

# How the United States Was Able to Dodge International Reforms Designed to Make Wildlife Trapping Less Cruel

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## 1. Introduction

Each year in the United States, more than 6 million animals are trapped in the wild for their fur, primarily with steel-jaw leghold traps, body-gripping kill traps, and strangling neck snares.<sup>1</sup> Although factors such as reduced domestic demand for fur, plummeting pelt prices, and increased public pushback have led to a decline in commercial trapping over the past several decades, the United States continues to be among the world's leaders in the number of wild animals trapped for their fur.

Raccoons, coyotes, muskrats, beavers, red foxes, bobcats, and mink are among the most commonly trapped species.<sup>2</sup> However, official reports are mere estimates (using known data to extrapolate more broadly) and fail to include all animals who are actually trapped. Many unreported nontarget animals fall victim to steel-jaw traps and Conibear traps,<sup>3</sup> including dogs, cats, deer, and birds, as well as threatened and endangered species.<sup>4</sup> Moreover, many wild species, particularly predators such as coyotes, are trapped and killed for wildlife damage management because they are deemed “nuisance” animals.<sup>5</sup> Kills by government-

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<sup>1</sup> Caught By Mistake: Pets Suffer Serious Steel-Jaw Leghold Trap Injuries, ANIMAL WELFARE INSTITUTE (2016), <https://awionline.org/awi-quarterly/2016-spring/caught-mistake-pets-suffer-serious-steel-jaw-leghold-trap-injuries>.

<sup>2</sup> Ass'n of Fish & Wildlife Agencies, Trap Use Report (2015), available at [http://www.fishwildlife.org/files/AFWA\\_Trap\\_Use\\_Report\\_2015\\_ed\\_2016\\_02\\_29.pdf](http://www.fishwildlife.org/files/AFWA_Trap_Use_Report_2015_ed_2016_02_29.pdf).

<sup>3</sup> See, e.g., Christina M. Russo, “Antiquated” Trapping Laws Can Inflict Torture on Wildlife...And Family Pets, THE DODO (March 25, 2015), <https://www.thedodo.com/wyoming-trapping-laws-1058977987.html>.

<sup>4</sup> NOCTURNAL WILDLIFE RESEARCH PTY., WELFARE OUTCOMES OF LEG-HOLD TRAP USE IN VICTORIA (Sept. 2008), [http://agriculture.vic.gov.au/\\_data/assets/pdf\\_file/0019/261712/REVIEW-WELFARE-OUTCOMES-OF-LEG-HOLD-TRAP-USE-IN-VICTORIA.pdf](http://agriculture.vic.gov.au/_data/assets/pdf_file/0019/261712/REVIEW-WELFARE-OUTCOMES-OF-LEG-HOLD-TRAP-USE-IN-VICTORIA.pdf); G. Iossa et al., *Mammal Trapping: A review of animal Welfare Standards of Killing and Restraining Traps*, 16 ANIMAL WELFARE 335 (2007); BRIAN J. FRAWLEY ET AL., MICH. DEP'T. OF NAT. RESOURCES, FOX AND COYOTE TRAPPING SURVEY, WILDLIFE REPORT DIVISION, no. 3430 (Feb. 2005); Roger Powell & Gilbert Proulx, *Trapping and Marking Terrestrial Mammals for Research: Integrating Ethics, Performance Criteria, Techniques, and Common Sense*, 44 ILAR J. no. 4, 259 (2003); Thomas N. Tomsa & James E. Forbes, FOURTH EASTERN WILDLIFE DAMAGE CONTROL CONFERENCE, Coyote Depredation Control in New York – An Integrated Approach (Sept. 25 1989), <http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1039&context=ewdcc4>; Gary R. Bortolotti, *Trap and Poison Mortality of Golden and Bald Eagles*, 48 J. WILDLIFE MGMT. no. 4, 1173 (1984).

<sup>5</sup> See, e.g., United States Department of Agriculture Animal and Plant Health Inspection Service, *Resolving Wildlife Damage to Protect People, Agriculture and Wildlife* (2012) (referring to actions targeting “nuisance” animals), [https://www.aphis.usda.gov/wildlife\\_damage/informational\\_notebooks/2012/Section\\_1\\_combined.pdf](https://www.aphis.usda.gov/wildlife_damage/informational_notebooks/2012/Section_1_combined.pdf); Indiana Department of Natural Resources, *Nuisance Wildlife*, <http://www.in.gov/dnr/fishwild/2351.htm> (last visited March 31, 2017).

sanctioned trappers are supposed to be reported and eventually made public by the US Department of Agriculture's Wildlife Services program. Other animals may be trapped and killed by ranchers or trappers who act on their behalf because the animals are deemed a threat to livestock.<sup>6</sup> Approximately 250,000 people are employed by the pest control and nuisance wildlife control industries (although they may be employing methods other than trapping).<sup>7</sup> The vast majority of trappers are engaged in some trapping of so-called nuisance animals. Because few states require trappers to report nontarget animals caught in traps,<sup>8</sup> we do not know the total number of animals trapped and killed each year in the United States beyond the number reported to state wildlife agencies by licensed commercial and recreational trappers and the number reported by federal trappers with Wildlife Services. What we do know is that millions of animals continue to be killed, maimed, and made to suffer unnecessarily in cruel traps for the domestic and overseas fur trade and for the purpose of conducting "wildlife damage control" and eradicating "nuisance" wildlife.

This article examines the impediments to trapping reforms at the state level, as well as nationally and internationally. Section 2 provides a brief overview of wildlife trapping regulations and the traps most commonly used in the United States. Section 3 discusses the United States' response to the European Union's trapping reform legislation and how this response creates an impediment to future trapping reforms domestically. Section 4 examines the underlying cultural and legal sources of resistance to trapping reforms in the United States in particular. Section 5 summarizes the various efforts that have been directed at reforming trapping laws in the United States, and suggests efforts to overcome the resistance to further trapping reforms in the United States and internationally. Final thoughts are offered in Section 6.

## **2. Regulation of wildlife trapping in the United States**

Trapping is predominantly regulated at the state level,<sup>9</sup> and regulations vary greatly depending on the state.<sup>10</sup> For example, states such as Nevada and Louisiana have very few restrictions on trapping, while others, such as Colorado and Arizona, feature more complex regulations.<sup>11</sup>

### **2.1 Steel-jaw traps**

Steel-jaw traps operate in the same manner as those brought from Europe to North America more than 300 years ago.<sup>12</sup> When the trap is activated, steel jaws clamp together with bone-crushing

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<sup>6</sup> Camilla H. Fox, *Wildlife Control: Out of Control*, 35 ANIMAL ISSUES no. 2, 15 (2004); Camilla H. Fox, *Analysis of the Marin County Strategic Plan for Protection of Livestock & Wildlife: An Alternative to Traditional Predator Control* (2008) (unpublished thesis, Prescott College); Michael Robinson, *Predatory Bureaucracy: The Extermination of Wolves and the Transformation of the West* (2005) (on file with the University Press of Colorado).

<sup>7</sup> Minutes of the Agreement on International Humane Trapping Standards Joint Management Committee Meeting, Edmonston, Alberta, Canada, Oct 4-5, 2011, p. 14: <http://www.fishwildlife.org/files/2011JMCReport.pdf>.

<sup>8</sup> ANIMAL PROTECTION INST., *CULL OF THE WILD: A CONTEMPORARY ANALYSIS OF WILDLIFE TRAPPING IN THE UNITED STATES* (Camilla H. Fox & Christopher M. Papouchis eds. 2004).

<sup>9</sup> *Id.* at 71.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> RICHARD GERSTELL, *THE STEEL TRAP IN NORTH AMERICA* (1985) (Stackpole Books).

force on the limb of the animal. The traps come in a wide array of sizes, and utilize one or two long or paired coil springs. Some may have extra coil springs added (a “beefier kit”) or an extra set of jaws (“double-jawed”). The steel-jaw trap often used on muskrat is called a “stop-loss” trap and has an auxiliary arm that is intended to hold the animals away from their trapped limbs so that they are unable to chew them off to escape. This self-mutilating behavior is called “wring-off” by trappers. An enclosed style of steel-jaw trap, also called a foot-encapsulating trap or a dog-proof trap, is used on raccoons to prevent wring-off. The front feet of raccoons are hypersensitive, yet they will commonly chew them off to escape from steel-jaw traps. Using a steel-jaw trap in an enclosure merely prevents the raccoon from accessing the limb close to the trap to chew it off; it does not reduce the pain. One particularly grim account of the suffering of an animal during trap testing describes a raccoon who had nearly amputated his leg to get out of an enclosed steel-jaw trap by chewing at his limb near the shoulder, as that was the only portion he could access.<sup>13</sup> This trap modification and others are described further below.

