2004 LEGISLATIVE REVIEW

REVIEW EDITOR'S NOTE

The seventh annual edition of *Animal Law*'s Legislative Review addresses the wide range of state and federal legislative action per-

taining to animals from the end of 2003, through 2004. The laws at both levels are in a constant state of flux, sometimes taking forward steps in animal protection, and sometimes taking steps back. A significant portion of federal and state legislation passed this past year increases the protection of animals. However, there was federal legislation reducing the potential protection of animals stemming from the United States' need for military preparedness as it becomes increasingly involved in military conflict.

Ms. Erin Hauck* reports on major pieces of federal legislation, including the National Defense Authorization Act for Fiscal Year 2004, which impacts the Endangered Species Act and the Marine Mammal Protection Act; potential amendments to the Marine Mammal Protection Act, which would affect three major changes to the existing law; the Captive Wildlife Safety Act, which prohibits ownership of certain species of exotic cats and fortifies existing state laws; the Captive Exotic Animal Protection Act of 2004, which seeks to forge a national response to canned hunts; and the Marine Turtle Conservation Act, which provides funding for the international conservation of marine turtles and their habitat.

Ms. Tami Santelli** reports on state legislation in 2004, including increased penalties and expanded scope of state animal protection and anti-cruelty laws, with national trends toward the protection of service dogs and the termination of animal fighting; restricted ownership of captive exotics in Minnesota and New York; expanded alternatives to dissection for high school students in Virginia and New Mexico, and the continued fight in Massachusetts to enact dissection choice legislation; banned production and sales of foie gras in California as of July 1, 2012; and funding of spay and neuter programs for companion animals in Arizona, Florida, Maine, Oklahoma, and Vermont.

In 2004, we witnessed the continued movement toward stiffer penalties for acts of cruelty to animals and the closing of loopholes in animal fighting legislation. Furthermore, the ban on foie gras in California garnered national attention, and New York is considering similar legislation in 2005. Groups such as the Humane Society of the United States, the Animal Protection Institute, and the American Society for the Prevention of Cruelty to Animals remain the leaders of this movement toward legal protections for animals and provide invaluable resources through legislative campaign updates. *Animal Law* is indebted to their thorough research, made available to the public via the Internet.

It is my desire that this section provides another useful tool in monitoring the important changes made in animal law. Our goal is to portray important national trends and identify significant legislative acts focused on federal and state issues. *Animal Law* welcomes sugges-

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tions for the publication of future legislative reviews, which will be contained in the second issue of future volumes.

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I. FEDERAL LEGISLATION

A. National Defense Authorization Act for Fiscal Year 2004

In the first week of March 2003, the Bush Administration went to Congress seeking environmental exemptions for the Department of Defense (DOD) in situations where environmental laws affect military preparedness.[1] This is part of a "multi-year campaign" effort by the Pentagon to obtain exemptions from environmental laws for domestic training and weapons testing according to an internal DOD memo.[2] The military obtained its desired exemptions in the National Defense Authorization Act for Fiscal Year 2004,[3] which primarily provides funding for the DOD.

The bill was first introduced in the United States Senate as Sen. 1050, sponsored by Senator John Warner (R-VA) on May 13, 2003.[4] This bill contains a section that grants exemptions for the military under the Endangered Species Act (ESA).[5] A companion bill, H.R. 1588, was later introduced by Representatives Duncan Hunter (R-CA) and Ike Skelton (D-MO) on April 3, 2003,[6] which included the ESA changes from the Senate bill and, in addition, contained amendments to the Marine Mammal Protection Act (MMPA).[7] H.R. 1588 was passed using a defense authorization bill as a vehicle for amendments to the MMPA, and was termed a "backroom congressional victory."[8] The amendments were a result of minimal public debate or scientific input and showed a complete disregard for the House Resources Subcommittee's exclusive jurisdiction over the MMPA.[9] The end result

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1 Eric Pianin, *Environmental Rules Embattled; Pentagon Says War Effort Requires Easing of Regulations*, Houston Chron. A2 (Mar. 7, 2003) (the administration sought exemptions from the Clean Air Act, the Endangered Species Act, the Superfund law (CERCLA), the Resource Conservation and Recovery Act, and the Marine Mammal Protection Act).

2 Pub. Employees for Envtl. Resp., *Pentagon Readies New Assault on Environmental Law*, http://www.peer.org/news/news_id.php?row_id=213 (Jan. 13, 2003).

3 Pub. L. No. 108-136, 117 Stat. 1392 (2004).

4 Lib. Cong., *Bill Summary and Status for the 108th Congress*, http://thomas.loc.gov/cgi-bin/bdquery/z?d108:SN01050:@@@L&summ2=M& (accessed Jan. 21, 2005).

5 Sen. 1050, 108th Cong. § 322 (May 13, 2003).

6 Lib. Cong., *supra* n. 4, at http://thomas.loc.gov/cgi-bin/bdquery/z?d108:HZ00139:.

7 H.R. 1588, 108th Cong. §§ 318–319 (Nov. 12, 2003).

8 Marc Kaufman, *Activists Plan Fight for Marine Mammals: Exempt from Some Rules to Protect Animals, Navy Might Seek to Alter Sonar Limits*, Wash. Post A11 (Nov. 16, 2003) (available at http://www.washingtonpost.com/ac2/wp-dyn?pagename=article&contentId=A45873-2003Nov15&notFound=true).

9 *Id.*

was a bill that authorized $400.5 billion for military activities, salaries, and other needs of the DOD.[10] Although many members in the House and Senate disagreed with the environmental changes in the bill, they felt compelled to vote for the bill because it also provided salaries for soldiers fighting overseas and increased funds for veterans.[11] The bill was ultimately passed in the House by a vote of 362-40 and passed in the Senate by a vote of 95-3.[12] On November 24, 2003, the President signed H.R. 1588, the National Defense Authorization Act for Fiscal Year 2004, into law.[13]

1. Changes to the Endangered Species Act

The amendments made to the Endangered Species Act (ESA) in the Defense Authorization Act affect the designation of critical habitat for a threatened or endangered species. Typically, under the ESA, once an animal is listed as an endangered or threatened species, the Secretary of the Interior shall designate "critical habitat."[14] Critical habitat is habitat "essential to the conservation of the species . . . which may require special management considerations or protection."[15] However, under the new law, the Secretary of Interior shall not designate any DOD lands as critical habitat if the lands are subject to an Integrated Natural Resources Management Plan under the Sikes Act.[16] The amendments also allow the Secretary to consider the impact on national security when designating critical habitat.[17]

The amendments to the ESA relate to urban encroachment on military bases, a problem that is occurring across the country. The DOD oversees twenty-five million acres of military and training facilities, and within that land, there are over three hundred species of animals that are listed as either endangered or threatened.[18] While cities have grown, military land has remained largely undeveloped. Consequently, it has become a "last refuge" for many endangered species.[19] Under the

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[10] H.R. Rpt. 108-106 at 2 (May 16, 2003) (available at 2003 WL 21206219).

[11] Mark J. Palmer, *RIP, Keiko*, 19 Earth Island J. 14 (Spring 2004) (available at http://www.earthisland.org/eijournal/new_articles.cfm?articleID=872&journalID=77).

[12] Lib. Cong., *supra* n. 4, at http://thomas.loc.gov/cgi-bin/bdquery/z?d108:HR01588:@@@R.

[13] *Id.*

[14] 16 U.S.C. § 1533(a)(3)(A)(1) (2000).

[15] *Id.* at § 1532(5)(A)(i).

[16] *Id.* at § 1533(a)(3)(B)(i). The Sikes Act, 16 U.S.C. § 670 (2000), generally provides for the cooperation of the DOD, the Department of the Interior, and state agencies in maintaining wildlife resources on military land. U.S. Fish & Wildlife Serv., *Digest of Federal Resource Laws of Interest to the U.S. Fish and Wildlife Service*, "The Sikes Act," http://laws.fws.gov/lawsdigest/sikes.html (accessed Mar. 20, 2005).

[17] 16 U.S.C.A. § 1533(b)(2) (West Supp. 2004).

[18] Brad Knickerbocker, *Military Gets Break from Environmental Rules*, Christian Sci. Monitor 2 (Nov. 24, 2003) (available at http://www.csmonitor.com/2003/1124/p02s02-usmi.html).

[19] Harold Kenney, *Military Training Gets Break from Environmental Rules*, Natl. Defense Indus. Assn. 64 (Aug. 2003) (available at http://www.nationaldefensemagazine.org/issues/2003/Aug/Military_Training.htm).

