFG, Enforcement Report FG2020-E1695 (2020) (Niemeyer Decl., Ex. D). Grizzly bears are also able to break trap chains or cable snares and “leave the trap site dragging the trap on [their] foot or the snare around [their] neck.” Servheen Decl. ¶ 16; Proulx Decl. ¶ 15. While this can cause severe injury, it also leads to “significant underestimates” of grizzlies captured in traps and snares. Servheen Decl. ¶ 16. As shown by the Idaho and Montana snaring records, wolf traps and snares frequently injure and kill grizzly bears once caught. Snares are especially lethal: “the longer the snare is in place, the more it acts as a saw” that “can cut through muscles and spinal cords and can cause wounds” that kill grizzly bears. Proulx Decl. ¶ 15. Foothold traps will cause toe fractures and amputations in grizzly bears. Niemeyer Decl. ¶ 20. These injuries

“can affect not only mobility but also food acquisition and possibly other behaviors such as mating, successful rearing of young by females, and territory defense,” which can “have impacts at the population level ... when trapping and snaring are widespread and year-round.” Vickers Decl. ¶ 21 (citation omitted).

### **III. DEFENDANTS’ ROLE IN WOLF TRAPPING AND SNARING**

The Commission has authority to carry out Idaho’s wildlife policies and supervises the IDFG. See Idaho Code §§ 36-102, -103. As such, the Commission sets season trapping and snaring rules and issues permits, tags, and licenses, which are required to trap, snare, and hunt wolves. See Idaho Code § 36-104(b); IDAPA 13.01.04. As discussed below, see Argument II.C., infra, beginning July 1, 2021, Defendants altered the wolf-trapping rules with the goal of substantially reducing Idaho’s wolf population. See IDFG, 2021-2022 Gray Wolf Hunting & Trapping Seasons & General Rules 79-81 (2021) (attached to Scrimshaw Decl. as Ex. E).

## **LEGAL BACKGROUND**

### **I. ENDANGERED SPECIES ACT**

The ESA is considered “the most comprehensive legislation for the preservation of endangered species ever enacted by any nation,” and embodies Congress’s “commitment to halt and reverse the trend toward species extinction, whatever the cost.” Ctr. for Biological Diversity v. Zinke, 900 F.3d 1053, 1059 (9th Cir. 2018) (quoting Tenn. Valley Auth. v. Hill, 437 U.S. 153, 180, 184 (1978)) (quotation and citation omitted).

To that end, Section 9 of the ESA prohibits the “take” of an endangered species unless specifically authorized by the relevant federal agency in an incidental take statement. 16 U.S.C. §§ 1538(a)(1)(B), 1539. The ESA defines “take” to mean “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” Id.

§ 1532(19). Thus, an activity may constitute “take” even if it does not cause injury or mortality. Id. “Take” includes direct as well as indirect harm and need not be purposeful. See Babbitt v. Sweet Home Chapter of Communities for a Great Or., 515 U.S. 687, 704 (1995).

The ESA’s take prohibition applies equally to threatened species, unless otherwise indicated by a species-specific rule promulgated by the relevant federal agency. See 50 C.F.R. § 17.31(a). FWS oversees ESA compliance with respect to grizzly bears. FWS’s species-specific rules for grizzly bears allow for no exception from the take prohibition for trapping or snaring that targets other species. 50 C.F.R. § 17.40(b)(1)(i)(A).

State hunting and trapping schemes violate the ESA’s take prohibition when “a risk of taking exists [even] if trappers comply with all applicable laws and regulations in place.” Animal Prot. Inst. v. Holsten, 541 F. Supp. 2d 1073, 1079 (D. Minn. 2008); see also Strahan v. Sec’y, Mass. Exec. Off. of Energy & Env’tl. Affs., 458 F. Supp. 3d 76, 95 (D. Mass. 2020); Ctr. for Biological Diversity v. C.L. Otter, No. 1:14-CV-258-BLW, 2016 WL 233193 (D. Idaho Jan. 8, 2016), reversed on other grounds on reconsideration, No. 1:14-CV-258- BLW, 2018 WL 539329 (D. Idaho Jan. 24, 2018); Red Wolf Coal. v. N. Carolina Wildlife Res. Comm’n, No. 2:13-CV-60-BO, 2014 WL 1922234 (E.D. N.C. May 13, 2014).