A few states have banned or restricted the use of steel-jaw traps for commercial and/or recreational trapping under some circumstances.<sup>14</sup> Five of these banned steel-jaw traps via voter initiatives: Arizona in 1994 (ban on trapping on public lands), Colorado and Massachusetts in 1996, California in 1998, and Washington in 2000.<sup>15</sup> Two states banned or strongly restricted the use of steel-jaw traps through legislation. Rhode Island enacted a law in 1977 banning the use of steel-jaw traps except under permit for “animal damage control.” New Jersey followed suit in 1984, with stronger legislation banning the use, manufacture, sale, import, transport, and possession of steel-jaw traps.<sup>16</sup> In 1972, Florida became the only state to restrict the use of steel-jaw traps through the administrative process, by mandating that padded steel-jaw traps are allowed only under permit for “animal damage control.” In 1999, Hawaii—although it contains no commercially targeted furbearers—banned all forms of trapping.<sup>17</sup>

A number of states have implemented regulations placing some limits on steel-jaw traps. For example, several states have placed an upper limit on the size of steel-jaw traps used on land and/or in water.<sup>18</sup> Several states have disallowed the use of steel-jaw traps with teeth or

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<sup>13</sup> George F. Hubert, Jr. et al., *Evaluation of Two Restraining Traps to Capture Raccoons*, 24 WILDLIFE SOC’Y BULL., no. 4, 1996, 699–708.

<sup>14</sup> ANIMAL PROTECTION INST., *supra* note 8.

<sup>15</sup> See Ballotpedia for a list of state initiatives: [https://ballotpedia.org/Arizona\\_Public\\_Land\\_Trapping\\_Statute,\\_Proposition\\_201\\_\(1994\)](https://ballotpedia.org/Arizona_Public_Land_Trapping_Statute,_Proposition_201_(1994)); [https://ballotpedia.org/Colorado\\_Prohibited\\_Methods\\_of\\_Taking\\_Wildlife,\\_Initiative\\_14\\_\(1996\)](https://ballotpedia.org/Colorado_Prohibited_Methods_of_Taking_Wildlife,_Initiative_14_(1996)); [https://ballotpedia.org/Massachusetts\\_Ban\\_on\\_Leghold\\_Traps\\_Initiative,\\_Question\\_1\\_\(1996\)](https://ballotpedia.org/Massachusetts_Ban_on_Leghold_Traps_Initiative,_Question_1_(1996)); [https://ballotpedia.org/California\\_Proposition\\_4,\\_Prohibition\\_on\\_Trapping\\_Fur-Bearing\\_Mammals\\_\(1998\)](https://ballotpedia.org/California_Proposition_4,_Prohibition_on_Trapping_Fur-Bearing_Mammals_(1998)); [https://ballotpedia.org/Washington\\_Animal\\_Trapping\\_Act,\\_Initiative\\_713\\_\(2000\)](https://ballotpedia.org/Washington_Animal_Trapping_Act,_Initiative_713_(2000)).

<sup>16</sup> See New Jersey Dep’t of Env’tl. Prot., *Trapping Regulations* (2016), available at [http://www.state.nj.us/dep/fgw/pdf/2016/trapping\\_summary16-17.pdf](http://www.state.nj.us/dep/fgw/pdf/2016/trapping_summary16-17.pdf). New Jersey now allows for the use of “enclosed” or “foot encapsulating” traps; live-restraint traps which operate as steel-jaw traps enclosed by a housing; see also Dena Jones & Sheila Rodriguez, *Restricting the Use of Animal Traps in the United States: An Overview of Laws and Strategy*, 9 ANIMAL L. 135 (2003), available at [https://www.animallaw.info/sites/default/files/lralvol9\\_p136.pdf](https://www.animallaw.info/sites/default/files/lralvol9_p136.pdf).

<sup>17</sup> Hawai’i Fishing Regulations, Board of Land and Natural Resources (Aug. 2015), available at [http://dlnr.hawaii.gov/dar/files/2015/08/fishing\\_regs\\_Aug\\_2015.pdf](http://dlnr.hawaii.gov/dar/files/2015/08/fishing_regs_Aug_2015.pdf).

<sup>18</sup> States that have restricted the size of steel-jaw traps used in land sets include Alabama, Alaska, Arizona, Arkansas, Connecticut, Delaware, Georgia, Idaho, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Minnesota, Nevada, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Utah, Virginia, Washington, West Virginia, and Wisconsin. States that have restricted the size of steel-jaw traps used in water sets include Alaska, Arizona, Arkansas, Connecticut, Delaware, Illinois, Maryland, Minnesota, New Mexico, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, South Carolina, and

serrations; however, such traps are still allowed in a significant number of states.<sup>19</sup> Although some wildlife managers claim that padded steel-jaw traps are more humane than traps without this modification, only a few states specifically mandate the use of padded steel-jaw traps in some circumstances in lieu of non-padded steel-jaw traps.<sup>20</sup> In addition, a national survey indicated that less than three percent of steel-jaw traps used by US trappers were padded.<sup>21</sup> A number of states mandate the use of “offset jaws” (jaws that leave a small gap when closed) when steel-jaw traps are used in water or land sets.<sup>22</sup> The small gap between the jaws (typically 3/16 inch) ostensibly allows small nontarget animals to escape and reduces trap injuries in larger animals.<sup>23</sup>

In June 2015, the New Jersey Fish and Game Council voted to legalize enclosed steel-jaw traps through a rulemaking process, calling them “enclosed foothold traps” in an attempt to circumvent the state’s 31-year ban on steel-jaw traps.<sup>24</sup> As described earlier, enclosed traps operate in the same manner as the banned steel-jaw traps; they merely encapsulate the jaws in plastic or metal and the trap is tripped by the animal pulling up on the trigger rather than depressing it. While the traps in question are intended for raccoons, opossums are taken as

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Tennessee. Information about the details of these state laws, and other state laws mentioned in these notes, is on file with the authors.

<sup>19</sup> Nineteen states allow the use of teeth or serrations in land sets of steel-jaw traps. Twenty-six states allow the use of such traps for water sets. States that have not banned the use of teeth or serrations on steel-jawtraps used in land sets include Alaska, Delaware, Georgia, Idaho, Kansas, Minnesota, Mississippi, Montana, Nevada, New Hampshire, North Dakota, South Carolina, South Dakota, Texas, Utah, and Wyoming. States that have not banned the use of teeth or serrations on steel-jaw traps used in water sets include these same states plus Alabama, Iowa, Maine, New Mexico, Tennessee, Virginia, and Wisconsin.

<sup>20</sup> States prohibiting or restricting steel-jaw traps used in land sets except for use of padded steel-jaw traps under certain circumstances are California (padded steel-jaw traps used by “federal, state, county, or municipal government employees or their duly authorized agents in the extraordinary case where the otherwise prohibited padded-jaw steel-jaw trap is the only method available to protect human health or safety”), Colorado (padded steel-jaw traps may be used after obtaining a permit for “animal damage control purposes,” by the state Department of Health, or under other regulatory exemptions), Connecticut (“on land, trappers must use padded-jawed traps, and set the traps in the animal’s burrow; steel-jawed leghold traps may be set only in water bodies”), Florida (“permits for padded steel-jaw traps may be issued to trap nuisance animals”), and Washington (“padded steel-jaw traps used by permit for human health/safety, endangered species protection, wildlife research, and animal damage control”).

<sup>21</sup> WildEarth Guardians, *FAQ on Trapping*, <http://www.wildearthguardians.org/site/DocServer/FAQ-ON-TRAPPING.pdf?docID=4562>; see also Ass’n of Fish & Wildlife Agencies, *supra* note 3.

<sup>22</sup> ANIMAL PROTECTION INST., *supra* note 8 at 80.

<sup>23</sup> States that mandate the use of offset jaws under some circumstances include Arizona (“footholds” must be “padded or rubber-jawed or unpadded with jaws permanently offset to a minimum of 3/16 inch and a device that allows for pan tension adjustment”), Arkansas (“all steel-jaw traps with a jaw spread greater than 5 inches must have offset jaws”), Delaware (“any footholds above waterline must be offset, laminated, or padded”), Indiana (illegal to use a “foothold trap with saw-toothed or spiked jaws and illegal to take a wild animal with a foothold trap if the widest inside jaw-spread measured perpendicular to the trap’s base plate and the inside width between the trap’s hinge posts (both measurements) is greater than 5¾ inches and less than or equal to 6½ inches, unless the jaws of the trap have at least a 1/8-inch offset, the gap of the offset is filled with securely attached rubber pads, or the trap is completely covered by water”), Nevada (“all steel leg hold traps size No. 2 or larger or with an outside jaw spread of 5.5 inches or larger must maintain a minimum trap opening of three-sixteenths of one inch”), New Mexico (“any foot-hold trap with an inside jaw spread 5½ inches or larger shall be offset, unless it has padded jaws”), North Carolina (“if the jaw spread is between 5½ and 7½ inches, the jaws must be offset by 3/16th of an inch”), Oregon (illegal to use a “No. 3 or larger steel-jaw trap not having a jaw spacing of at least 3/16 of one inch when the trap is sprung”), and Utah (traps “must leave an opening of at least 3/16 of an inch when the jaw is closed”).