ESA, when the military discovers an endangered species, it must protect the species, even if that means restricting military operations.[20] Maneuvering around critical habitat has become costly for the military: between 1998 and 2003, the DOD spent $74 million to comply with the ESA,[21] and it spends nearly $4 billion to comply with environmental laws annually.[22] Compliance is also cumbersome for the military. Officials claim that newer equipment requires more space to maneuver and practice.[23] As a result, the military has had to alter the amount of land it can use for training and has resorted to using computer-generated simulations or substituting training rounds for live fire.[24] Military officials are also concerned that troops sent to war may not receive the proper training they need if the military is unable to use all of its available land.[25]

The DOD has called these exemptions a "common-sense" balance of environmental regulation and military preparedness.[26] However, a Government Accountability Office[27] report determined that training readiness stayed high for most units and that the Pentagon's concerns regarding preparedness were not supported by the data.[28] The Environmental Protection Agency (EPA) Administrator at the time, Christine Whitman, also stated that she was not aware of any training missions that were thwarted by environmental regulations.[29] According to Representative Earl Blumenauer (D-OR), changes to these environmental laws were unnecessary because the DOD already had the authority to waive environmental laws when it was deemed necessary

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[20] *Id.*

[21] *Id.*

[22] Katharine Q. Seelye, *Pentagon Seeks Exemption from Environmental Laws*, N.Y. Times A11 (Mar. 30, 2002) (available at http://www.commondreams.org/headlines02/0330-01.htm). For example, the Navy spends $2.4 million annually to protect the loggerhead shrike, an endangered species that lives on San Clemente Island off the coast of California. *Id.* The Navy closes its bombing range on the island four days a week during the bird's breeding season and as a result the population has grown from 13 individuals to 160. *Id.*

[23] Kenney, *supra* n. 19.

[24] *See id.* (giving as an example the Army's new Stryker combat vehicle, which requires up to ten times the training space as its predecessor).

[25] Knickerbocker, *supra* n. 18.

[26] Pianin, *supra* n. 1.

[27] The Government Accountability Office (GAO) has changed its name from General Accounting Office as a result of legislation, effective July 7, 2004. Govt. Accountability Off., *GAO's Name Change and Other Provisions of the GAO Human Capital Reform Act of 2004*, http://www.gao.gov/about/namechange.html (accessed Mar. 20, 2005). The GAO is an independent and nonpartisan investigative part of Congress that evaluates federal programs and expenditures to make government more efficient and effective. Lib. Cong., *What is GAO?* http://www.gao.gov/about/what.html (accessed Mar. 20, 2005).

[28] Ltr. from David M. Walker, Comptroller of the U.S., U.S. Gen. Acctg. Office, to Duncan Hunter, U.S. House of Rep., Comm. on Armed Servs., & Ike Skelton, U.S. House of Rep., Comm. on Armed Servs., *Posthearing Questions Related to Strategic Human Capital Management and Endangered Species* 1 (May 21, 2003) (available at http://www.gao.gov/new.items/d03777r.pdf).

[29] Pianin, *supra* n. 1.

for national security, and the responsible agency has always granted these waivers.[30]

2. *Amendments Affecting the Marine Mammal Protection Act*

While the changes to the ESA were fairly limited in scope, the modifications to the MMPA resulted in three distinct changes to the law. First, the definition of harassment was altered for military readiness activities.[31] Second, there is an exemption clause for actions deemed necessary for national defense.[32] Finally, there were modifications made to the issuance of small take permits for military readiness purposes.[33]

The MMPA generally prohibits the "taking" of marine mammals without a permit from either the Secretary of Commerce or Interior.[34] The term "take" is defined broadly to include "harass, hunt, capture, or kill."[35] The National Defense Authorization Act has altered the definition of harassment as it applies specifically to a "military readiness activity" or a "scientific research activity conducted by or on behalf of the Federal Government."[36] The language change is subtle, but the impact may be significant: "harassment" is now defined as an act that "has the *significant* potential to injure a marine mammal,"[37] or an act that will disturb or is "likely to disturb" a marine mammal by causing a disruption in the behavioral patterns such that the behavior is "abandoned or significantly altered."[38] The term "significant" has been added to the MMPA for precision, but it is unclear what constitutes a "significant potential to injure"[39] or what would constitute an abandonment of behavior.[40] Some opponents argue that this new definition of harassment is looser[41] and that now, the Navy and scientific re-

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30 H.R. Conf. Rpt. 108-10982 at 11005 (Nov. 7, 2003) (reprinted in 149 Cong. Rec. H109825 (daily ed. Nov. 7, 2003)).

31 16 U.S.C.A. § 1362(18)(B) (West Supp. 2004).

32 *Id.* at § 1371(f).

33 *Id.* at § 1371(a)(5)(D)(vi).

34 The Secretary of Interior has management authority for the sea otter, polar bear, walrus, dugong, and manatee. The Secretary of Commerce has authority over cetaceans (all whales, dolphins, and porpoises) and pinnipeds (seals and sea lions) except the walrus. U.S. Fish & Wildlife Serv., *Digest of Federal Resource Laws of Interest to the U.S. Fish and Wildlife Service*, "Marine Mammal Protection Act of 1972," http://laws.fws.gov/lawsdigest/marmam.html (accessed Mar. 20, 2005).

35 *Marine Mammal Protection Act*, 16 U.S.C. § 1362(13) (2000).

36 16 U.S.C.A. § 1362(18)(B) (West Supp. 2004).

37 *Id.* at § 1362(18)(B)(i) (emphasis added).

38 *Id.* at § 1362(18)(B)(ii).

39 Sierra Club, *National Marine Committee, Marine Mammals, Action Alert on the Bush Administration Assault on the Marine Mammal Protection Act*, http://www.sierraclub.org/marine/mammals/mmpa.asp (accessed Mar. 20, 2005).

40 Nat. Resources Def. Council, *Written Statement on Proposals to Amend the Marine Mammal Protection Act of 1974*, "Analysis of the MMPA Amendments Proposed by the Defense Department," http://www.nrdc.org/wildlife/marine/cmmpa0303.asp (accessed Mar. 20, 2005).

41 Kaufman, *supra* n. 8.

searchers are held to an entirely different standard regarding harassment as compared to the shipping, fishing, and tourism industries.[42]

Proponents of this Act, however, have harbored a concern that the term harassment was already susceptible to a broad interpretation. The National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NOAA Fisheries) was supportive of the amendments that H.R. 1588 made to the MMPA, predicting that they "would have no adverse impact on the protection of marine mammals" and that a clearer definition of harassment would be beneficial.[43] NOAA Fisheries has argued that harassment is open to vague interpretation,[44] and Representative Duncan Hunter (R-CA) suggested that the statute could possibly be interpreted so that harassment would apply in situations where a Navy ship passes a seal sitting on a buoy. If the seal looks up at the ship, the seal is "potentially disturbed" and thus, harassed.[45]

However, wildlife agencies have never applied this sort of *de minimus* standard on the definition of harassment.[46] The Marine Mammal Commission, a non-partisan advisory council, has found that it is not clear that such a minor response would be included in the definition of harassment.[47] The law itself refers to "disruption in behavioral *patterns*,"[48] which would suggest prohibiting disruptions in well-observed or routine behaviors such as migration or breeding. In addition, since 1994 the DOD has applied for more than twenty incidental take and harassment authorizations and none of those requests for permits were denied.[49] Some opponents contend that the DOD failed to make its case that adherence to pre-existing environmental laws was onerous and that changes were necessary.[50]

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42 H.R. Conf. Rpt. 108-10982 at 11002 (Representative Sam Farr (D-CA) speaking out against H.R. 1588).

43 H.R. Subcomm. on Military Readiness of the Comm. on Armed Servs., *FY 2004 Department of Defense Readiness and Range Preservation Initiative*, 108th Cong. [¶] 19 (Mar. 13, 2003) (testimony of Dr. William T. Hogarth, Asst. Adminstr. for Fisheries, Natl. Oceanic & Atmospheric Administration Fisheries, Dept. of Commerce) (available at http://www.ogc.doc.gov/ogc/legreg/testimon/108f/hogarth0313.htm).

44 Sen. Subcomm. on Oceans, Fisheries & Coast Guard of the Comm. on Commerce, Sci., & Transp., *On Reauthorization of the Marine Mammal Protection Act*, 108th Cong 2 (July 16, 2003) (testimony of Dr. Rebecca Lent, Dep. Asst. Adminstr. for Fisheries, Natl. Marine Fisheries Service Natl. Oceanic & Atmospheric Administration) (available at http://www.legislative.noaa.gov/Testimony/071603lent.pdf).

45 Lib. Cong., *National Defense Authorization Act for Fiscal Year 2004*, http://thomas.loc.gov/cgi-bin/query/D?c108:5:./temp/~c1088L0HFh:: (May 21, 2003).

46 Nat. Resources Def. Council, *supra* n. 40, at "A. Amendments to the MMPA Definition of "Harassment" (§ 316(b)(1))."

47 *Id.*

48 *Id.* (emphasis added).

49 Ocean Conservancy, *Young Testifies to Save Marine Mammal Protection Act, The Ocean Conservancy Seeks to Stop Changes to MMPA*, http://www.oceanconservancy.org/site/PageServer?pagename=press_archive1798 (Mar. 13, 2003).