“A reasonably certain threat of imminent harm to a protected species is sufficient for issuance of an injunction” in the context of ESA Section 9. Marbled Murrelet v. Pac. Lumber Co., 83 F.3d 1060, 1066 (9th Cir. 1996).

## **II. PRELIMINARY INJUNCTION AND TRO STANDARD**

A party seeking a preliminary injunction must demonstrate: (1) it is likely to succeed on the merits; (2) it is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in its favor; and (4) injunctive relief is in the public interest. Winter v.

Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008); see All. for Wild Rockies v. Pierson, 2021 WL 3131315 at \*3 (D. Idaho 2021) (explaining standard for TRO and preliminary injunction are the same).

The ESA alters this standard such that courts “presume ... that the balance of interests weighs in favor of protecting endangered species, and that the public interest would not be disserved by an injunction.” Nat’l Wildlife Fed’n v. Nat’l Marine Fisheries Serv., 886 F.3d 803, 817 (9th Cir. 2018). Accordingly, a preliminary injunction is appropriate where plaintiffs show they are likely to succeed on the merits of their ESA claims and are likely to suffer irreparable harm in the absence of preliminary injunctive relief. Id. at 818; Biodiversity Legal Found. v. Badgley, 309 F.3d 1166, 1177 (9th Cir. 2002); 16 U.S.C. § 1531(b).

## ARGUMENT

Plaintiffs are entitled to a TRO and preliminary injunction because they are likely to succeed on the merits and likely to suffer irreparable harm absent an injunction.

### **I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR CLAIMS THAT IDAHO WOLF-TRAPPING RULES VIOLATE THE ESA**

Plaintiffs are likely to prevail on the merits of their claim that Defendants’ authorization of wolf-trapping is reasonably certain to cause the unlawful take of grizzly bears. 16 U.S.C. §§ 1538(a)(1)(B), 1539. Last year, two grizzly bears were killed in incidents involving snares in north Idaho, and numerous other takings have occurred in Idaho and neighboring jurisdictions since 2010. Worse, Defendants recently introduced new wolf-trapping rules further expand and incentivize wolf trapping throughout the State, including in grizzly bear habitat. Declarations by Chris Servheen (former U.S. Fish and Wildlife Service Grizzly Bear Recovery Coordinator), Carter Niemeyer (former U.S. Fish and Wildlife Service trapper and wildlife biologist), Gilbert Proulx (Ph.D. mammologist and trapper), and Winston Vickers (wildlife veterinarian and

research trapper) confirm that future grizzly bear take in Idaho wolf traps is reasonably certain to occur. Servheen Decl. ¶¶ 15-16; Niemeyer Decl. ¶¶ 8, 33; Proulx Decl. ¶ 19; Vickers Decl. ¶ 11.

**A. Recent Incidental Snaring of Idaho Grizzly Bears Demonstrates that Future Take is Reasonably Certain to Occur.**

“[T]he mere trapping of the [ESA-listed species], even if released alive, constitutes a taking under § 9 of the ESA.” Ctr. for Biological Diversity, 2016 WL 233193 at \*4; 16 U.S.C. § 1532(19). IDFG records from 2020—which show that two grizzly bears were taken and killed in incidents involving wolf snares in north Idaho’s Panhandle region—alone establish the reasonably certain future unlawful take of grizzly bears in wolf traps and snares. See IDFG, Enforcement Report (May 2020) (Niemeyer Decl., Ex. C); IDFG, Enforcement Report FG2020-E1695 (August 2020) (Niemeyer Decl., Ex. D).

Past takings of ESA-protected species are “instructive, especially if there is evidence that future similar takings are likely.” Nat’l Wildlife Fed’n v. Burlington N. R.R., Inc., 23 F.3d 1508, 1512 (9th Cir. 1994). Federal district courts have repeatedly recognized past takings as evidence of future take. See Ctr. for Biological Diversity, 2016 WL 233193, at \*1 (four lynx captures in three-and-a-half years sufficient to establish reasonable certainty of future take); Animal Prot. Inst., 541 F. Supp. 2d at 1080 (future take reasonably certain because data from earlier years showed take and trapping regulations remained substantially the same). Indeed, while prior take is indicative of likely future take, evidence of prior take is not always necessary to demonstrate future take. Animal Welfare Inst. v. Beech Ridge Energy, 675 F. Supp. 2d 540, 576, 579 (D. Maryland 2009) (finding—despite no record evidence of prior take—“a virtual certainty that [endangered bats] will be harmed, wounded, or killed imminently” by wind turbines where plaintiffs established bat presence in the area). Moreover, “the future threat of [even a] single taking is sufficient to invoke the authority of the [ESA].” Loggerhead Turtle v. Cnty. Council of