<sup>24</sup> See New Jersey Dep’t of Env’tl. Prot., Comment Letter on Proposed Rule to Amend N.J.A.C. 7:25-5.12(g) to Allow for the Use of Enclosed Leghold Traps (May 15, 2015), available at <https://awionline.org/sites/default/files/uploads/documents/AWI-WL-NJTrapping-DEP-DktNo011502-2015.pdf>.

incidental catch. The enclosure is meant to prevent the trapped animal from chewing off his or her foot to escape, and the pull trigger is meant to prevent dogs from being caught. Nonetheless, the 60-pound clamping force is strong enough to inflict severe trauma and pain and restrict blood flow, and domestic cats are among the trap's potential nontarget victims.<sup>25</sup>

## 2.2 Conibear traps

Conibear traps are kill or body-gripping traps composed of two metal rectangles with a scissor-like hinge in the center, with one or two springs. When the device is tripped, the rectangles clamp together with tremendous force on the neck and/or torso of an animal. The springs are so strong, a setting tool is needed to open the device; family members' efforts to rescue trapped companion animals are futile. Such traps are restricted in a number of states because of the lethal danger posed to nontarget animals, particularly domestic dogs and cats.<sup>26</sup>

## 2.3 Snares

Snares are wire nooses that most often are set to strangle an animal to death. The traps can operate in a manner that uses the animal's movement to draw the loop tight, or they can employ some form of spring mechanism to do so. While some states regulate and restrict the use of snares, others ban strangling snares outright due to their indiscriminate and lethal nature. Some of the various restrictions placed on snares include requiring the use of "locks" or "stops," which prevent the snare from closing beyond a set diameter, thereby making it a restraining rather than a killing trap; another is to require a "breakaway" device to allow animals of a particular size to escape. Few states differentiate between neck, body, and foot (leg) snares.<sup>27</sup> Death in killing snares is brutal and can take an extended period, particularly for canids who have thick musculature along the neck. The canids suffer severe edema, with the animal's neck and head swelling terribly, a condition commonly referred to as "jelly head."<sup>28</sup>

## 2.4 Cage/Box traps

Cage or box traps are designed to allow an animal to enter an enclosure, trip the device, and remain contained inside it. There are a variety of such traps. The log box trap is used on larger species in Canada and is likely the least cruel trap. It is a very large box made almost entirely of logs from native trees. The captured animal is sheltered instead of being held brutally by an appendage, and, because there are no metal bars, animals will not break their teeth trying to

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<sup>25</sup> *See id.*

<sup>26</sup> ANIMAL PROTECTION INST., *supra* note 8 at 81.

<sup>27</sup> *Id.* States that prohibit the use of snares for commercial trapping and recreational trapping: Arizona (complete ban), California, Colorado, Connecticut (complete ban), Hawaii, New York (complete ban), Rhode Island (complete ban), Vermont (complete ban), and Washington (although note that snares are permissible to use under some circumstances in Washington).

<sup>28</sup> TOM GARRETT, ALTERNATIVE TRAPS: THE ROLE OF CAGE AND BOX TRAPS IN MODERN TRAPPING, THE ROLE OF LEGSNARES IN MODERN TRAPPING, AND THE ROLE OF SPRING-POWERED KILLING TRAPS IN MODERN TRAPPING (rev. ed., 1999).

escape. However, as with any live restraint device, a cage/box trap can be inhumane if left unchecked for extended periods as, depending on the device, trapped animals can die of thirst, hunger, exposure, self-mutilation, or predation.<sup>29</sup>

## 2.5 Trap sets

A trap set is the specific manner in which a trap is placed in order to catch and hold an animal. A land or dry set holds an animal on land, while a water set is meant to hold an animal underwater so that if the device does not kill instantly, the animal will still drown. A slide set describes a trap set on land that causes the trapped animal to slide on a line into the water and drown. Most traps are held in place by a chain affixed to a stake in the ground to prevent a live-trapped animal from moving away. Sometimes a “drag” is used instead, where the trap is affixed to a large object—such as a branch or a steel grapple—so that the trapped animal can move away to hide in brush.

Pole sets are typically steel-jaw traps (although sometimes snares or Conibear traps) set above ground and attached to a pole, post, log, or tree branch.<sup>30</sup> The traps work by catching animals who are then left dangling from the pole, ensuring that they cannot escape via chewing off a trapped limb. The use of pole sets is legal in most states;<sup>31</sup> however, their use has been controversial, as threatened, endangered, and other nontarget animals are often caught.<sup>32</sup> Some states have responded to this by restricting the use of pole sets that are placed in a way that can capture nontarget animals, such as certain raptors.<sup>33</sup> For example, in Minnesota, “A person may not take a bird with a steel jaw leg-hold trap mounted on a pole, post, tree stump, or other perch more than three feet above the ground.”<sup>34</sup> Other states (such as New York) have simply banned the use of traps set “in such a manner that causes a captured animal to be suspended in the air.”<sup>35</sup> A majority of the states, however, are silent on their use, which indicates that it is legal to use them.<sup>36</sup>

## 2.6 Colony traps (also Known as submarine traps)

A colony trap is a cage or box trap set in water to capture and drown multiple animals.<sup>37</sup> They are commonly used due to their efficiency in capturing large numbers of animals. Because they

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<sup>29</sup> *Id.*

<sup>30</sup> ANIMAL PROTECTION INST., *supra* note 8, at 83.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> MINN. STAT. § 97B.705 (2016), <https://www.revisor.mn.gov/statutes/?id=97b.705>.

<sup>35</sup> See Trapping Regulations, New York State Department of Environmental Conservation (Mar. 27, 2017), available at <http://www.dec.ny.gov/outdoor/9209.html>.

<sup>36</sup> ANIMAL PROTECTION INST., *supra* note 8, at 83. States that have banned pole traps only if set for birds: South Dakota (if set in a manner that a raptor may be captured, injured, or killed: <http://gfp.sd.gov/hunting/trapping/regulations.aspx>) and Wisconsin (<http://dnr.wi.gov/files/pdf/pubs/wm/wm0002.pdf>). States that explicitly prohibit pole traps are New Jersey, Pennsylvania, South Dakota, Tennessee, Washington, and West Virginia. Others may indirectly prohibit by excluding from list of acceptable traps for use.

<sup>37</sup> *Id.*

are so efficient at catching multiple animals, colony traps are explicitly banned in a number of states. Most states, however, are silent on their use.<sup>38</sup>

### 3. The European Union's ban on steel-jaw traps—and Canadian and US efforts to sidestep it

Following a lengthy process of considering the cruelty of steel-jaw traps and what should be done, the European Union adopted a historic measure (Regulation 3254/91) in 1991 that banned steel-jaw traps within member countries by 1995.<sup>39</sup> This regulation was the first-ever international agreement that comprehensively addressed animal welfare issues specific to wildlife.

Regulation 3254/91 also sought to exert economic pressure on countries using steel-jaw traps by prohibiting these countries from exporting fur from 13 species of animals to the European Union.<sup>40</sup> At the time the regulation passed, Europe imported more than 70 percent of wild-caught furs from the United States and Canada.<sup>41</sup> Animal advocates had hoped the EU regulation would provide the necessary impetus to finally end the use of steel-jaw traps within the United States, Canada, and Russia; the three nations that export the largest number of pelts from wild-caught animals.<sup>42</sup>

Those hopes were not realized. Before the regulation was finalized, the European Union bowed to pressure from Canada and the United States and added a clause to the regulation that permitted countries exporting fur to the European Union to either prohibit all use of steel-jaw traps *or* to use trapping methods for the 13 species that meet “internationally agreed humane trapping standards.” At the time, no such standards existed, although they were under development (more on this later). However, the EU interpretation of the regulation<sup>43</sup> was that such humane trapping standards had to include a prohibition on steel-jaw traps for the 13 species listed in the regulation.<sup>44</sup>

The governments of Canada and the United States balked at this interpretation. These countries and the fur interests they represent were not prepared to end use of all types of steel-jaw traps for the 13 species, and they did not want their fur trade with the European Union curtailed. Canada, with support from the United States, responded by threatening a trade challenge under the General Agreement on Tariffs and Trade (GATT)—an international treaty originally signed in 1947 and revised in 1994 to coincide with the establishment of the World Trade Organization (WTO). The agreement's dispute settlement and enforcement procedures

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<sup>38</sup> *Id.* States that have explicitly banned the use of colony traps include Illinois (<http://www.ilga.gov/legislation/ilcs/fulltext.asp?DocName=052000050K2.33a>) and Wisconsin (<http://www.fishwildlife.org/files/Summary-Trapping-Regulations-Fur-Harvesting.pdf>). States that explicitly allow the use of colony traps are Colorado (<https://www.sos.state.co.us/CCR/GenerateRulePdf.do?ruleVersionId=854>), Iowa (muskrats only: <https://coolice.legis.iowa.gov/Cool-ICE/default.asp?category=billinfo&service=IowaCode&ga=83&input=481A.92>), and Michigan (muskrats only: <http://www.mtpca.com/regulations.html>).