50 *Id.*

The second major change to the MMPA grants the military an exemption for actions that are deemed necessary for national defense.[51] After conferring with the Secretary of Interior or Commerce, the Secretary of Defense can exempt actions taken by the DOD for a period of two years.[52] Under this provision, the Secretary of Commerce or Interior may issue a takings permit, exempting a broad category of actions, rather than just a single action as was allowed under the old law.[53] The major issue with these changes is that all authority is vested entirely with the Secretary of Defense,[54] with notice given only to the Committees on Armed Services in the House and Senate after thirty days of the issuance of an exemption.[55] There is also no environmental review component, so activities conducted during peacetime that are not negatively affected by mitigation may fall outside of the process and will not receive any mitigation or monitoring.[56]

Finally, the changes create a separate incidental take permit related to military readiness activities.[57] Typically, the Secretary of Commerce or Interior issued a takings permit for a small number of marine mammals based on the activity occurring in a specific geographic area and having a negligible impact on the species.[58] The permit was limited to a narrow area, an area no larger than necessary to accomplish the activity.[59] These geographic regions are important because particular behaviors occur in these specific areas. For instance some areas are necessary for breeding and others are necessary for migration. The geographic area is necessary to determine whether the activity will have an adverse or negligible impact on the species.[60] However, the new changes removed the "specified geographical region" and the "small numbers" language so that one permit can potentially allow naval activities throughout the entire ocean, and it can potentially harm an unlimited number of mammals.[61]

The changes made to the MMPA are a result of the Navy's desire to expand its testing and training of Surveillance Towed Array Sensor System Low Frequency Active sonar (LFA).[62] This sonar is used to detect new, quiet diesel-electric submarines. While passive sonar just listens for sound, active sonar emits a sound and listens for an echo to

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51 Nat. Resources Def. Council, *supra* n. 40, at "C. Categorical Exemption for Defense Department Activities (§ 316(b)(4))."

52 16 U.S.C.A. § 1371(f)(1), (2)(B) (West Supp. 2004).

53 *Id.* at § 1371(f)(1).

54 Nat. Resources Def. Council, *supra* n. 40, at "Summary Analysis."

55 16 U.S.C.A. § 1371(f)(4).

56 Nat. Resources Def. Council, *supra* n. 40, at "Categorical Exemption for Defense Department Activities (§ 316(b)(4))."

57 *Id.* at "B. Amendments to the Permitting Process (§ 316(b)(2))."

58 16 U.S.C.A. § 1371(5)(A)(i).

59 *Nat. Resources Def. Council, Inc. v. Evans*, 279 F. Supp. 2d 1129, 1143 (N.D. Cal. 2003).

60 Nat. Resources Def. Council, *supra* n. 40, at "Summary Analysis."

61 Palmer, *supra* n. 11.

62 Kenney, *supra* n. 19, at "Work-Arounds."

identify an object in the ocean.[63] The problem is that LFA sonar is so loud, perhaps as loud as a jet engine,[64] that it is believed to have killed whales and dolphins, and some scientists contend that these sounds may also harm turtles and fish.[65] Whale strandings have occurred all over the world, as a possible result of sonar tests conducted nearby. Fourteen beaked whales were stranded in the Canary Islands about four hours after a mid-frequency sonar exercise was conducted around the islands.[66] The Navy has also admitted that its high-intensity sonar caused sixteen beaked and minke whales to beach themselves in the Bahamas shortly after a Navy ship using the sonar passed by the animals.[67] Necropsies performed on the animals showed that many died due to bleeding around the inner ears, and, in one instance, bleeding around the brain. In a report of the incident, the Navy and NOAA Fisheries determined that the strandings were a result of "unique local conditions"; however, officials could not rule out the possibility that the local conditions found in the Bahamas would cause similar problems again.[68]

Since *Natural Resources Defense Council, Inc. v. Evans*,[69] the Navy has drastically reduced its use of LFA sonar. Natural Resources Defense Council (NRDC) and The Humane Society of the United States (HSUS) joined other groups to file suit to overturn a small take permit which allowed the Navy to harass marine mammals while using LFA. Magistrate Judge Elizabeth Laporte's final ruling determined that if the Navy conducted tests of its LFA sonar in areas where endangered marine mammals frequented, the environment would be "irreparably harmed."[70] Magistrate Judge Laporte ordered the parties to negotiate an agreement that would allow LFA sonar to be used in

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63 Humane Socy. of the U.S., *Accord is Sweet Music for Sonar-Afflicted Marine Life*, http://www.hsus.org/ace/19848 (Oct. 14, 2003).

64 Kaufman, *supra* n. 8.

65 *Id.*

66 P. D. Jepson, et al., *Gas-Bubble Lesions in Stranded Cetaceans*, 425 Nat. 575, 575 (Oct. 9, 2003). The scientists in the study concluded that the bubbles found in the tissues were consistent with what would occur in rapid decompression, which could have been caused by the animals altering their dive depths, swimming up towards the surface in response to the sonar. *Id.*

67 Mark Schrope, *Whale Deaths Caused by U.S. Navy's Sonar*, 415 Nat. 106, 106 (July 10, 2002).

68 *Id.* According to the report, the sound waves were trapped in a layer of warm water and the whales were unable to escape because they were feeding in underwater canyons. *Id. See also* Rex Dalton, *Push to Protect Whales Leaves Seafloor Research High and Dry*, 428 Nat. 681, 681 (Apr. 15, 2004) (the research vessel, *Maurice Ewing*, operated by Lamont-Doherty Earth Observatory at Columbia University in New York, has been linked to at least two incidents of whale strandings as a result of discharging bursts of compressed air which are used to map rock formations on the ocean floor).

69 279 F. Supp. 2d at 1129.

70 Humane Socy. of the U.S., *supra* n. 63, at "The Background." In an earlier ruling, an injunction had been issued because the National Marine Fisheries Service had violated fundamental requirements of the MMPA when it issued a small take permit to the Navy. *Id.*

instances that would cause only minimal impacts on marine animals. On October 13, 2003, the parties agreed to a reduction by the Navy in its deployment of the sonar from seventy-five percent of the world's oceans to one percent.[71]

The agreement reached in the *Evans* case was viewed as a victory from an environmental standpoint. However, Representative John Dingell (D-MI) viewed these latest changes to the MMPA as an attempt to overturn the case through legislation and perhaps prevent further litigation against the Navy.[72] The amendments to the ESA and MMPA are also considered by some to be too broad to actually protect the environment, while at the same time too narrow to deal with the actual problems, such as encroachment on DOD land.[73]

B. Marine Mammal Protection Act Amendments of 2004

Many more changes are likely in store for the Marine Mammal Protection Act. Representatives Wayne T. Gilchrest (R-MD) and Richard Pombo (R-CA) introduced H.R. 2693, the Marine Mammal Protection Act Amendments of 2004, on July 10, 2003.[74] On April 20, 2004, the bill was placed on Union Calendar No. 268, where it awaited a vote in the 108th Congress but was never brought to the floor.[75]

There are at least fourteen substantive proposed amendments to the MMPA, including more changes to the definition of harassment. As the law stands, there are two categories of harassment. Level A harassment is the potential to "injure" a marine mammal.[76] Level B harassment is the potential to "disturb" a marine mammal's behavioral patterns, including, but not limited to, migration, breathing, and feeding.[77] The proposed change would narrow the level B harassment to behaviors that are "biologically significant" to the survival and reproduction of the species,[78] which would perhaps make the definition all inclusive and limit the behaviors to those listed in the statute.

The second major change would alter the incidental take permit for animal research activities, removing the reference to "small numbers" of marine animals.[79] Currently, the language of the law could be interpreted to allow the issuance of a permit only if both a small number of marine mammals are affected by the activity and the activity has a negligible impact on the entire population. The deletion of "small

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[71] *Id.*

[72] H.R. Conf. Rpt. 108-10982 at 10999–1001 (Rep. Dingell speaking out against H.R. 1588).

[73] Earl Blumenauer, *DOD Environmental Exemptions*, http://blumenauer.house.gov/issues/ FloorSpeechSummary.aspx?NewsID=93&IssueID=6 (May 22, 2003).

[74] Lib. Cong., *Bill Status and Summary for the 108th Congress*, http://thomas.loc.gov/cgi-bin/bdquery/z?d108:HR02693:@@@L&summ2=m& (accessed Feb. 23, 2005).

[75] *Id.*

[76] 16 U.S.C. § 1362(18)(A)(i), (C).

[77] *Id.* at § 1362(18)(A)(ii), (D).

[78] H.R. 2693, 108th Cong. § 13 (Apr. 20, 2004) (as introduced).

[79] *Id.* at § 14.

numbers" would be desirable for research vessels engaging in an activity that would harass a large number of animals but have a negligible impact on the population as a whole.[80]

The other changes to the MMPA would allow recreational fisheries, not just commercial fisheries, to incidentally take marine mammals.[81] It would also require the Secretary of Commerce to research the non-lethal removal and control of nuisance pinnipeds (seals and sea lions) that interfere with recreational and commercial fisheries.[82] There are proposed changes in the way that facilities in the United States export marine mammals to other countries.[83] The bill would also repeal the eleven-member minimum for the Marine Mammal Commission,[84] a non-partisan advisory agency that provides oversight regarding the management and conservation of marine mammals.

It is unclear what effect the MMPA amendments from the National Defense Authorization Act for Fiscal Year 2004 will have on future amendments to the MMPA. However, it is expected that the 109th Congress will bring forward additional amendments to the MMPA amendments. The Congress will likely attempt to further clarify the definition of harassment, which would apply to any person that harasses a marine mammal, rather than just to the military or research vessels.[85]

C. Captive Wildlife Safety Act

Before the internet became widely available, it was difficult to purchase exotic (animals not native to the United States) or wild animals, especially lions or tigers. However, until 2003, the creation of the internet helped foster more than one thousand websites that promoted private ownership of wild animals.[86] For example, one Arizona company was offering chimpanzees for $65,000, infant tigers for $1,500 and one-year-old black bears for $500.[87] Unfortunately, people who are unaware of the cost of care and amount of time that a wild animal requires are the typical purchasers of these animals. As a result, the animal may suffer from abuse or neglect and the owner eventually

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80 H.R. Rpt. 108-464 § 14 (Apr. 20, 2004).

