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First Circuit Court of Appeals Upholds Maine Court's Lynx Decision Under the Endangered Species Act

On October 20, 2010, the First Circuit Court of Appeals in Boston issued a decision upholding the refusal of Judge Woodcock of the U.S. District Court for Maine to require the Maine Department of Inland Fisheries and Wildlife (DIFW) to ban the use of foothold traps. *Animal Welfare Institute v. Martin*.

The Animal Welfare Institute (AWI) had argued that because the foothold traps, which are legally used to trap coyote and fox, also incidentally trap lynx (which is listed as a threatened species under the ESA), DIFW must ban such traps. The First Circuit agreed that the definition of an illegal "take" under the ESA could be broad enough to make it illegal to trap lynx, but it did not agree that the result necessarily is that such traps must be banned. Rather, such traps need only be banned if the trapping results in "irreparable injury."

Although the First Circuit appeared to lean toward requiring a threat to the "species as a whole" to find "irreparable injury," it also agreed with Judge Woodcock that the death of a single animal may, in some circumstances, result in irreparable injury. The First Circuit noted that Judge Woodcock had found that so-called Conibear traps result in irreparable injury because individual lynx may suffer irreparable harm, even though the Conibear traps do not threaten the species as a whole.

Because AWI was not able to show that any lynx have been killed in foothold traps, or even that lynx suffer serious physical injury from being trapped in foothold traps, AWI could not show irreparable harm from the foothold traps. The court also rejected AWI's argument that the stress of being trapped in the foothold traps could result in irreparable harm.

Interestingly, AWI had also asked the First Circuit to order DIFW to participate in a working group to discuss the problem of incidental take of lynx. Because AWI did not ask for that relief from Judge Woodcock, though, the Court of Appeals denied AWI's request: "Parties are held to their choices and AWI's bait and switch tactics in the courts are to be deplored, not rewarded." It is not clear whether the First Circuit's "bait and switch" pun was intended.

If you have questions about the *AWI v. Martin* decision, or ESA issues generally, please contact Matt Manahan at mmanahan@pierceatwood.com or (207) 791-1189 or Nick Livesay at nlivesay@pierceatwood.com or (207) 791-1281.

Environmental Alert

A periodic update of recent developments concerning environmental issues.

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