<sup>39</sup> Council Regulation 3254/91 of 4 Nov. 1991, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1500477936509&uri=CELEX:31991R3254>).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Note for the File* prepared by Willem Wijnstekers, 24 November 1993 (an adapted version of a note of 8 October 1993 on this subject). Note that the document takes account of the comments and views of the legal division of DG XI and the Commission Legal Service.

<sup>44</sup> *Id.*

induced the European Union to buckle under pressure from Canada and the United States. Implementation of the fur import ban was delayed while negotiations dragged on for years.

In July 1997, an Agreement on International Humane Trapping Standards (AIHTS) was reached between the European Union, Canada, and Russia, which spared the latter two from a fur import ban. The agreement required Canada and Russia to end use of “conventional” steel-jaw traps for certain species within four years of AIHTS’s ratification. Trapping standards are annexed to the agreement, trap testing must be conducted, and the parties must end use of traps that do not meet the standards. Steel-jaw traps that meet the standard can continue to be used.

In December 1997, the United States reached a separate understanding (a nonbinding “agreed minute”) with the European Union.<sup>45</sup> “Standards for the Humane Trapping of Specified Terrestrial and Semi-Aquatic Mammals” (the same standards that are annexed to the European Union/Canada/Russia agreement) and a side letter from the United States are included in the understanding.

The agreed minute states that the United States and the European Union consider the standards to be “a common framework and a basis for cooperation” and that the parties “intend to encourage and support research, development, monitoring and training programs ... to promote the use and application of traps and trapping methods for the humane treatment of such mammals.” It emphasized that such agreement does not “alter the distribution of authority within the United States for regulation of the use of traps and trapping methods.”

The side letter further affirms that trap regulation is primarily the responsibility of the states. The United States promised a 50-state initiative to develop best management practices (BMP) for traps and trapping methods and touted that this initiative would cover 29 species rather than the 19 annexed to the agreed minute. Not so widely touted was the fact that the agreement was *nonbinding* on the states and the BMP process, among its many flaws, was a *voluntary* program.

The side letter went on to assure the European Union that, “*pursuant to the standards,*” the United States would phase out use of steel-jaw *restraining* traps on ermine and muskrat within four years of the entry into force of the tripartite agreement between the European Union, Canada, and Russia. However, both species are commonly taken in steel-jaw traps set to kill the animals rather than restrain them. Muskrats are trapped in water sets where they are drowned. Ermine are not typically targeted, but are taken as incidental catch in steel-jaw traps set for other species. If steel-jaw traps are set for ermine, they are set in a manner intended to kill the ermine rather than restrain them. Notwithstanding the United States’ assurances, therefore, the end result has been business as usual.

The United States further stated that regarding other species, “*pursuant to the standards* annexed to the Agreed Minute, the use of *conventional* steel-jawed leghold restraining traps is being phased out within six years of the entry into force” of the tripartite agreement (emphasis added). The United States did not acknowledge that there is no agreed definition of what constitutes a “conventional” steel-jaw trap. The language “*pursuant to the standards*” appears to suggest that the phase-out of conventional steel-jaw restraining traps would occur only if they failed to meet the weak standards annexed to the agreement.

Furthermore, the status of the tripartite agreement and the US-EU understanding has been difficult to discern. It appears that although the EU Regulation was adopted in 1991, the agreement between the European Union, Canada, and Russia was not ratified until July 22,

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<sup>45</sup> Office of the United States Trade Rep., European Union Humane Trapping Standards Agreement (Dec. 23, 1997) available at [http://tcc.export.gov/Trade\\_Agreements/All\\_Trade\\_Agreements/exp\\_002820.asp](http://tcc.export.gov/Trade_Agreements/All_Trade_Agreements/exp_002820.asp).

2008.<sup>46</sup> Beyond these dates, there is little public record of what progress has been made toward compliance with either agreement.

### 3.1 History of the ISO process of developing “Humane Trapping Standards”

The seed for creating trap standards was planted before EU Regulation 3254/91 was even adopted. In the mid-1980s, the Canadian government brought together about 50 representatives from the Canadian fur industry to meet with a four-member Gray and Company public relations team to see what could be done to protect their trade. The seminar was titled, “The Animal Rights Movement, Trappers and the Canadian Fur Industry: Facing the Facts and Shaping the Message.”<sup>47</sup> The objective was “to develop an effective strategy to counter vocal critics of trapping and the fur industry.” Following the meeting a report was prepared, “Launching the Offensive,” and in this document the firm advised the industry to reach the general public—“uncommitted yet vulnerable to emotional issues and messages”—with a “positive” and “effective” message on behalf of Canadian fur interests. The industry was told that it is problematic to rally the public to “Save the Leghold Trap.” Instead, Canada was advised to adopt strong national standards, and the Fur Institute was told to make “humane trapping a key agenda item immediately.” An essential long-term goal was for Canada to label its fur products so as to assure the public that the animals are caught “humanely” and by a “caring and interested community.”<sup>48</sup> Canada was advised that “by not sitting this out and simply waiting for the next shoe to fall, Canada will be able to set the agenda on behalf of its fur interests. Assumptions made *about* the industry and trapping can be assumptions shaped *by* the industry.” (emphasis added)

The next year, Canada began the formal process of developing humane trap standards under the auspices of the International Organization for Standardization (ISO). The involvement of ISO—whose mission is to “promote the development of standardization and related activities in the world with a view to facilitating the international exchange of goods and services”—played into the hands of the fur industry.<sup>49</sup> Canada served as administrator of the process and a Canadian served as chair. The first meeting of ISO Technical Committee 191 to develop international humane trap standards was held in Quebec City in 1987. Ultimately, three separate standards were devised: for “humane” restraint traps, “humane” killing traps, and “humane” drowning traps, and the work was done by three working groups).<sup>50</sup> All three were chaired by Canadians. Representatives deliberating on appropriate text and requirements for the documents were trappers, trap manufacturers, game managers, and others involved with the industry. Animal protection representatives were present, though significant efforts were made to minimize their participation.

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<sup>46</sup> European Commission, Implementation of Humane Trapping Standard in the EU, [http://ec.europa.eu/environment/biodiversity/animal\\_welfare/hts/index\\_en.htm](http://ec.europa.eu/environment/biodiversity/animal_welfare/hts/index_en.htm) (last visited March 31, 2017).

<sup>47</sup> Response from Department of External Affairs, Canada to Access to Information Request No. A-176 for a “discussion paper dated May 1985 prepared by Gray and Company...as well as copies of the minutes of meetings held where this report was tabled and discussed by government representatives,” dated 12 September 1985.

<sup>48</sup> *Id.*

<sup>49</sup> AMERICAN NATIONAL STANDARDS INSTITUTE, International Organization for Standardization Overview, available at [https://www.ansi.org/standards\\_activities/iso\\_programs/overview](https://www.ansi.org/standards_activities/iso_programs/overview).

<sup>50</sup> See *Pro-Steel Jaw Leghold Trap “Experts” Meet Behind Closed Doors to Produce a Final Draft of “Humane” Trap Standards*, 42 ANIMAL WELFARE INST. Q. 12-13 (Spring 1993).

The standards process continued over many years without commanding much attention—until the stakes were raised when the Canadians secured “humane trap standards” language in EU Regulation 3254/91. As stated above, under the revised regulation, EU member states would end the use of steel-jaw traps but other countries wishing to import fur into the EU could either ban steel-jaw traps *or* meet “internationally agreed humane trapping standards for the thirteen species in the annex.” Suddenly, the ISO standards became a vehicle to help Canadian and US fur traders slide in under the latter provision.

Once the standards were tied to the law, however, the process of agreeing upon what constituted humane trapping standards started to break down. The United States and Canada were vehemently opposed to the notion that if they adopted humane trapping standards they would also have to prohibit all steel-jaw traps for the 13 species of furbearer listed in the regulation. Meantime, countries participating in the ISO process were unable to agree on base criteria for what constituted a “humane” trap. How much injury was acceptable for a humane restraining trap? How much time was acceptable before an animal was irreversibly unconscious in a humane killing trap? How could fractured teeth exposing pulp cavity, broken tendons and bones, amputation of toes, and forcible drowning be considered “acceptable traumas” associated with a “humane” trap? The ISO process was also criticized internationally as lacking in transparency and being biased in its representation.