81 *Id.* at § 6. The law currently allows incidental takes of marine mammals by commercial fisheries. 16 U.S.C. § 1387.

82 H.R. Rpt. 108-464 at § 7.

83 *Id.* at §16.

84 H.R. Rpt. 108-464 at § 8.

85 Ecological Socy. of Am., *Policy News from the ESA's Public Affairs Office*, "Waves of Ocean Legislation Slated for 109th," (available at http://www.esa.org/pao/PolicyNewsUpdate.pn2005/01102005.php (Jan. 10, 2005)).

86 Press Release, Congressman George Miller, *Miller Hopeful Captive Wildlife Safety Act Will Win Swift House Approval* (June 12, 2003) (available at http://www.house.gov/georgemiller/rel61203.html) [hereinafter *Miller Press Release*].

87 Judy Peet, *Tougher Pet Laws Are Urged Rules Needed to Protect Exotic Animals and People, Activists Say*, Star-Ledger (Newark, N.J.) 18 (Nov. 12, 2003).

tires of caring for the animal.[88] The animal is then sold to a dealer, who in turn sells the animals to canned hunting ranches, where people pay a fee for the opportunity to shoot an animal at close range.[89]

Only twenty states ban the ownership of dangerous exotic animals, and sixteen states do not have any laws restricting the possession of captive wildlife.[90] The Animal Welfare Act[91] regulates animal wholesalers and retailers, but it does not apply to animals that are kept as pets.[92] The Lacey Act[93] only prohibits the trade and transport of animals in violation of state or federal law, so it does not have any effect in states that are lacking laws that regulate exotics. In an effort to provide uniformity throughout the country, Senator James Jeffords (I-VT) introduced Sen. 269 to amend the Lacey Act on January 30, 2003.[94] The bill was passed in the Senate but then held in the House.[95] A companion bill, H.R. 1006, which differed only slightly from the Senate bill, was sponsored by Representatives Buck McKeon (R-CA) and George Miller (D-CA) and was introduced on February 27, 2003.[96] The House and Senate passed the bill unanimously. The bill was signed into law as the Captive Wildlife Safety Act on December 19, 2003.[97]

The new law is aimed at previously unregulated and untrained people who keep wild animals as pets.[98] It amends the Lacey Act, prohibiting the sale and transportation of the following large cats: lions, tigers, leopards, cheetahs, jaguars, cougars, and hybrids of those species.[99] However, many facilities are not regulated under the new legislation because there is an exception for zoos or research facilities that are licensed and inspected by a federal agency, colleges and universities, and non-profit sanctuaries or humane societies.[100]

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88 Wayne Pacelle, *Captive Wildlife Safety Act: A Good Start in Banning Exotics as Pets*, http://www.hsus.org/ace/20192 (accessed Feb. 24, 2005).

89 Am. Humane, *Animal Welfare Legislation, A Victory for the Animals*, http://www.americanhumane.org/site/PageServer?pagename=ta_federal_animals_wrap_exotic (accessed Mar. 6, 2005).

90 Pacelle, *supra* n. 88. *See also*, Am. Veterinary Med. Assn., *JAVMA News, Laws Take Aim at Wildlife Pets*, http://www.avma.org/onlnews/javma/jul04/040715c.asp (July 15, 2004) (Minnesota signed SF 1530 into law on July 15, 2004 prohibiting the ownership of dangerous wild animals, effective January 1, 2005). The twenty states banning ownership are: Alaska, Arizona, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Illinois, Maine, Maryland, Michigan, Minnesota, Nebraska, New Hampshire, New Mexico, Tennessee, Utah, Vermont, and Wyoming. Pacelle, *supra* n. 88.

91 7 U.S.C. §§ 2131–2155 (2000).

92 Am. Veterinary Med. Assn., *supra* n. 90.

93 16 U.S.C. §§ 1371–1378 (2000).

94 Lib. Cong., *Bill Status and Summary for the 108th Congress*, http://thomas.loc.gov/cgi-bin/bdquery/z?d108:SN00269:@@@L&summ2=m& (accessed Feb. 23, 2005).

95 *Id.*

96 *Id.* at http://thomas.loc.gov/cgi-bin/bdquery/z?d108:HR01006:@@@L&summ2=m.

97 *Id.*

98 *Miller Press Release*, *supra* n. 86.

99 16 U.S.C.A. § 3371(g) (West Supp. 2004).

100 *Id.* at § 3372(2)(A), (B), (C)(i)–(iv). This exception applies as long as the non-profit sanctuaries are not involved in the commercial trade of animals or products, do not

There have been many problems relating to the more than fifteen thousand large cats living in the United States because big cats remain wild. Many of these animals are kept as pets, but they are also placed beside businesses or kept in roadside zoos.[101] People try to turn these wild animals into pets, but this has led to deadly consequences. For example, a ten-year-old North Carolina boy was mauled by his aunt's 400-pound tiger that she kept in her backyard behind a chain-link fence.[102] There have been 125 similar types of incidents and 87 human deaths involving large cats between 1998 and 2003.[103] Captive wildlife can also act as "vectors" for exotic diseases; for example, civet cats haven been linked with SARS.[104]

The problems span beyond harm to humans; large cats require a vast amount of space, and there are numerous examples of animal suffering. Animals have been found in small, unhealthy conditions, such as the case of a Harlem man found to have a 425-pound Siberian Bengal Tiger in a cage in his apartment.[105] A New Jersey woman was found keeping twenty-four tigers on a quarter of an acre in a fenced enclosure in her backyard.[106] As a result of such living conditions, these animals often suffer from abuse, malnutrition, and poor health due to a lack of veterinary care, and they also suffer from physical problems due to inbreeding. While some owners think they are saving an endangered species, the majority of these animals are genetically inferior hybrids, and legitimate breeding programs are unable to use these animals.[107]

HSUS, The American Humane Association, the International Fund for Animal Welfare, the American Veterinary Medical Association, and many other animal rights groups supported the Captive Wildlife Safety Act.[108] However, the United States Fish and Wildlife Service opposed the legislation because it would force the service to spend more time enforcing the law, rather than focusing its resources on its highest priority: protecting wild populations of animals.[109] Others contend that the Captive Wildlife Safety Act neglects two important issues. First, it does not prevent the private ownership of large

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breed the animals, and do not allow direct contact between the public and the animals. *Id.*

101 Pacelle, *supra* n. 88.

102 *Id.*

103 Peet, *supra* n. 87.

104 *Miller Press Release*, *supra* n. 86.

105 Cable News Network, *Tiger, Gator Removed from Harlem Apartment*, http://www.cnn.com/2003/US/Northeast/10/04/nyc.tiger/index.html (Oct. 6, 2003).

106 Intl. Fund for Animal Welfare, *Bush Signs Exotic Pets Bill into Law*, http://www.ifaw.org/ifaw/general/default.aspx?oid=79321 (Dec. 24, 2003).

107 Pacelle, *supra* n. 88.

108 Am. Humane, *supra* n. 89.

109 H.R. Subcomm. on Fisheries Conservation, Wildlife, & Oceans of the Comm. on Resources, *Regarding H.R. 1006, the "Captive Wildlife Safety Act" and 1472, the "Don't Feed the Bears Act,"* 108th Cong. (June 12, 2003) (available at http://laws.fws.gov/TESTIMON/2003/Hogancaptivewildlife.htm (June 12, 2003).

cats or the in-state breeding or the sale of these animals.[110] Second, the National Association of State Public Health Veterinarians believes that because captive wildlife sales are so lucrative, the business will just go underground. The group believes that future legislation should focus on preventing exotic wildlife from entering the country in the first place.[111] However, animal rights activists are hopeful that the Captive Wildlife Safety Act, which focuses on highly visible and charismatic animals, is the start of future legislation that will protect other wild species.[112]

D. Captive Exotic Animal Protection Act of 2004

On July 22, 2004 Senator Frank Lautenberg (D-NJ) and Senator Joe Biden (D-DE) sponsored Sen. 2731, the Captive Exotic Animal Protection Act of 2004, which has been referred to the Committee on the Judiciary in the United States Senate.[113] This bill focuses on captive exotic animals, which are animals that are not native to the United States.[114] On October 7, 2004, Representatives Sam Farr (D-CA) and Chris Shays (R-CT) sponsored a similar bill, H.R. 5242, titled the Captive Mammal Protection Act.[115] This bill has been referred to the House Subcommittee on Crime, Terrorism, and Homeland Security.[116] The Captive Mammal Protection bill refers to captive mammals generally and does not specify whether the species must be native to the United States.[117] Both bills prohibit similar actions, the interstate shipment of captive exotic animals (or non-exotic animals for H.R. 5242) for the purpose of being shot in a fenced enclosure for entertainment or for trophy,[118] also referred to as canned hunts. The bills would limit the definition of a captive animal to an animal that roams in an area smaller than one thousand acres and is unable to survive by foraging on natural foods from the land.[119]

There is a need for uniformity on this issue because only eighteen states have full or partial bans on shooting animals in enclosures.[120]

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110 Pacelle, *supra* n. 88.