Volusia Cnty., Fla., 896 F. Supp. 1170, 1180 (M.D. Fla. 1995). Thus, the evidence of two snared Idaho grizzly bears in 2020 sufficiently demonstrates the likelihood of future take to invoke the ESA's enforcement mechanisms.

To the extent IDFG may argue that the agency does not bear responsibility for past incidental snaring of grizzly bears that occurred outside of IDFG's then-authorized season, that is beside the point.<sup>3</sup> Plaintiffs do not ask the Court to find IDFG liable for past ESA violations. Instead, these past incidents demonstrate that wolf snares and traps take grizzly bears (regardless of who is responsible for that take), and future take is reasonably certain. Not only does IDFG authorize trapping and snaring that will take bears in the future, but it has also authorized the expansion of those activities, including into the summer season on private land when trapping was previously disallowed. See IDFG, 2021-2022 Gray Wolf Hunting & Trapping Seasons & General Rules, 79-81 (2021) (Scrimshaw Decl., Ex. D) (authorizing year-round trapping on private land). This expansion thus authorizes a permanent wolf-trapping season across large swaths of Idaho's grizzly bear habitat, and future take of grizzly bears on private land in summer months would thus be directly attributable to IDFG. For context, in Idaho's Game Management Unit 1, which includes all of Boundary County—where both 2020 snaring incidents occurred and many of Idaho's grizzly bears reside—29.2 percent of the land ownership is private and largely forested.<sup>4</sup> And IDFG reports show that grizzly bears in Idaho have been widely reported to range onto private property, including ranchlands and fruit orchards, which provide unique

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<sup>3</sup> IDFG concluded that one of these incidents likely occurred in May, outside of Idaho's previously designated wolf trapping season.

<sup>4</sup> IDFG, Idaho Hunt Planner: Wolf General Any Weapon Season, Unit 1 "Surface Management" Table 3 (attached to Scrimshaw Decl. as Ex. F).

attractants to grizzlies. See IDFG, Wildlife Conflict Overview Report, 2009-2020 (attached to Scrimshaw decl. as Ex. G); Proulx Decl. ¶ 14.

Moreover, IDFG cannot point to current limitations on summertime trapping and snaring on public land as a defense against responsibility for future taking when grizzly bears are more likely to be trapped and snared during the spring, fall, and early winter months when Defendants permit wolf trapping and snaring throughout grizzly bear habitat on both private and public land. Servheen Decl. ¶¶ 12, 14-15. In the spring, grizzly bears emerge from their dens beginning in late February or early March with high protein needs after months of hibernation. Id. at ¶ 12. And because Defendants permit baited trapping and snaring statewide during these spring months when grizzly bear food sources are scarce, grizzly bears are particularly likely to be drawn to the baits and scented lures intended to attract wolves to traps and snares. Id. at ¶ 15. Similarly, grizzly bears will also be especially drawn to wolf bait in fall and early winter months when they experience “hyperphagia”—the period right before hibernation when bears begin eating in excess to build up fat stores to survive the winter. Id. at ¶ 14. Thus, future take of grizzly bears is more likely to occur during the spring, fall, and early winter months when Defendants permit trapping and snaring on both public and private lands—from as early as September 10 through March 31 for trapping and November 15 through March 31 for snaring—and these takes will therefore be directly attributable to Defendants’ permitting of lawful wolf trapping and snaring in Idaho.

The two grizzly bear snaring incidents in 2020 and the high probability that future take will occur during Idaho’s open trapping and snaring season thus establish that Defendants’ continued permitting of wolf trapping in grizzly bear habitat is reasonably certain to cause the

unlawful take of grizzlies. See Loggerhead Turtle, 896 F. Supp. at 1180; Ctr. for Biological Diversity, 2016 WL 233193, at \*1; Animal Welfare Inst., 675 F. Supp. 2d at 576, 579.