The pivotal point in the ISO trap standards process occurred at a meeting of TC191 in Ottawa in February 1994. Following four days of debate over whether or not the word “humane” should be deleted from the standards, it was removed from *all* of the trap standards. Countries voting to delete it were Belgium, Finland, Germany, the Netherlands, New Zealand, Norway, Sweden, and the United Kingdom. The United States and Denmark had voted to keep the term, while Argentina and Canada abstained. As soon as the word “humane” was removed, two of the three chairs resigned and left the meeting.<sup>51</sup>

Trap standards that did not include the word “humane” were of little use to the major users of steel-jaw traps and the fur industry, which had hoped to both secure continued use of steel-jaw traps and to place a “humane” label on wild-caught furs. The process soon devolved, and ultimately, no trap standards were adopted. Instead, the Canadians salvaged a protocol on methods for testing restraining traps and another for testing killing traps.<sup>52</sup> The testing protocols do not simply assess effects of the traps on animals; other data—such as safety to the trapper, practicality and efficiency—are included. These ISO standards are the basis for the methods of trap testing taking place under the IAHTS.

### **3.2 The United States’ federal BMP trap-testing program**

Pursuant to the above bilateral and trilateral agreements, the United States instituted a federally funded Best Management Practices trap-testing program.<sup>53</sup> One of the primary aims of the federal BMP trap-testing program is “to instill public confidence in and maintain public support

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<sup>51</sup> See *Friends of Furbearers: Delegations That Voted for Removal of the Word “Humane” from the Title of the Trap Standards*, 43 ANIMAL WELFARE INST. Q. 1, 11 (Winter 1994).

<sup>52</sup> See International Organization for Standardization, *Animal (Mammal) Traps*, ISO 10990-4:1999 & ISO 10990-5:1999, <https://www.iso.org/committee/54422/x/catalogue>.

<sup>53</sup> New York Dep’t of Env’tl. Conservation, *Best Management Practices for Trapping in the United States* (2006), available at [http://www.dec.ny.gov/docs/wildlife\\_pdf/trapbmppsintro.pdf](http://www.dec.ny.gov/docs/wildlife_pdf/trapbmppsintro.pdf).

for wildlife management and trapping through distribution of science-based information.”<sup>54</sup> Recreational fur trappers are paid to participate in the program. Trappers are given a set of standard testing procedures to follow as they trap coyotes, bobcats, martens, raccoons, badgers, muskrats, otters, and other furbearing animals on their trap lines. The trappers and their “technicians” (who can, by protocol, be the trapper’s spouse, relative, or friend) are asked to set certain types of traps and aid in the evaluation of criteria that describe trap performance. The trappers submit an invoice to the AFWA and receive checks for their time and expenses for participating in the program.

BMP trap recommendations have been issued for 22 species in the United States.<sup>55</sup> Steel-jaw traps—the very device the European Union originally intended to prohibit—are included in the list of traps meeting the BMP criteria for 17 species, including coyotes, bobcats, beavers, lynx, and river otters. Although steel-jaw traps are permitted for select species, there is no requirement to monitor which species are actually caught in them. In addition, the steel-jaw trap is often used as the control device to which a different design—for example, a steel-jaw trap with a modification—is compared. More than 150 different types of commercially available traps have been tested on animals.<sup>56</sup>

The final BMPs issued are mere recommendations; neither state nor federal wildlife management agencies are required to adopt them as requirements. According to a national survey of licensed trappers in the United States, only 42 percent had heard of BMPs for trapping.<sup>57</sup>

### 3.3 BMPs legitimize the status quo

The United States’ BMP trap-testing program has enabled the United States to assert that it has established a certification mechanism determined via a “scientific process,” despite the fact that the process has focused on legitimizing steel-jaw traps. Former National Trappers Association President Craig Spoore assured trappers that “the scientific BMP process will discover that some steel-jaw traps will continue to be necessary and prove best for some American species.”<sup>58</sup> Indeed, the first official BMPs recommend unmodified steel-jaw traps and neck snares for several species.<sup>59</sup>

The costs of the BMP trap-testing program have been substantial, both in dollars and animal suffering. Historically funded by federal tax dollars passed through the USDA to the AFWA, the BMP program has cost millions since its inception in 1996.<sup>60</sup> While the USDA was funding the program, the public was officially entitled to any documents associated with it. Once the USDA stopped funding the program some years ago, however, and it was funded by the AFWA, associated documents were no longer available through the federal Freedom of Information Act.

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<sup>54</sup> Association of Fish and Wildlife Agencies, Best Trapping Practices for Trapping in the United States, Introduction, at 3 (2006), available at [http://www.dec.ny.gov/docs/wildlife\\_pdf/trapbmpsintro.pdf](http://www.dec.ny.gov/docs/wildlife_pdf/trapbmpsintro.pdf);

<sup>55</sup> Responsive Mgmt., *supra* note 2.

<sup>56</sup> See Minutes of the Agreement on International Humane Trapping Standards Joint Management Committee Meeting, Edmonton, Alberta, Canada 15 (October 4-5, 2011), <http://www.fishwildlife.org/files/2011JMCRReport.pdf>.

<sup>57</sup> *Id.*

<sup>58</sup> Fox, *supra* note 6.

<sup>59</sup> *Id.*

<sup>60</sup> According to the minutes of the Agreement on International Humane Trapping Standards Joint Management Committee Meeting, Edmonton, Alberta, Canada, Oct 4-5, 2011, p. 15, about \$9 million has been spent “including federal funds and state contributions, direct and in-kind.” <http://www.fishwildlife.org/files/2011JMCRReport.pdf>.

The BMP testing program is unquestionably subject to bias, subjectivity, and inaccuracy. The use of professional fur trappers—who have a strong interest in the outcome— as testers undermines the veracity and accuracy of the data and the scientific rigor of the process. Trappers well-versed at the setting and use of steel-jaw traps, neck snares, and Conibears are unlikely to be familiar with many of the alternatives and this can confound the data. Full disclosure is questionable: Trappers are loath to admit having trapped an endangered species or family pet, or that a trapped animal had struggled so excessively that it self-amputated a foot while trying to escape.

Indeed, the program has been criticized by independent scientists, wildlife professionals, and animal advocacy organizations as unscientific, self-serving, and rife with political agendas.<sup>61</sup> Moreover, program design and implementation has occurred with no public accountability, transparency, or oversight. The Animal Welfare Institute, in a letter to Donald MacLauchlan, international resource director of the International Association of Fish and Wildlife Agencies (later renamed the Association of Fish and Wildlife Agencies), dated February 5, 1998, requested membership on the Fur Resources Technical Subcommittee overseeing the BMPs. Although the subcommittee included two nongovernmental representatives from the National Trappers Association, AWI's request was denied.<sup>62</sup> In addition, public review of the research projects or monitoring of the BMP trap-testing process is virtually impossible.

Ultimately, the BMP trap-testing program has caused thousands of coyotes, bobcats, beavers, raccoons, and other furbearing animals to suffer unnecessarily in steel-jaw traps. The traps close with bone-crushing force on their victims, who struggle violently to be free. Injuries include amputation of digits, severed tendons and ligaments, joint luxation, and bone fractures. Teeth may be broken, sometimes right down to the jawbone, as animals bite at the trap. In their desperation, some animals will chew off their own limb to escape. In the trap studies being conducted (based on the agreement between the United States and the European Union), four of 20 animals caught in traps can experience these and other traumas, and the trap can still be approved. One does not find much of this information about the damage caused to animals by steel-jaw traps and other devices in the recent scientific literature because the vast majority of trap testing has not been published in any peer-reviewed journal. This process needs to be exposed for the farce that it is, and this needless trapping cruelty must end.

In practice, these agreements and associated trap testing programs have enabled all parties to sidestep the original intent of Regulation 3254/91 by allowing both continued use of steel-jaw traps outside of the European Union and unfettered trade in wild-caught fur from the United States, Canada and Russia to Europe.

#### **4. The sources and causes of resistance to trapping reforms in the United States**

The response of the United States government to EU Regulation 3254/91 indicates more than economic self-interest. A primary source of resistance to trapping reforms in the United States is wildlife agencies, at both the federal and state level.

Despite a rising tide of public opinion condemning cruel trapping, especially the use of steel-jaw traps and strangling neck snares, state wildlife departments as well as federal

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<sup>61</sup> *Id.*

<sup>62</sup> Personal communication from Cathy Liss to Mr. MacLauchlan, 5 February 1998.

agencies have made few changes to reduce animal pain and suffering from traps.<sup>63</sup> This is unsurprising, given their utilitarian wildlife use philosophy. Most state wildlife agency commissions (or boards or councils) are dominated, often as required under state law, by “consumptive wildlife users” (i.e., those who hunt, trap, and kill wildlife for recreation), making it both challenging and slow to achieve regulatory change through the administrative process. To members of these commissions and, in general, employees of these agencies, wildlife is seen as a resource to be stocked and managed for the benefit of consumptive wildlife users.