111 Am. Veterinary Med. Assn., *supra* n. 90.

112 Peet, *supra* n. 87.

113 Lib. Cong., *Bill Status and Summary for the 108th Congress*, http://thomas.loc.gov/cgi-bin/bdquery/z?d108:SN02731:@@@L&summ2=m (accessed Feb. 23, 2005).

114 Sen. 2731, 108th Cong. (July 22, 2004) (as introduced).

115 Lib. Cong., *supra*, n. 113.

116 *Id.*

117 H.R. 5242, 108th Cong. § 2 (Oct. 7, 2004) (as introduced).

118 Lib. Cong. at http://thomas.loc.gov/cgi-bin/bdquery/z?d108:SN02731:@@@L&summ2=m&; *Id.* at http://thomas.loc.gov/cgi-bin/bdquery/z?d108:HR05242:@@@L&summ2=m&.

119 H.R. 5242, 108th Cong. at § 2; Sen. 2731, 108th Cong. at § 3.

120 Humane Socy. of the U.S., *Canned Hunts*, "Legislation," http://www.hsus.org/ace/12017 (accessed Feb. 24, 2005).

Other federal laws such as the Animal Welfare Act[121] do not regulate game preserves or hunting preserves.[122] Regulation of these ranches is also outside of the domain of both the State agriculture departments and fish and game departments.[123]

There are more than one thousand commercial operations, or canned hunting ranches, in at least twenty-five states, and more than six hundred of those ranches are located in Texas.[124] These hunting ranches house more than 230,000 animals and 124 exotic species.[125] Ranches offer high success rates, over ninety percent on trophy animals,[126] and many have a "No Kill No Pay" policy.[127] They are able to guarantee a kill because the animals are enclosed within game fences and are often fed at the same time and location, which ensures their presence when hunters arrive at the ranches.[128] Hunters are willing to pay up to $1,500 for a weekend stay at a ranch and up to $10,000 for a bongo (a large African antelope) or $3,500 for a zebra.[129]

The animals arrive at hunting ranches in a number of different ways. Some zoos over-breed their animals and sell their excess animals in order to make room for babies, which are more popular with the general public.[130] They often sell them to middlemen or animal dealers, who in turn sell the animals to game ranches.[131] While the American Zoo and Aquarium Association (AZA) strongly opposes selling animals for hunting, of the 2,250 animal exhibits in the United States only 196 belong to the AZA.[132] Other animals are victims of the pet trade, including those that are no longer cared for, such as big cats, and those that are retired from circuses.[133]

One of the biggest concerns from an animal rights perspective is that canned hunts do not involve fair chase. However, there are several other problems that have arisen as a result of hunting ranches. In several Texas counties, exotic animals jump the game fences, and roam loose throughout the state, outnumbering native deer.[134] These

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121 The Animal Welfare Act is limited to the regulation of the humane treatment of certain animals used for research, experimentation, sale, and exhibition. U.S. Fish & Wildlife Serv., *Digest of Federal Resource Laws of Interest to the U.S. Fish and Wildlife Service*, http://laws.fws.gov/lawsdigest/anwelfa.html (accessed Feb. 24, 2005).

122 Humane Socy. of the U.S., *supra* n. 120.

123 Sen. 2731, 108th Cong. at § 2.

124 Evan Moore, *Texas Ranchers Cash in on Exotic Game*, Houston Chron. 29 (June 15, 2003) (available at 2003 WLNR 10896162).

125 *Id.*

126 Fund for Animals, *Canned Hunts: In Their Own Words*, http://www.fundforanimals.org/library/documentViewer.asp?ID=1085 (Aug. 26, 2003).

127 *Id.*

128 Moore, *supra* n. 124.

129 *Id.*

130 Fund for Animals, *Canned Hunts: The Other Side of the Fence* 1 (Fund for Animals, 2002) (available at http://www.fundforanimals.org/uploads/fs_hunt4.pdf).

131 *Id.*

132 *Id.*

133 *Id.* at 1–2.

134 Moore, *supra* n. 124.

animals are possible carriers for disease such as chronic wasting disease (CWD), a neurological disease that is similar to Mad Cow disease. CWD has been found in wild deer and elk and has spread throughout the Midwest and West.[135] In 1991, an elk escaped from a Montana game ranch and ended up testing positive for tuberculosis.[136] The animal was caught, but disaster could have resulted if it had transmitted the disease to a herd of elk in nearby Yellowstone National Park.[137]

To further complicate this issue, an Internet website that currently offers target practice with a .22 caliber rifle has touted that it will soon offer Internet hunting of animals living on its Texas ranch.[138] The owner claims that it could be popular with disabled hunters or those who are unable to afford a trip to Texas.[139] State law in Texas only covers animals native to the state and does not prevent the hunting of "unregulated" animals.[140] Texas does not have any laws that regulate Internet hunting either. However, a proposed rule would require a person hunting an animal covered by state laws to be physically at the location of the animal when they shoot it.[141] This rule would not fully prevent the Internet-killing of captive animals because it would exempt exotic species of animals that the rancher may own.[142]

Safari Club International (SCI) and the National Rifle Association (NRA) have opposed any sort of regulations regarding hunting. SCI has even created an achievement award, the "Introduced Trophy Game Animal of North America," which animal rights groups have argued only encourages canned hunting ranches.[143] Other supporters of game ranches argue free enterprise and look at Internet hunting as just the next step in hunting technology.[144] The NRA, although stating that it embraces humane and ethical conduct, opposes the Captive Exotic Animal Protection Act of 2004 because the legislation may not protect animals from actual inhumane and unethical conduct. It would only criminalize a hunter's *motives*, i.e., killing an animal for entertainment or trophy, rather than the conduct itself.[145] The NRA is also worried that since entertainment is not defined in the bill, the law

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135 *Id.*

136 Fund for Animals, *supra* n. 130, at 2.

137 *Id.*

138 MSNBC, *Game Hunting via Internet? Officials Wary*, http://www.msnbc.com/id/6507424 (Nov. 18, 2004). An attendant would retrieve the shot animal and the hunter could have the head preserved by a taxidermist and have the meat processed and shipped to his home. *Id.*

139 *Id.*

140 *Id.*

141 *Id.*

142 *Id.*

143 Humane Socy. of the U.S., *supra* n. 120.

144 MSNBC, *supra* n. 138.

145 Natl. Rifle Assn., Inst. for Legis. Action., *H.R. 3464/S. 1655: The "Captive Exotic Animal Protection Act,"* http://www.nraila.org/Issues/FactSheets/Read.aspx?ID=123 (Feb. 12, 2002).

may hinder recreation or sport hunting, despite the fact that the bill specifically states that the law does not intend to hinder the licensed hunting of native mammals or native or exotic birds.[146] The NRA also sees enforcement problems because the bill only prohibits the transfer or transport of an animal.[147] Thus, the person that does the actual killing would not necessarily be subject to prosecution. Finally, the organization is concerned with the bill's definition of captivity, which defines a captive animal to be an animal that lives on less than one thousand acres of land.[148] The NRA argues that it would be unfair to list all animals under this definition because some small species are easily able to forage and elude hunters on less than one thousand acres.[149]

E. Marine Turtle Conservation Act of 2004

Less than sixty years ago, marine turtles were found nesting on beaches all over the world.[150] Now, of the seven marine turtle species found in the world, all seven are listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and six of those species are listed as threatened or endangered under the ESA.[151] Marine turtles have existed for more than 100 million years,[152] but recently they have suffered greatly from environmental and human-related pressures.

In an effort to boost the conservation efforts of these species, Senator James Jeffords (I-VT) introduced Sen. 1210 on June 9, 2003.[153] On October 31, 2003 the Senate passed the bill unanimously and it went to the House where it was referred to the House Committee on Resources.[154] Representative Wayne Gilchrest (R-MD) introduced similar legislation, H.R. 3378, on October 28, 2003.[155] This House bill was passed on June 14, 2004 by a voice vote, and four days later, it passed

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146 *Id.*

147 *Id.*

148 *Id.*

149 *Id.*

150 Bureau of Intl. Info. Programs, *New Law Aims to Help Other Countries Conserve Endangered Turtles*, http://usinfo.state.gov/gi/Archive/2004/Jul/07-473215.html (July 7, 2004).

151 World Wildlife Fund, *Marine Turtle Conservation Legislation Signed into Law; WWF and The Ocean Conservancy Praise Unanimous Support of Act*, Press Release of World Wildlife Fund (July 7, 2004) (available at http://www.worldwildlife.org/news/displayPR.cfm?prID=132). The six species found in United States waters are: Green, Hawksbill, Kemp's Ridley, Leatherback, Loggerhead, and Olive Ridley. The seventh sea turtle is the Flatback, found offshore of Australia. H.R. Rpt. 108-507 at 2 (May 20, 2004) (reprinted in 2004 U.S.C.C.A.N. 726, 727).

152 H.R. Rpt. 108-507 at 1 (May 20, 2004) (reprinted in 2004 U.S.C.C.A.N. 726, 726).

153 Lib. Cong., *Bill Status and Summary of the 108th Congress*, http://thomas.loc.gov/cgi-bin/bdquery/z?d108:SN01210:@@@L&summ2=m& (accessed Mar. 20, 2005).