**B. Additional Evidence of Grizzly Bear Taking Throughout the Region Also Demonstrates the Reasonably Certain of Future Take in Idaho.**

Additional data from Idaho, Montana, British Columbia, and Alberta show that the 2020 grizzly bear snaring incidents are the rule rather than an exception. In Montana, wolf trappers reported three grizzly bear captures in wolf traps, and four in coyote traps, since 2010. MT Fish, Wildlife, & Parks, Incidental Captures by Public (2021) (Scrimshaw Decl., Ex. D). Further, research from British Columbia and Alberta shows at least five grizzly bear captures in wolf traps between 2010 and 2020 and additional grizzly bears killed in snares. Proulx Decl. ¶¶ 10, 13 & Ex. B at 7; Vickers Decl. ¶ 21. And IDFG records reference at least one other incidental trapping of a grizzly bear in a research trap sometime before 2016. See E-mail from Jeremy Nicholson, IDFG, to Katherine Oelrich, Wildlife Staff Biologist, IDFG (Apr. 30, 2021, 10:14 MDT) (Scrimshaw Decl., Ex B). These records show that the wolf-trapping and snaring threat to grizzly bears is a natural consequence of allowing wolf trapping and snaring in grizzly bear habitat, and further bolster the reasonable certainty of future unlawful take associated with Defendants' continued permitting of wolf trapping and snaring in Idaho's grizzly habitat.

What is more, these data likely represent just a fraction of incidental grizzly bear take because non-target trapping data rely primarily on trappers' self-reporting. Niemeyer Decl. ¶ 29 (“Based on my conversations with various members of the trapping community in Idaho and Montana, many trappers will not report incidental captures out of fear that these reports will result in increased regulation of trapping activities.”); Vickers Decl. ¶ 17 (self-reported trapper data “is inherently biased low by trapper self-interest”); Proulx Decl. ¶ 14 (“[I]t is almost certain that a significant amount of non-target animals captured in snares in Idaho are not reported.”);

Servheen Decl. ¶ 16 (noting “significant underestimates of the number of grizzly bears captured, killed, or maimed in wolf traps and snares”).

**C. Defendants’ Recent Actions Increased the Likelihood of Future Grizzly Bear Take.**

Despite wolf trapping and snaring already causing the unlawful capture and killing of grizzly bears, Defendants’ recently set new wolf-trapping and snaring rules seek to further expand and incentivize trapping and snaring throughout Idaho, including in grizzly bear habitat.

Beginning July 1, 2021, Defendants altered the wolf-trapping rules for the ongoing 2021-2022 season, with the goal of substantially reducing Idaho’s wolf population. Among other things, the new rules authorize: (1) a permanent, year-round wolf-trapping season on private property, which abandoned prior prohibitions on wolf trapping statewide between May 1st and September 9th; (2) an unlimited number of wolf tags, and thus wolf kills, per person, up from the previous cap of 15 wolf kills per person; and (3) state-sponsored, private-contractor wolf killing in partnership with the Idaho Wolf Depredation Control Board. Compare IDFG, 2021-2022 Gray Wolf Hunting & Trapping Seasons & General Rules 79-81 (2021) (Scrimshaw Decl., Ex. E), with IDFG, 2019-2020 & 2020-2021 Gray Wolf Hunting & Trapping Seasons & General Rules 78-81 (2019) (attached to Scrimshaw Decl. as Ex. H); see Idaho Code § 22-5306(2)-(3) (granting Commission supervisory control over wolf-killing funds). Defendants also authorized continued wolf snaring and use of bait when trapping. IDFG, 2021-2022 Gray Wolf Hunting & Trapping Seasons & General Rules 79-81 (Scrimshaw Decl., Ex. E).

Expanding wolf trapping and snaring in Idaho’s grizzly bear habitat is reasonably certain to take grizzly bears because these devices “are by their nature inherently indiscriminate.” Niemeyer Decl. ¶ 28. Neck snares are “capable of ensnaring almost any animal that steps into or through them.” Id. ¶ 16. Wolf foothold traps in Idaho can clamp a grizzly bear by its feet or

toes, trapping the animal, and causing injuries such as foot damage and toe amputations. Id. ¶¶ 11, 20; Proulx Decl. ¶ 10; Vickers Decl. ¶¶ 21-22. In fact, when paired with baits, scents, and lures—as permitted in Idaho—traps and snares pose particular dangers to grizzly bears, who can smell dead animals from long distances and will be easily drawn to these scents. Servheen Decl. ¶¶ 13-15; Niemeyer Decl. ¶ 16; see also Vickers Decl. ¶ 13. Thus, Defendants’ effort to increase wolf trapping and snaring further heightens the reasonable certainty that state-permitted wolf trapping will cause the unlawful take of grizzly bears. Proulx Decl. ¶ 19; Niemeyer Decl. ¶ 27; Servheen Decl. ¶ 16; Vickers Decl. ¶ 11.