Moreover, state wildlife agencies depend heavily upon revenues and excise taxes directly connected to sales of hunting, trapping, and fishing licenses and gear. As a result, agencies largely ignore the opinions of other constituents who are opposed to these practices. Agency funds tend to be disproportionately invested in “game” animals, while “nongame” animals receive very little consideration.<sup>64</sup>

The conduct of both state and federal agencies reflects a regrettably common public attitude: the failure to see animals as having moral standing and intrinsic worth. Wildlife agencies, particularly at the state level, have generally been slow to respond to shifting public values and to demands for less invasive and lethal ways of managing wildlife, and have resisted innovative and participatory governance and ecosystem-based management.<sup>65</sup>

## 5. Ongoing and future reform efforts needed: Forums and issues

More than 100 countries have banned or severely restricted use of steel-jaw traps,<sup>66</sup> a device condemned as inhumane by the National Animal Control Association and the American Animal Hospital Association. In 1995, all member countries of the European Union banned steel-jaw traps and sought to ban the import of furs from countries still using these traps.

Yet, the United States lags far behind the rest of the world with regard to trapping reforms.<sup>67</sup> Despite increased opposition to the use of steel-jaw traps<sup>68</sup> and the availability of alternatives,<sup>69</sup>

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<sup>63</sup> Camilla Fox, *Trapping, Behavior, and Welfare*, in *ENCYCLOPEDIA OF ANIMAL RIGHTS AND WELFARE* 559 (Marc Bekoff ed., 2d ed. 2010); *ANIMAL PROTECTION INST.*, *supra* note 10; Jones & Rodriguez, *supra* note 17.

<sup>64</sup> *ANIMAL PROTECTION INST.*, *supra* note 8.

<sup>65</sup> R. Bruce Gill, *The Wildlife Professional Subculture: The Case of the Crazy Aunt*, 1 *HUMAN DIMENSIONS OF WILDLIFE* 60 (1996); Martin Nie, *State Wildlife Policy and Management: The Scope and Bias of Political Conflict*, 64 *PUB. ADMIN. REV.* 221 (2004); *COEXISTING WITH LARGE CARNIVORES: LESSONS FROM GREATER YELLOWSTONE* (Tim Clark et al. eds., Island Press 2005).

<sup>66</sup> *Laws on Leg-Hold Animal Traps Around the World*, THE LAW LIBRARY OF CONGRESS, <http://www.loc.gov/law/help/leg-hold-traps/index.php> (last updated December 12, 2016).

<sup>67</sup> Fox, *supra* note 63; Iossa et al., *supra* note 4; *Caught by Mistake: Pets Suffer Serious Steel-Jaw Leghold Trap Injuries*, ANIMAL WELFARE INSTITUTE (2016), <https://awionline.org/awi-quarterly/2016-spring/caught-mistake-pets-suffer-serious-steel-jaw-leghold-trap-injuries>. G. Iossa, C. D. Soulsbury & S. Harris. *Mammal Trapping: A Review of Animal Welfare Standards of Killing and*; G. Iossa et al., *Mammal Trapping: A Review of Animal Welfare Standards of Killing and Restraining Traps*, 16 *ANIMAL WELFARE* 335 (2007).

<sup>68</sup> Robert Muth et al., *Unnecessary Source of Pain and Suffering or Necessary Management Tool: Examining the Attitudes of Conservation Professionals toward Outlawing the Use of the Steel-jaw Trap*, 34 *WILDLIFE SOC’Y BULL.* 706 (2010); *ANIMAL PROTECTION INST.*, *supra* note 9; Dena Jones & Sheila Rodriguez, *Restricting the Use of Animal Traps in the United States: An Overview of Laws and Strategy*, 9 *ANIMAL L.* 135 (2003); Stuart Harrop, *The Trapping of Wild Mammals and Attempts to Legislate for Animal Suffering in International Standards*, 12 *J. ENVTL. L.* 333 (2000); John Gentile, *The Evolution of Anti-Trapping Sentiment in the United States: A Review and Commentary*, 15 *WILDLIFE SOC’Y BULL.* 490 (1987).

<sup>69</sup> See Garrett, *supra* note 28.

brutal trapping devices remain legal in most of the United States, including for use on national wildlife refuges. Meanwhile, the United States government continues to defend commercial fur trapping and the use of steel-jaw traps.<sup>70</sup>

## 5.1 Types of reform efforts in the United States

### 5.1.1 Reform efforts using the ballot initiative process

In 26 states and Washington DC,<sup>71</sup> the initiative process allows citizens to gather petition signatures to place a proposed statutory or constitutional amendment before the voters. History has shown that when the public begins to distrust government, they seek redress through direct democratic processes.<sup>72</sup> Such processes “give voters a direct say in the law and circumvent special interests and unresponsive legislatures.”<sup>73</sup>

In the last two decades, animal advocates have used the public initiative process to ban or to restrict certain traps and/or trapping practices at the state level.<sup>74</sup> As noted above, from 1994 through 2000, voters in five states (Arizona, California, Colorado, Massachusetts, and Washington) passed ballot initiatives restricting the use of body-gripping and/or steel-jaw traps for commercial and recreational trapping.<sup>75</sup> These successes reflect public concern that cruel traps such as these should not be permitted.

With heightened controversy and increased public awareness, efforts to restrict or reform trapping through ballot initiatives will likely continue.

### 5.1.2. Reform efforts using the judicial process

Animal advocates and wildlife conservationists have also used the courts to restrict trapping in order to protect endangered species from steel-jaw traps, body-gripping traps, and neck snares. Cases involving the incidental trapping of federally protected Canada lynx are illustrative of the effort.

In 2008, the Animal Welfare Institute and the Wildlife Alliance of Maine (WAM) filed a federal lawsuit against the Maine Department of Inland Fisheries and Wildlife (MDIFW) for failing to adequately protect Canada lynx from traps and snares set for other furbearing species by trappers licensed by the MDIFW.<sup>76</sup> AWI and WAM claimed that allowing and authorizing

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<sup>70</sup> Fox, *supra* note 63; ANIMAL PROTECTION INST., *supra* note 8; Jones & Rodriguez, *supra* note 16.

<sup>71</sup> Jones & Rodriguez, *supra* note 16; *see also states with initiative or referendum*, Ballotpedia.org, [https://ballotpedia.org/States\\_with\\_initiative\\_or\\_referendum](https://ballotpedia.org/States_with_initiative_or_referendum).

<sup>72</sup> Kenneth Jost, *Initiatives: True Democracy or Bad Lawmaking?*, in EDITORIAL RESEARCH REPORTS 1990, at 461 (1990).

<sup>73</sup> *Id.* at 463.

<sup>74</sup> ANIMAL PROTECTION INST., *supra* note 8; Jones & Rodriguez, *supra* note 16; Susan Cockrell, *Crusader Activists and the 1996 Colorado Anti-Trapping Campaign*, 27 WILDLIFE SOC’Y BULL. 65 (1999).

<sup>75</sup> Jones & Rodriguez, *supra* note 16.

<sup>76</sup> Animal Welfare Inst. v. Martin, 588 F. Supp. 2d 70 (D. Me. 2008); Keith Rizzardi, *Animal Welfare Institute v. Martin: Dispute over Canada Lynx Trapping Creates Factual Twists and Procedural Controversies*, ESA BLAWG (Dec. 24, 2008), <http://www.esablwg.com/esalaw/ESBlawg.nsf/d6plinks/KRII-7MN4KB>.

trappers to injure and sometimes kill Canada lynx—a species listed as threatened under the Endangered Species Act (ESA) — was a violation of Section 9 of the ESA’s prohibition against “take” (causing serious injury or death) of such species.<sup>77</sup>

In December 2009, the US District Court for the District of Maine ruled that Maine’s current regulatory scheme for trapping furbearing animals results in the trapping of Canada lynx in violation of the ESA. The court did not, however, enjoin trapping in Maine’s lynx habitat. The court noted a pending decision by the US Fish and Wildlife Service (USFWS) to issue an incidental take permit (ITP) to the MDIFW, which would, according to the court, require the agency to implement mitigation measures to better protect lynx from indiscriminate traps and would thereby shield the state from liability for incidental trapping of Canada lynx.

However, once issued, the ITP failed to adequately protect Canada lynx. As a result, on 17 August 2015, AWI, WAM, and the Center for Biological Diversity filed a lawsuit against the USFWS for allowing trappers in Maine to take Canada lynx. The lawsuit requests that the court close down the state’s trapping season in lynx habitat.<sup>78</sup> On February 15, 2017, the court denied plaintiffs’ motion for summary judgment. To date, plaintiffs have not announced a decision regarding an appeal.