154 *Id.*

155 *Id.* at http://thomas.loc.gov/cgi-bin/bdquery/z?d108:HR03378:@@@L&summ2=m&.

the Senate by unanimous consent.[156] On July 2, 2004 the President signed the Marine Turtle Conservation Act of 2004 into law.[157]

Marine turtles have lengthy life spans (some living more than seventy years),[158] mature late, and are highly migratory. They spend their entire lives at sea with only the females coming to shore to lay eggs.[159] Because of the migratory nature of these animals, the United States cannot properly conserve its six species without the cooperation of the international community.[160] Turtles face a trio of pressures: the fishing industry, hunters, and habitat loss. They are killed worldwide as bycatch in longline, trawl, and gillnet fisheries.[161] Turtles are hunted or poached for their meat, leather, and oil, their eggs are harvested, and their shell is used to make combs and other tourist items.[162] In the Caribbean region alone, six countries/territories still allow turtles to be taken from their waters: the British Virgin Islands, Cuba, the Turks and Caicos Islands, the Cayman Islands, Haiti, and the Bahamas.[163]

The Pacific leatherback has suffered tremendously from environmental pressures.[164] Its population has plunged ninety five percent in the last twenty-two years, and it is estimated that only about five thousand nesting females remain to this day.[165] Only one in one thousand leatherback hatchlings survive to adulthood.[166] This does not bode well for the environment as a whole because marine turtles are very important indicators of healthy marine ecosystems.[167] They are a "keystone species" and can be important in maintaining sea grass beds

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156 *Id.*

157 *Id.*

158 H.R. Subcomm. on Fisheries, Wildlife, & Oceans of the Comm. on Resources, *Saving the Ancient Mariners: The Marine Turtle Conservation Act of 2003*, 108th Cong. 2 (Mar. 25, 2004) (testimony of Brooks B. Yeager, Vice Pres. Global Threats, World Wildlife Fund) [hereinafter *Yeager Testimony*] (available at http://resources committee.house.gov/archives/108/testimony/2004/brooksyeager.pdf).

159 H.R. Rpt. 108-507 at 2.

160 *Yeager Testimony*, *supra* n. 158, at 7.

161 World Wildlife Fund, *supra* n. 151. There have been new advances in fishing gear such as circle hooks rather than traditional "J" hooks which could prove to reduce deaths from bycatch from longline fishing. *Id.* Turtle Exclusion Devices (TEDs) have also reduced bycatch from the trawl net fishery. World Wildlife Fund, *Sea Turtles Worth More Alive Than Dead, Says WWF*, Press Release of World Wildlife Fund (May 24, 2004) (available at http://worldwildlife.org/news/displayPR.cfm?prID=115).

162 World Wildlife Fund, *supra* n. 151.

163 Elizabeth H. Fleming, *Swimming against the Tide: Recent Surveys of Exploitation, Trade, and Management of Marine Turtles in the Northern Caribbean* 17 (TRAFFIC N. Am. 2001) (available at http://www.traffic.org/seaturtles/fullreport.pdf). The Bahamas prohibits the taking of hawksbills. *Id.* at 27.

164 Kenneth R. Weiss, *Sea Turtle is Losing the Race*, L.A. Times A1 (Apr. 21, 2003) (available at http://insidecostarica.com/specialreports/sea_turtles.htm).

165 *Id.*

166 *Id.* Some marine biologists fear that unless there is significant action soon, the leatherback will become extinct in a decade. *Yeager Testimony*, *supra* n. 158, at 3.

167 Sebastian Troëng & Carlos Drews, *Money Talks: Economic Aspects of Marine Turtle Use and Conservation* 29 (World Wildlife Fund-Intl., 2004).

and controlling the growth of sponges so that the sponges do not outcompete corals on a reef.[168]

The Marine Turtle Conservation Act assists foreign countries in the conservation of marine turtles and their nesting habitats. Currently, many countries lack the funding to protect nesting turtles and their habitats, to prevent the illegal trade of turtle products, or to provide community education.[169] The Marine Turtle Conservation Act would provide funding in the following areas: monitoring trade in products, tracking movement of turtles by satellite, protecting nesting beaches, and putting a stop to poaching.[170]

Offering more support to countries may help marine turtles and could establish or strengthen local economies through the creation of alternatives such as tourism. In a World Wildlife Fund (WWF) Report, the organization determined that marine turtles are actually worth more money alive then they are dead. When turtles are used for consumptive purposes, the average annual income earned was approximately $582,000,[171] whereas where turtles are a tourist attraction, the average annual income was approximately $1.66 million.[172] Worldwide, there are ninety-two sites in forty-three countries that host tourism involving marine turtles and over 175,000 people a year participate in "turtle tours."[173] There can be many local social and economic benefits that result from the tourism industry,[174] but it is not without some negative effects as well. Increased tourism may alter turtle behavior.[175] However, if the industry is controlled, then marine turtle conservation may have an overall positive effect on both turtles and local economies.

To obtain funding from the program, a foreign country may apply for money through its wildlife management authority or through a person or group that is both knowledgeable and involved in the conservation of turtles.[176] That person then submits a project proposal to the Secretary of Interior.[177] Preference is given to projects that can obtain

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168 *Id.* In the WWF Report, it was estimated that sea grass beds are a valuable ecosystem, worth $3.8 trillion globally, and that the net benefit of turtles on coral reefs is estimated to be $30 billion. *Id.*

169 *Yeager Testimony*, *supra* n. 158, at 3.

170 U.S. Dept. of Int., *News*, *New Law Gives Boost to International Marine Turtle Conservation Efforts*, http://www.doi.gov/news/040706a (July 6, 2004).

171 Troëng & Drews, *supra* n. 167, at 16.

172 *Id.* at 19.

173 *Id.* at 18.

174 *Id.* at 23. Compared to fisheries, the tourist industry tends to hire more women and also employ more workers overall. *Id.*

175 *Id.* at 19.

176 16 U.S.C.A. § 6603 (2004) (available at http://international.fws.gov/laws/mtca04.htm).

177 *Id.* at § 6603(b)(1)(A), (B). Marine turtles are jointly managed and fall under primary jurisdiction of the Department of Commerce (NOAA Fisheries) while the animals are in the water, and under the Department of Interior (U.S. Fish & Wildlife Serv.) when they come onto land to nest. Natl. Oceanic & Atmospheric Administration Fisher-

matching funds,[178] and the Secretary may require support from the foreign government if it is deemed to be necessary for the project's success.[179] The Act provides $5 million annually for 2005–2009.[180] However, this funding was not present in the budget of the Department of the Interior for Fiscal Year 2005.[181]

When funding does become available for the Act, it will be funded under the Multinational Species Conservation Fund.[182] This is a cooperative effort between the United States government, foreign governments, non-governmental organizations, and the private sector. The United States uses this fund to provide money to projects that are involved in the conservation of the great apes, rhinoceros, elephants, tigers, and migratory birds.[183]

The Marine Turtle Conservation Act was supported by all of the major environmental groups including WWF, The Ocean Conservancy, and HSUS.[184] NOAA Fisheries[185] and the National Fisheries Institute, an organization representing the seafood industry, also backed the legislation.[186] However, there has been some criticism of the legislation. First, some view this legislation as another example of the insertion of global policy upon the policy of the United States because money is spent overseas, rather than domestically.[187] Second, there is a question whether enough money would be spent on actual local programs or whether the money will become tied up with CITES, which tends to focus too more on trade.[188] However, if the Act is managed in accordance with the Multinational Species Conservation Fund, it has the potential for success. Environmental groups such as WWF have found the fund to be well managed,[189] and Secretary of Interior Gale Norton[190] considers the fund to be an effective way to assist wildlife managers to better protect wildlife in their country.[191] In the past, $25 million of United States funds have been leveraged to obtain over $80

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ies Serv., Off. of Protected Resources, *Marine Turtles*, "Marine Turtle Conservation and Management," http://www.nmfs.noaa.gov/pr/species/turtles/ (accessed Mar. 20, 2005).

178 16 U.S.C. § 6603(f).

179 *Id.* at § 6603(b)(2)(F).

180 *Id.* at § 6606.

181 Off. of Mgt. and Budget, *Budget of the United States Government, Fiscal Year 2005* 569 (Govt. Printing Off. 2004) (available at http://www.whitehouse.gov/omb/budget/fy2005/pdf/appendix/int.pdf).

182 *Yeager Testimony*, *supra* n. 158, at 4.

183 *Id.*

184 World Wildlife Fund, *supra* n. 151.

185 U.S. Dept. of Int., *supra* n. 170.

186 *Yeager Testimony*, *supra* n. 158, at 5.

187 Cheryl K. Chumley, *Turtle Bill Oozes U.N. Agenda*, http://www.conservativemonitor.com/opinion04/79.shtml (June 28, 2004).

188 Cheryl K. Chumley, *Alternative Approaches to Environmental Concerns, CITES: UN-reasonable, UN-wise, UN-sanctioned*, http://www.abetterearth.org/article.php/813.html (accessed Feb. 25, 2005).

189 *Yeager Testimony*, *supra* n. 158, at 4.