In short, Plaintiffs are likely to succeed on the merits of their claim that Defendants’ continued and expanded authorization of wolf trapping and snaring in Idaho’s grizzly bear habitat is reasonably certain to cause the future “take” of grizzly bears in violation of ESA Section 9. See Loggerhead Turtle, 896 F. Supp. at 1180; Ctr. for Biological Diversity, 2016 WL 233193, at \*1; Animal Prot. Inst., 541 F. Supp. 2d at 1073; Animal Welfare Inst., 675 F. Supp. 2d at 576, 579. These future ESA violations are reasonably certain “even if trappers comply with all applicable laws and regulations in place,” and are thus directly attributable to Defendants’ permitting actions and wolf-trapping and snaring rules and regulations. Animal Prot. Inst., 541 F. Supp. 2d at 1079.

## **II. PLAINTIFFS ARE LIKELY TO SUFFER IRREPARABLE HARM IF INJUNCTIVE RELIEF IS NOT GRANTED**

Defendants’ continued and expanded authorization of wolf trapping in grizzly bear habitat threatens irreparable harm to Plaintiffs’ and their members’ interests in observing, enjoying, and conserving grizzly bears in the wild. Defendants’ wolf-trapping rules also threaten irreparable harm to Idaho’s vulnerable grizzly populations. These harms warrant the issuance of a TRO and preliminary injunction.

**A. The Wolf-Trapping Rules Irreparably Harm Plaintiffs' and Their Members' Religious, Recreational, and Aesthetic Interests.**

Without a TRO and preliminary injunction, Plaintiffs and their members will suffer irreparable harm to their religious, recreational, and aesthetic interests under the wolf-trapping rules. Harm to religious, aesthetic, and recreational interests is a cognizable injury. Fund for Animals v. Lujan, 962 F.2d 1391, 1396 (9th Cir. 1992); Roman Cath. Diocese of Brooklyn v. Cuomo, 141 S. Ct. 63, 67-68 (2020). Actions that impair a plaintiff's ability to enjoy wildlife in its natural environment is cognizable harm. Nat'l Wildlife Fed'n, 886 F.3d at 821. Harm to a person's aesthetic and recreational interests in enjoying wildlife is irreparable harm because it cannot be undone. Amoco Prod. Co. v. Vill. of Gambell, 480 U.S. 531, 545 (1987) (“[e]nvironmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, *i.e.*, irreparable.”).

Here, Plaintiffs and their members will suffer irreparable harm to their fundamental interests if this Court does not grant injunctive relief. Defendants' wolf-trapping rules harm Plaintiffs and their members by undermining the survival and recovery of grizzly bears in Idaho. Plaintiffs' and their members use Idaho's grizzly bear habitat for traditional, recreational, and deeply personal activities and pursuits, including hiking, camping, backpacking, wildlife viewing, tracking, hunting, photography, aesthetic enjoyment, and spiritual contemplation. Rain Náhkòxho'óxeóó'éstse-Bear Stands Last Decl. ¶¶ 8, 10, 13-16; Brett Haverstick Decl. ¶¶ 4-7; Gary McFarlane Decl. ¶ 5; Janet Torline Decl. ¶¶ 3-6, 8-11, 14; Kevin Brown Decl. ¶¶ 4, 10, 27; Larry Campbell Decl. ¶¶ 4, 6; Margaret Almquist Decl. ¶¶ 12-15; Paul Sieracki Decl. ¶¶ 9-13, 15-16; Suzanne Stone Decl. ¶¶ 4-6. In doing so, Plaintiffs' members and staff seek to observe, photograph, track, study, read sign of, and simply be in the presence of grizzly bears in their native habitat. Rain Decl. ¶¶ 8, 10, 13-16; Haverstick Decl. ¶¶ 4, 8; McFarlane Decl. ¶¶ 4-5;