In a similar case, in March 2008, the US District Court for the District of Minnesota ruled that Minnesota’s Department of Natural Resources (DNR) violated Section 9 of the ESA because the department’s trapping program was the proximate cause of numerous lynx takings. The court noted that “government agencies cause a taking under ESA if such agency authorizes activities that result in said taking,”<sup>79</sup> Expanding on this, the Court stated:

In order to legally engage in trapping in Minnesota ... one must obtain a license and follow all governmental regulations governing trapping activities. Thus, for purposes of determining proximate cause, the DNR’s licensure and regulation of trapping is the “stimulus” for the trappers [sic] conduct that results in incidental takings. Accordingly, the trappers [sic] conduct is not an independent intervening cause that breaks the chain of causation between the DNR and the incidental takings of lynx.<sup>80</sup>

As a result, the court ordered the state to restrict traps and snares to reduce the likelihood of lynx being captured in traps set for other species. In addition, the ruling required the state to obtain an ITP from the USFWS under Section 10 of the ESA. The ITP was to provide the state with a variety of alternatives and strategies to avoid, minimize, and mitigate the taking of lynx.

The cases in Maine and Minnesota were among the first lawsuits brought by wildlife advocates that specifically targeted state wildlife agencies for authorizing the use of traps and establishing trapping seasons for furbearers that capture, injure, and kill federally listed lynx and other species. These cases are important to protect listed species from intentional or incidental take in traps.

## 5.2 Problems with state trapping regulations and reforms needed

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<sup>77</sup> 16 U.S.C. § 1532 (2017) (defining the term “take” as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct”).

<sup>78</sup> *Friends of Animals v. Phifer*, 1:15-CV-00157-JDL, 2017 WL 617910 (D. Me. 2017).

<sup>79</sup> *Ctr. For Biological Diversity v. Holsten*, 541 F. Supp. 2d 1073, 1078 (D. Minn. 2008).

<sup>80</sup> *Id.* at 1079.

### 5.2.1 Trap check times and lack of enforcement

Even though numerous scientific studies indicate that short trap check intervals greatly reduce injuries to trapped animals,<sup>81</sup> a number of states still allow animals to languish in traps for days. In Montana and Alaska, for instance, there is no mandatory trap check time for most steel-jaw traps, while Wyoming trappers are directed to check steel-jaw traps just once every 72 hours. Where trap-check standards are in place, they are often weak and unenforced. In addition, where trap check times have been established for “furbearers” and other categories of animals, species classified as “nongame” or “predatory”—such as coyotes—may be excluded, allowing victims to suffer indefinitely. New Mexico, for example, excludes coyotes from existing trap check standards.<sup>82</sup> Moreover, there is generally a shortage of enforcement personnel to ensure compliance with existing trapping regulations.

Little attention is given to evaluating the impact of these trapping practices on wildlife populations, and relaxed licensing and record-keeping requirements compound this problem. For instance, New York law does not mandate reporting for furbearers other than bobcats, and a number of states from Nevada to Virginia do not require trapper education courses in order to obtain a permit.<sup>83</sup>

Many states, by their own admission, lack the enforcement personnel in the field to ensure compliance with state trapping (and hunting) regulations. Violations of trapping regulations, as well as poaching of protected species, are commonplace. These violations include (1) failure to check traps as frequently as state regulations require, (2) using traps without the personal identification that is required in most states, (3) trapping of species out of season, and (4) using traps that do not comply with state regulations.

### 5.2.2 New technologies that reduce suffering are ignored

New technologies are available and, if mandated and used by trappers, capable of greatly reducing the suffering of animals in live traps. One such technology is the use of remote trap monitors, which send a signal to let a trapper know when an animal has tripped and presumably been caught in a trap so that the animal can be promptly removed from the trap.<sup>84</sup> Another technology, albeit one that may come with a regulatory burden, is the use of tranquilizer tabs. Here, the device is equipped with a tab containing a tranquilizing agent; upon capture, the animal bites the tab and ingests the agent, thereby reducing his or her stress and injury.<sup>85</sup>

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<sup>81</sup> NOCTURNAL WILDLIFE RESEARCH PTY., *supra* note 4; Powell & Proulx, *supra* note 4.

<sup>82</sup> *While the World Moves On, US Still Caught in Its Traps*, ANIMAL WELFARE INSTITUTE (2013) <https://awionline.org/awi-quarterly/2013-fall/while-world-moves-us-still-caught-its-traps>.

<sup>83</sup> *Id.*

<sup>84</sup> Nat'l Wildlife Research Ctr., *Evaluation of Remote Trap Monitors* (2008), available at [https://www.aphis.usda.gov/wildlife\\_damage/nwrc/research/predator\\_management/content/USDA%20Tech%20Note%20Remote%20Trap%20Monitors.pdf](https://www.aphis.usda.gov/wildlife_damage/nwrc/research/predator_management/content/USDA%20Tech%20Note%20Remote%20Trap%20Monitors.pdf).

<sup>85</sup> Donald Balsler, *Tranquilizer Tabs for Capturing Wild Carnivores*, 29 J. WILDLIFE MGMT. 438 (1965); Duane Sahr & Frederick Knowlton, *Evaluation of Tranquilizer Trap Devices (TTDs) for Foothold Traps Used to Capture Gray Wolves*, 28 WILDLIFE SOC'Y BULL. 597 (2000).

### 5.2.3 Omission of several species from trapping regulation protections

Some state trapping regulations cover only certain trapped species, such as those classified as “furbearer” or “small game.” Species classified as “nongame” or “predatory” are often exempt from any protections or regulatory oversight. In some states, such species can be trapped and/or hunted at any time of the year, in any number, without a license, and without any requirement to report the number of animals killed to the state agency.<sup>86</sup> The impact of such unregulated trapping and hunting on mammal populations is unknown, but may be significant for some species, particularly at local levels.

### 5.2.4 Lack of oversight of “Nuisance Wildlife” trapping

With increasing urban sprawl in recent decades, encounters between humans and wildlife have escalated, and private “nuisance wildlife control” trapping businesses have grown exponentially in response.<sup>87</sup> This industry, which is based upon the removal, generally via lethal means, of animals deemed “pests” or “nuisances,” has little regulatory oversight at either the state or federal level.<sup>88</sup> Although many nuisance wildlife control operators (NWCOS) use the same traps used by fur trappers, few states require that NWCOS report the species or number of animals killed. State wildlife agencies have almost no oversight over private NWCOS, even though they kill wild animals subject to the management authority of state wildlife agencies. Some wildlife agency professionals, recognizing this problem, have recommended that the emerging industry be regulated.<sup>89</sup>

### 5.2.5 Unregulated methods for killing trapped animals

Most state regulations do not address how animals found alive in traps are to be killed. For example, in Georgia, trappers are required to carry a .22 caliber rim fire gun while tending traps, and to use that weapon to kill furbearers.<sup>90</sup> All other states that mention the killing of trapped animals, however, offer guidance rather than set requirements on the method of killing trapped furbearers. Alabama, for example, merely requires trappers to carry a choke stick, and trappers may use a standard .22 caliber rimfire firearm to kill furbearers.<sup>91</sup> New Jersey regulations state that except on Sunday, trappers with a valid rifle permit may carry a .22 caliber rifle and use short rimfire cartridges to kill legally trapped animals (other than

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<sup>86</sup> See *Oregon Big Game Hunting Regulations*, EREGULATIONS, <http://www.eregulations.com/oregon/big-game-hunting/general-hunting-regulations/> (last visited March 11, 2017).

<sup>87</sup> Camilla Fox, *Wildlife Control: Out of Control*, 35 ANIMAL ISSUES 15 (2004); John Hadidian et al., *Nuisance Control Practices, Policies, and Procedures in the United States*, in WILDLIFE, LAND, AND PEOPLE: PRIORITIES FOR THE 21ST CENTURY 165 (Rebecca Field et al. eds., 2001).

<sup>88</sup> Thomas Barnes, *State Agency Oversight of the Nuisance Wildlife Control Industry*, 25 WILDLIFE SOC’Y BULL. 185 (1997); Hadidian et al., *supra* note 87.

<sup>89</sup> Barnes, *supra* note 88.

<sup>90</sup> *Trapping Regulations*, GEORGIA DEP’T OF NATURAL RES., <http://www.georgiawildlife.com/Trapping> (last visited March 11, 2017).

<sup>91</sup> ALA. CODE § 220-2-.30(2) (2017).

muskrat).<sup>92</sup> Arizona, Wisconsin, and South Dakota require trappers to either release or kill trapped animals, but they do not state the methods to be used.<sup>93</sup> In addition, allowing children to live-trap animals raises concerns over how the animals will be killed and how prolonged their suffering could be.