190 U.S. Dept. of Int., *supra* n. 170.

191 *Id.*

million in matching contributions from five hundred partner organizations.[192]

According to the Marine Turtle Conservation Act, the Secretary of Interior must submit a report to Congress regarding the effectiveness of the program.[193] If the Act does not prove effective in increasing marine turtle numbers, then Congress can evaluate any problems and try to fix them. One thing is clear, due to the highly migratory nature of marine turtles, a global effort is required for their conservation.[194] If a global solution is not forthcoming, the conservation efforts spent in this country may fail when marine turtles migrate to foreign countries.[195]

II. STATE LEGISLATION

A. Animal Protection and Anti-Cruelty Legislation

The 2003–2004 legislative session consisted of legislation intended to increase protections for animals against physical harm. Legislation increasing the penalties for certain types of animal cruelty was introduced in ten states during the session, with laws passing in Massachusetts, New Jersey, Tennessee, and Vermont.[196] Legislatures also addressed the need to provide better protections for service animals. California, Georgia, Kansas, Minnesota, and Ohio enacted laws stiffening penalties for harming service dogs.[197] Animal fighting was also a major topic among state legislatures: Iowa, Louisiana, Maryland, and New York strengthened their laws prohibiting animal fighting.[198]

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192 *Id.* The fund has aided the Mountain gorilla to a seventeen percent increase in its population, to approximately seven hundred animals. It has also helped the Indian rhinoceros population to increase by fifty percent in the last ten years to 2,400 animals and has assisted in repopulating rhinoceros in areas of Nepal where it had previously been extinct. *Yeager Testimony*, *supra* n. 158, at 4.

193 16 U.S.C. § 6607.

194 *Yeager Testimony*, *supra* n. 158, at 2–3.

195 *Id.* at 3.

196 *Infra* pt. II(A)(1). Hawaii failed to pass HB 2691. Am. Socy. for the Prevention of Cruelty to Animals, *Advocacy Center*, *2004 End of Session Reports*, http://www.aspca.org/site/PageServer?pagename=lobby_sessions&s_state=HI (accessed Mar. 4, 2005). Kansas failed to pass both HB 2598 and S 87. *Id.* at http://www.aspca.org/site/PageServer?pagename=lobby_sessions&s_state=KS. Mississippi failed to pass both SB 2703 and SB 2397. *Id.* at http://www.aspca.org/site/PageServer?pagename=lobby_sessions&s_state=MS. New York failed to pass S 3274-b. *Id.* at http://www.aspca.org/site/PageServer?pagename=lobby_sessions&s_state=NY. Virginia failed to enact HB 629. *Id.* at http://www.aspca.org/site/PageServer?pagename=lobby_sessions&s_state=VA.

197 *Infra* pt. II(A)(2).

198 Am. Socy. for the Prevention of Cruelty to Animals, *supra* n. 196, at http://www.aspca.org/site/PageServer?pagename=lobby_sessions&s_state=IA; *id.* at http://www.aspca.org/site/PageServer?pagename=lobby_sessions&s_state=LA; *id.* at http://www.aspca.org/site/PageServer?pagename=lobby_sessions&s_state=MD; *id.* at http://www.aspca.org/site/PageServer?pagename=lobby_sessions&s_state=NY.

1. Animal Cruelty

Prior to the 2003–2004 legislative session, Massachusetts, New Jersey, Tennessee, and Vermont already had felony level penalties for some acts of cruelty.[199] During the recent session, these states increased the penalties for first time offenders, subsequent offenders, and certain acts of cruelty.[200] The Massachusetts bill also contained provisions allowing agency officials investigating child abuse to report suspected animal abuse.[201]

a. Massachusetts

Governor Mitt Romney (R) signed Massachusetts Sen. 198 into law on August 12, 2004.[202] This bill "increases the penalties for animal abuse, which [had previously been] lower in Massachusetts than in many other states."[203] Prior to Sen. 198, the penalty for animal cruelty was a fine of not more than $1,000 or one year of imprisonment.[204] Sen. 198 increases those maximum penalties to not more than five years in state prison or two and one half years in jail, or a $2,500 fine, or both the fine and imprisonment.[205] This bill also "[allows] employees of the Department of Social Services . . . to report animal abuse they may reasonably suspect in the course of a child abuse investigation."[206] This provision addresses the concern that confidentiality would prevent agency officials from reporting suspected animal abuse.[207]

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199 Humane Socy. of the U.S., *State Animal Anti-Cruelty Law Provisions* 3, 5, 6, 7, http://files.hsus.org/web-files/PDF/State_Cruelty_Laws_Oct_2003.pdf (updated Oct. 2003).

200 *Infra* pt. II(A)(1)(a)–(d). The link between animal abuse and domestic violence has been well-documented. Am. Humane, *Sample Bibliography: Domestic Violence and Animal Cruelty*, http://www.americanhumane.org/site/PageServer?pagename=lk_resource_center_bib_domestic (accessed Mar. 4, 2005). American Humane cites a survey of pet-owning families in which child abuse was documented. Am. Humane, *American Humane Fact Sheet: Understanding the Link between Animal Abuse and Family Violence* 1 (Am. Humane 2003) (available at http://www.americanhumane.org/site/DocServer/nr_Factsheet_TheLink.pdf?docID=1727) (listing many resources on the subject; including a survey which found that animal abuse was present in eighty-eight percent of homes where children were being physically abused). This survey found that animal abuse was present in 88% of these homes. *Id.*

201 Mass. Animal Coalition, *Legislative Issues*, http://www.massanimalcoalition.org/Legislative%20Issues.html (accessed Mar. 11, 2005).

202 Am. Socy. for the Prevention of Cruelty to Animals, *Advocacy Center, 2004 End of Session Reports*, http://www.aspca.org/site/PageServer?pagename=lobby_sessions&s_state=MA (accessed Mar. 19, 2005).

203 Mass. Animal Coalition, *supra* n. 201.

204 Mass. Sen. 198, 183d Gen. Ct. (Aug. 19, 2004) (enacted) (available at WL, 2004 Mass. Legis. Serv. Ch. 319).

205 *Id.*

206 Mass. Animal Coalition, *supra* n. 201.

207 *Id.*

b. New Jersey

Governor James McGreevey (D) signed New Jersey Assembly Bill 3074-2720, sponsored by Assemblymen Douglas Fisher (R), John Burzichelli (D), and State Senator Stephen Sweeney (D), into law on January 9, 2004.[208] This bill increases the civil penalties available for various types of animal cruelty, including animal fighting, failure to provide adequate food and water, and abandonment.[209] Assembly Bill 3074 also upgrades the penalties for repeat offenders and acts of cruelty that result in the death of the animal from fourth degree to third degree crimes, increasing the maximum penalties to five years imprisonment and a fine of $15,000.[210] This bill also includes poisoning an animal as an act of animal cruelty.[211]

c. Tennessee

The Tennessee legislature passed two bills this session addressing animal cruelty. Governor Phil Bredesen (D) signed Tennessee Sen. 374 into law on June 15, 2004.[212] Representative Rob Briley (D) and State Senator Stephen Cohen (D) sponsored the bill, which has two legal effects.[213] First, it upgrades a first act of aggravated cruelty from a misdemeanor to a felony.[214] Second, it "requires training and certification of law enforcement officers in animal control."[215] The bill, called the "General Patton Act of 2003," was named after a family dog, Patton, who was shot and killed by a police officer during a traffic stop.[216] This incident spurred American Humane to provide an animal behavior training program for law enforcement officers to the Tennessee Highway Patrol in February 2003, a month after the shooting.[217] This

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208 Am. Socy. for the Prevention of Cruelty to Animals, *supra* n. 196, at http://www.aspca.org/site/PageServer?pagename=lobby_sessions&s_state=NJ (accessed Mar. 20, 2005).

209 N.J. Assembly 3074 & 2720, 210th Leg., 2002–2003 Sess. 3–6 (Jan. 9, 2004) (enacted) (available at http://www.njleg.state.nj.us/2002/Bills/AL03/232_.PDF); *see* N.J. Assembly Agric. and Nat. Resources Comm. Statement to Assembly Comm. Substitute for A. 3074 & 2720 (Dec. 9, 2002) (available at http://www.njleg.state.nj.us/2002/Bills/A3500/3074_S1.PDF) (showing that the new bills contain increased penalties).

210 Am. Socy. for the Prevention of Cruelty to Animals, *supra* n. 196, at http://www.aspca.org/site/PageServer?pagename=lobby_sessions&s_state=NJ.

211 N.J. Assembly 3074 & 2720, 210th Leg., 2002–2003 Sess. at 2.

212 Am. Socy. for the Prevention of Cruelty to Animals, *supra* n. 196, at http://www.aspca.org/site/PageServer?pagename=lobby_sessions&s_state=TN (accessed Mar. 6, 2005).

213 *Id.*

214 *Id.*

215 *Id.*

216 Am. Humane, *TN 2004 – Hendersonville, Another Tragic Dog Shooting in Tennessee*, "Please voice your concern," https://secure2.convio.net/aha/site/Advocacy?JServSessionIdr001=djlwhw54k1.app20a&id=247 (accessed March 20, 2005).