Brown Decl. ¶¶ 6-8, 10, 27; Torline Decl. ¶¶ 6, 8-9, 11; Campbell Decl. ¶¶ 4, 6; Almquist Decl. ¶ 20; Sieracki Decl. ¶¶ 9-13, 15-16; Stone Decl. ¶ 6. Plaintiffs derive significant religious, aesthetic, recreational, scientific, inspirational, spiritual, and other benefits from these activities. Rain Decl. ¶¶ 5-7, 10, 13-15; Haverstick Decl. ¶ 5; McFarlane Decl. ¶ 6; Brown Decl. ¶¶ 11, 32, 35; Torline Decl. ¶¶ 3, 10, 14-16; Sieracki Decl. ¶¶ 10, 15, 21; Stone Decl. ¶¶ 6-7.

All Plaintiffs also have long-standing interests in the preservation and recovery of grizzly bears in Idaho, both because they and their members place a deep value on these species, and because the presence of grizzly bears is essential to healthy functioning of the ecosystem. Rain Decl. ¶¶ 5-7, 10, 13-15; Haverstick Decl. ¶¶ 9, 11; Torline Decl. ¶¶ 10, 14, 16, 19; Brown Decl. ¶ 29; Campbell Decl. ¶¶ 6-7; Almquist Decl. ¶¶ 18-19; Sieracki Decl. ¶¶ 5, 7-8, 10; Stone Decl. ¶¶ 6-7. Plaintiffs have been active in seeking to protect and recover grizzly bears through an array of actions, including public outreach and education, scientific analysis, and advocacy intended to promote achievement of healthy ecosystem functioning in the region. Rain Decl. ¶¶ 5-7, 13-14; Haverstick Decl. ¶¶ 9, 11; McFarlane Decl. ¶ 8; Torline Decl. ¶¶ 2, 16; Brown Decl. ¶¶ 29, 31; Campbell Decl. ¶¶ 2-3, 6; Almquist Decl. ¶¶ 2, 18; Sieracki Decl. ¶¶ 7-8; Stone Decl. ¶ 7. Consequently, the reasonably certain trapping and snaring of grizzly bears caused by Defendants' authorization of wolf trapping and snaring in Idaho' grizzly bear habitat will irreparably harm Plaintiffs' and their members' interests in grizzly bear conservation.

Defendants' authorization of wolf trapping and snaring in grizzly bear habitat will also irreparably harm Plaintiffs' members by causing them to fear for their own safety and the safety of their loved ones and their pets when recreating in grizzly bear and wolf habitat. Almquist Decl. ¶ 13; Torline Decl. ¶¶ 13, 18; Brown Decl. ¶¶ 18, 24-26, 29, 34; Stone Decl. ¶ 6. For example, Kevin Brown has been caught in a snare, has witnessed his "beloved dog[]" Ranger

“strangled to death at the end of a snare on a game trail,” and now fears taking his dogs in areas where wolf-trapping occurs. Brown Decl. ¶¶ 18, 24-25. Margaret Almquist has encountered “disguised wolf traps and a noose snare” while hiking, and once nearly triggered a hidden trap while clearing a trail with a crosscut saw. Almquist Decl. ¶ 9; see also Stone Decl. ¶ 6.

A plaintiff’s recreational and aesthetic interests are also harmed by actions that force them to contemplate the violent deaths or cruel suffering of animals that they enjoy studying or seeing in the wild. Humane Soc’y v. Hodel, 840 F.2d 45, 52 (D.C. Cir. 1988); Fund for Animals v. Clark, 27 F. Supp. 2d 8, 14 (D.D.C. 1998). Plaintiffs’ members are aware of the kind of suffering animals experience when caught in traps; some Plaintiffs’ members have even seen the suffering of wildlife and pets caught in traps and snares or been caught themselves. Torline Decl. ¶ 14; Brown Decl. ¶¶ 18-19, 24-25. Defendants’ wolf-trapping rules cause and will cause Plaintiffs’ members psychological and emotional harm by forcing them to contemplate the suffering of captured grizzly bears and other animals, such as when a grizzly’s foot is fractured in a foothold trap or when it starves to death because it cannot escape. Haverstick Decl. ¶ 12; Torline Decl. ¶¶ 14-16, 18; Almquist Decl. ¶¶ 21-22; Sieracki Decl. ¶ 21; Brown Decl. ¶¶ 19-21.