The common killing methods used by trappers are clubbing, suffocation (standing on the chest), and strangulation (with a “choke stick” or “catch pole”).<sup>94</sup> Fur trappers do not like to shoot trapped animals because bullet holes and blood damage pelts and reduce the value of furs.<sup>95</sup> Trapper education manuals—which are difficult to find posted online—typically advise trappers to kill animals by suffocation, drowning, gassing, and/or hitting them with a club in order to preserve the pelt, as well as to stand on the animal’s chest to compress its organs, which leads to death.<sup>96</sup> Some manuals suggest using a heavy object, such as an iron pipe or an axe handle, and striking the animal twice; once to render it unconscious and again to render it either dead or comatose.<sup>97</sup> One suggests that trappers “pin the head with one foot and stand on the chest (area near the heart) of the animal with the other foot for several minutes.”<sup>98</sup>

### 5.2.6 Inaccuracy of state wildlife agency population data and trap-kill data

Many state wildlife agencies rely on furbearer “harvest” numbers (those animals killed through trapping and hunting) to estimate statewide populations of trapped and hunted species. Because “harvest” figures do not necessarily reflect species abundance and may be more influenced by external factors, such as pelt price and fur demand, such extrapolations are generally poor methods for accurately estimating species’ populations.

Moreover, the majority of state wildlife agencies do not require trappers to report the number or species of animals they trap each season.<sup>99</sup> Instead, they rely upon fur dealer or buyer reports, which have little correlation to the actual number of animals trapped. Fur dealer or buyer reports only record those pelts purchased by licensed fur buyers within the state, and unsold and/or damaged pelts or pelts sold out of state are not recorded in these figures. Thus, these reports can drastically underestimate the total number of animals trapped statewide. Furthermore, states that *do* require seasonal trapping reports often obtain this information via mail or telephone

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<sup>92</sup> New Jersey Dep’t Env’tl. Prot., Trapping Regulations (2012), available at <http://www.state.nj.us/dep/fgw/pdf/2012/dighnt70-73.pdf>.

<sup>93</sup> Wisconsin Dep’t of Natural Res., Wisconsin Trapper Education Manual, available at <http://dnr.wi.gov/education/OutdoorSkills/documents/Unit3.pdf>; see also Ass’n of Fish & Wildlife Agencies, Summary of Trapping Regulations for Fur Harvesting in the United States (2007), available at [www.fishwildlife.org/files/Summary-Trapping-Regulations-Fur-Harvesting.pdf](http://www.fishwildlife.org/files/Summary-Trapping-Regulations-Fur-Harvesting.pdf).

<sup>94</sup> ANIMAL PROTECTION INST., *supra* note 8.

<sup>95</sup> *While the World Moves On*, *supra* note 82.

<sup>96</sup> LISA KEMMERER, ANIMALS AND THE ENVIRONMENT: ADVOCACY, ACTIVISM, AND THE QUEST FOR COMMON GROUND 125 (2015).

<sup>97</sup> ANIMAL PROTECTION INST., *supra* note 8.

<sup>98</sup> New York Dep’t of Env’tl. Conservation, Trapping Furbearers: An Introduction to Responsible Trapping (2016), available at [http://www.dec.ny.gov/docs/wildlife\\_pdf/trapedman.pdf](http://www.dec.ny.gov/docs/wildlife_pdf/trapedman.pdf).

<sup>99</sup> *Exposing the Myths: The Truth about Trapping*, BORN FREE USA, <http://www.bornfreeusa.org/facts.php?p=53&more=1> (last visited March 11, 2017).

surveys.<sup>100</sup> Response rates to such surveys, however, may vary from 10 to 60 percent.<sup>101</sup> State wildlife agencies then extrapolate the total number of animals trapped each year from these partial reports to estimate total take from trapping. These data are then used to determine trapping “harvest” levels and season lengths for the subsequent trapping season.

### **5.2.7 Poor (or nonexistent) reporting of nontarget animals trapped**

Very few states require that trappers report nontarget animals trapped. Some states regulate trap sets and specify methods for avoiding nontarget captures and recommend methods for handling instances in which a nontarget domestic animal is trapped.<sup>102</sup> However, because most trappers are not trained to assess the condition of trapped animals or the severity of any injuries sustained by trapping, it is unclear how a trapper can ensure that any nontarget animal is released “unharmful,” and state agencies fail to provide any criteria or instruction to aid in determining harm. What regulations that exist do little to ensure an accurate tally of the numbers of nontarget animals trapped, and field research indicates that nontarget take can be significant.<sup>103</sup>

### **5.2.8 Exemptions of private landowners from trapping regulations**

In a number of states, private landowners do not need a license to trap and kill certain species on their own property.<sup>104</sup> For example, in Wisconsin, landowners or occupants and their family members may (without a license) hunt or trap on their own property for coyotes, beavers, foxes, raccoons, woodchucks, rabbits, and squirrels year-round.<sup>105</sup> In Indiana, landowners may take coyotes at any time on the land they own, or provide written permission for others to do so.<sup>106</sup>

### **5.2.9 Insufficient regulation of trespassing by trappers**

Every state recognizes a landowner’s right to exclude trappers from his or her land by erecting “no trespassing” or “no hunting/trapping” signs. A few states even *require* that landowners who wish to exclude trappers/hunters post “no trespassing/ hunting/ trapping” signs. Conversely, other states require that trappers obtain permission from landowners even if the landowner has

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<sup>100</sup> ANIMAL PROTECTION INST., *supra* note 8 at 28.

<sup>101</sup> *Id.*

<sup>102</sup> *See, e.g.*, Maryland Dep’t of Natural Res., Maryland Trapper Education Manual (2005), available at [http://dnr.maryland.gov/Documents/Maryland\\_Trapper\\_Education\\_Student\\_Manual.pdf](http://dnr.maryland.gov/Documents/Maryland_Trapper_Education_Student_Manual.pdf); Minnesota Dep’t of Natural Res., Minnesota Trapper Education Manual (2012), available at [http://www.mnforesttrappers.com/trapper\\_manual.pdf](http://www.mnforesttrappers.com/trapper_manual.pdf).

<sup>103</sup> Nocturnal Wildlife Research Pty., *supra* note 4; Iossa et al., *supra* note 4; BRIAN J. FRAWLEY ET AL., *supra* note 4; Powell & Proulx, *supra* note 4; Gary Bortolotti, *supra* note 4.

<sup>104</sup> *See, e.g.*, Wisconsin Dep’t of Natural Res., Nuisance Wildlife Guidelines, available at <http://dnr.wi.gov/topic/WildlifeHabitat/documents/nuswlguide.pdf>; *Dealing with Nuisance Coyotes*, INDIANA DEP’T OF NATURAL RES., <http://www.in.gov/dnr/fishwild/5688.htm> (last visited March 11, 2017).

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

not posted prohibitory notices.<sup>107</sup> Alabama, Arizona, New Mexico, North Dakota, Oklahoma, Rhode Island, South Dakota, and Utah require written permission from landowners under some circumstances.<sup>108</sup> In several other states, verbal permission is allowed.<sup>109</sup> Trespassing by trappers remains an ongoing problem for private landowners.

#### **5.2.10 Lack of trapper education as a condition of licensing**

While there is no way to avoid animal cruelty when using steel-jaw traps, the lack of basic guidance—such as mandating that trappers avoid using bait that is attractive to companion animals or sets that may result in significant nontarget take, are familiar with the state’s trapping requirements, and have reached a specified age before they can obtain a (mandatory) trapping license—contributes to the problem.

### **6. Conclusion**

Trapping continues to be hidden from the public eye; most people are unaware of the extent to which it is even happening, and the United States continues to lag far behind the rest of the world in regard to trapping reforms. With more than 100 countries already having banned steel-jaw traps, a ban on steel-jaw traps is, arguably, *the* international standard. It is likely that global pressure will be needed to compel the European Union to rethink its weak trapping agreement with the United States and implement a strict prohibition on the import of pelts from animals captured using steel-jaw traps. Yet, without hope of overcoming trade agreements intended to facilitate such trade, there may not be a chance for the European Union to reconsider.

Ultimately, efforts need to be made at every level—local, state, national, and global—to seek a prohibition on the use of steel-jaw traps. It will be necessary to expose the various trap standards for the farce that they are, and to highlight their abysmal failure to actually protect furbearing animals. Meanwhile, additional measures can help, such as mandating a 24-hour trap check time in every state. This need is ever more apparent as the United States becomes increasingly isolated among a dwindling number of countries that sanction the horrific animal suffering caused by barbaric traps—traps that should be relegated to museums or melted down so the steel could be put to a better purpose.

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<sup>107</sup> See, e.g., *Landowner Permission Requirements and Trapping on Private Property*, MAINE DEP’T OF INLAND FISHERIES & WILDLIFE, [http://www.state.me.us/ifw/hunting\\_trapping/trapping/laws/landowner\\_privateproperty.htm](http://www.state.me.us/ifw/hunting_trapping/trapping/laws/landowner_privateproperty.htm) (last visited March 11, 2017).

<sup>108</sup> Ass’n of Fish & Wildlife Agencies, *supra* note 93.

<sup>109</sup> *Id.*

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