**B. The Wolf-Trapping Rules Irreparably Harm Grizzly Bears, Which Establishes Irreparable Harm.**

“Irreparable harm should be determined by reference to the purposes of the statute being enforced.” Nat’l Wildlife Fed’n, 886 F.3d at 818. Given the ESA’s purpose of “conserving endangered and threatened species and the ecosystems that support them, establishing irreparable harm” in an ESA case “should not be an onerous task.” Cottonwood Envtl. Law Ctr. v. U.S. Forest Serv., 789 F.3d 1075, 1091 (9th Cir. 2015). Section 9 of the ESA prohibits the “take” of “any animal from a listed species.” 16 U.S.C. § 1538(a)(1)(B); Nat’l Wildlife Fed’n, 886 F.3d at 818. Thus, “the threat of death to individual grizzly bears ... is sufficient” to establish



irreparable harm. Crow Indian Tribe v. United States, No. CV-17-89-M-DLC, 2018 WL 4145908, at \*1 (D. Mont. Aug. 30, 2018); accord Fund for Animals, Inc. v. Turner, No. CIV. A. 91-2201(MB), 1991 WL 206232, at \*8 (D.D.C. Sept. 27, 1991). Proof of an “extinction-level threat” to a species is not required. Nat’l Wildlife Fed’n, 886 F.3d at 818-19.

With two grizzlies killed in incidents involving wolf snares in 2020 and vulnerable Idaho grizzly bear populations, even one additional grizzly mortality could be devastating and could undermine recovery of the population. Servheen Decl. ¶¶ 10-11. Thus, like the sport hunt enjoined in Fund for Animals v. Turner, “the loss even of ... relatively few grizzly bears that are likely to be taken ... during the time it will take to reach a final decision in this case is a significant, and undoubtedly irreparable, harm.” 1991 WL 206232, at \*8; accord Crow Indian Tribe, 2018 WL 4145908, at \*1; Nat’l Wildlife Fed’n, 886 F.3d at 820-22 (harm from dams to salmon irreparable in light of “precarious state” of species).

Based on existing case law and the facts before this Court, Plaintiffs are suffering actual, concrete, and irreparable injuries resulting from Defendants’ authorization of wolf trapping and snaring within Idaho grizzly bear habitat and range. This Court should issue a TRO and preliminary injunction enjoining wolf trapping and snaring in Idaho’s overlapping wolf and grizzly bear habitat to prevent irreparable harm to Plaintiffs, their members, and Idaho’s fragile grizzly bear populations before the Court has an opportunity to issue a decision on the merits.

### **III. THE BALANCE OF HARMS AND PUBLIC INTEREST WEIGH IN FAVOR OF GRANTING PRELIMINARY RELIEF.**

Finally, by congressional design the “balance of hardships and the public interest tips heavily in favor of protected species.” See, e.g., Burlington N. R.R., 23 F.3d at 1511 (citing Tenn. Valley Auth., 437 U.S. at 174); Nat. Res. Def. Council, Inc. v. Evans, 279 F. Supp. 2d

1129, 1190 (N.D. Cal. 2003) (the public has an “extremely strong” interest in protecting “the survival and flourishing of ... endangered species”).

While the court considers a motion for a preliminary injunction, it has authority to issue a TRO, according to the same standard to grant a preliminary injunction. All. for Wild Rockies, 2021 WL 3131315 at \*3. Because Plaintiffs satisfy the test for a preliminary injunction, Plaintiffs fully satisfy the test for a TRO.

### CONCLUSION

Defendants’ authorization of wolf trapping and snaring in Idaho’s grizzly bear habitat violates the ESA’s prohibition against the take of threatened grizzly bears. Absent intervention from this Court, Defendants’ ongoing and increased efforts to kill wolves is reasonably certain to cause the unlawful take of grizzly bears in wolf traps and snares, thereby irreparably harming grizzly bears and Plaintiffs. Plaintiffs respectfully urge this Court to enjoin Defendants from authorizing wolf trapping and snaring in grizzly bear habitat—including all of Idaho’s Panhandle, Clearwater, Salmon, and Upper Snake regions—to avoid irreparable harm until ruling on the merits.

Respectfully submitted this 6th day of December, 2021.

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