217 *Id.*

training, called "Bark . . . Stop, Drop & Roll," was the first such program in the nation.[218]

Tennessee then passed H.B. 3458 on June 7, 2004.[219] This bill expanded the definition of "aggravated cruelty" to include "failure to provide food and water to a companion animal, resulting in death or a substantial risk of death."[220] These acts are now Class E felonies,[221] punishable by one to six years imprisonment and a fine of up to $3,000.[222]

d. Vermont

Vermont Sen. 100 makes the intentionally torturing, mutilating, or cruelly beating an animal a felony.[223] Governor Jim Douglas (R) signed Vermont Sen. 100 into law on May 19, 2004.[224] Previously, only actions that resulted in the animal's death were felony offenses.[225] Sen. 100 also permits courts to require psychological treatment for juveniles convicted of animal cruelty,[226] and defines "adequate food and water" and "proper shelter"[227]—terms which are used in the definition of "animal cruelty."[228]

2. Service Animals

During the 2003–2004 session, states worked to provide harsher penalties for people whose dogs attack or harass service animals. While California, Georgia, Kansas, Minnesota, and Ohio already had laws addressing assault or harassment of police dogs,[229] these states enacted provisions designed to better protect animals trained to aid

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218 *Id.*

219 Am. Socy. for the Prevention of Cruelty to Animals, *supra* n. 196, at http://www.aspca.org/site/PageServer?pagename=lobby_sessions&s_state=TN (accessed Mar. 19, 2005).

220 Tenn. H. 3458, 103d Gen. Assembly (June 7, 2004) (enacted) (available at http://www.legislature.state.tn.us/info/Leg_Archives/103GA/bills/BillText/HB3458.pdf).

221 Tenn. Code. Ann. § 39-14-212(d) (2004).

222 Tenn. Code Ann. § 40-35-111 (2003).

223 Am. Socy. for the Prevention of Cruelty to Animals, *supra* n. 196, at http://www.aspca.org/site/PageServer?pagename=lobby_sessions&s_state=VT (accessed Mar. 19, 2005).

224 *Id.*

225 Humane Socy. of the U.S., *VT S. 100 Animal Cruelty*, http://www.hsus.org/ace/644 (accessed Oct. 10, 2004) (copy on file with *Animal Law*).

226 Vt. Sen. 100, 2003–2004 Sess. § 4 (May 19, 2004) (enacted) (available at http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2004/acts/ACT120.HTM).

227 *Id.* at § 1.

228 *Id.* at § 2.

229 Cal. Penal Code Ann. § 600 (West 1999), Ga. Code Ann. § 16-11-107 (2003), Kan. Stat. Ann. § 21-4318 (1995), Minn. Stat. § 609.596 (2003), Ohio Rev. Code Ann. § 2921.321 (West 1997).

people with disabilities. Kansas also addressed attacks on dogs used by game wardens.[230]

a. California

California Assembly Bill 1801, authored by Assemblymember Fran Pavley (D) and sponsored by the California Counsel for the Blind, aims to better protect people with disabilities and their service dogs from attacks by other dogs.[231] Governor Arnold Schwarzenegger (R) signed California Assembly Bill 1801 into law on August 30, 2004.[232] Assemblymember Pavley, whose own family raised guide dog puppies, noted that attacks on service dogs are very personal to the people who rely on them and stated that her office was inundated with stories of such attacks.[233] Assembly Bill 1801 expands the definition of "guide dog" to include signal dogs and service dogs, and it increases penalties for causing injury or death to a service dog.[234] Previously, a person causing injury to a service dog was required to pay for the veterinary bills and replacement costs if the dog was disabled or killed.[235] Now, if an injury to a service dog is caused by a person's reckless disregard in the exercise of control over his dog, it is a misdemeanor and is punishable by imprisonment for one year or a fine between $2,500 and $5,000 or both.[236] Assembly Bill 1801 also increases the maximum fine for intentionally causing injury or death to a service dog from $5,000 to $10,000.[237]

b. Georgia

The Georgia General Assembly also increased the penalties for dog attacks on service dogs. Georgia H.B. 211, signed by Governor Sonny Perdue (R) on May 17, 2004, provides a felony penalty for the owner of a dog that "assault[s] or caus[es] the death of a service dog, or attempt[s] to do so . . . ."[238] H.B. 211 also provides that to knowingly interfere or attempt to interfere with the use of a service dog is a mis-

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230 *Kan. Dept. of Wildlife and Parks, Commission Meeting Minutes for Thursday April 22, 2004,* at 2 (Kan. Dept. of Wildlife and Parks Apr. 22, 2004) (available at http://www.kdwp.state.ks.us/PDF/ComissionMin/22April04-2.pdf).

231 Guide Dogs for the Blind, *Pavley Bill Stiffens Penalties for Attacks on Guide and Service Dogs*, http://www.guidedogs.com/res-ab1801.html (Aug. 30, 2004).

232 *Id.*

233 *Id.*

234 Cal. Assembly 1801, 2003–2004 Reg. Sess. (Apr. 27, 2004) (enacted) (available at http://www.assembly.ca.gov/acs/acsframeset2text.htm; *select* Session 2003–2004, House Assembly, Bill Number 1801, *search*, *select* Bill Text, Chaptered PDF).

235 *Id.* at 1.

236 *Id.*

237 *Id.* at 2.

238 Am. Socy. for the Prevention of Cruelty to Animals, *supra* n. 196, at http://www.aspca.org/site/PageServer?pagename=lobby_sessions&s_state=GA (accessed Mar. 19, 2005).

demeanor, carrying a penalty of ninety days in jail or a $500 fine, or both.[239]

c. Kansas

The Kansas legislature in 2003 and 2004 substantially expanded an already existing provision addressing dog attacks on police, arson, and search and rescue dogs. The preexisting law, Kan. Stat. Ann. § 21-4318, provided that inflicting harm, disability, or death on these dogs is a Class A misdemeanor, punishable by up to a year in jail and a fine of $2,500.[240] Kansas H.B. 2197, enacted on April 14, 2003 without the governor's signature, expanded this provision to include assistance dogs.[241] A year later, the Department of Wildlife and Parks initiated H.B. 2621, a bill that included game warden dogs in this provision.[242] H.B. 2621 was signed by Governor Kathleen Sebelius (D) on May 20, 2004.[243] This bill also substantially expanded the definition of cruelty to animals to include torturing, abandoning, and failing to provide food and water, making these acts Class A non-person misdemeanors.[244]

d. Minnesota

Governor Tim Pawlenty (R) signed Minnesota S.F. 1614, sponsored by State Senators Charles Winger (D), Dan Sparks (DFL), and Satveer Chaudhary (DFL), into law on April 19, 2004.[245] This bill provides that a person whose dog causes harm to a service animal, defined as "an animal . . . trained to [aid] an individual with a disability," is guilty of a misdemeanor, and must pay restitution for the costs resulting from the attack.[246] S.F. 1614 also expressly states that it does not preclude a person from seeking civil remedies.[247]

e. Ohio

The initiative for Ohio H.B. 369 came almost entirely from one Knox County citizen, and Governor Bob Taft (R) signed the bill into

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239 Ga. Gen. Assembly, *House Bill 211 (As Passed House and Senate)*, "Section 1," http://www.legis.state.ga.us/legis/2003_04/fulltext/hb211.htm (accessed Mar. 19, 2005).

240 Kan. Stat. Ann. §§ 21-4318, 21-4502, 21-4503 (1995).

241 Am. Socy. for the Prevention of Cruelty to Animals, *supra* n. 196, at http://www.aspca.org/site/PageServer?pagename=lobby_sessions&s_state=KS (accessed Mar. 6, 2005).

242 *Kan. Dept. of Wildlife and Parks*, *supra* n. 230 at 2.

243 Humane Socy. of the U.S., *State Legislation*, http://www.hsus.org/legislation_laws/state_legislation/state-legislation-list.html?state=kansas (accessed Oct. 13, 2004).

244 Kan. H. 2621, 2003–2004 Reg. Sess. 2–3 (May 20, 2004) (enacted) (available at http://www.kslegislature.org/bills/2004/2621.pdf).

245 Am. Socy. for the Prevention of Cruelty to Animals, *supra* n. 196, at http://www.aspca.org/site/PageServer?pagename=lobby_sessions&s_state=MN (accessed Mar. 6, 2005).

246 Minn. Sen. File 1614, 83d Leg.(Apr. 19, 2004) (enacted) (available at http://www.revisor.leg.state.mn.us/bin/bldbill.php?bill=S1614.2&session=ls83).

247 *Id.*

law on August 26, 2004.[248] Patty Yarman, who is legally blind, became concerned when she heard stories about guide dogs being attacked by other dogs, and learned that Ohio had no laws addressing these situations.[249] Yarman took her concerns to Representative Thom Collier (R), her representative and her neighbor, and he agreed to sponsor the legislation.[250] H.B. 369 makes it a misdemeanor of the second degree to harass or assault a service dog and increases the penalties for incidents resulting in the death or serious injury of the service dog.[251] Assault on a service dog that results in the serious physical injury, previously a fifth degree felony, is now a fourth degree felony punishable by up to eighteen months in prison and a $5,000 fine.[252] An assault resulting in the death of the service dog was upgraded from a fourth degree felony to a third degree felony, punishable by up to five years in prison and a $10,000 fine.[253] This bill also requires the responsible party to pay restitution,[254] prohibits interference with a police animal,[255] and makes failure to restrain a dog from harassing a police animal a crime.[256]

3. *Animal Fighting*

All fifty states have a law prohibiting dogfighting,[257] and all states except Louisiana and New Mexico prohibit cockfighting.[258] However, while most states have felony level penalties for violations of these prohibitions, animal fighting in some states is only a misdemeanor offense.[259] In addition, while the actual act of animal fighting is illegal, there are many loopholes that make it more difficult for law enforcement officers to enforce these prohibitions. For example, while cockfighting itself is illegal, many states do not have laws banning pos-

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248 Toni De Iuliis, *Taft Signs Bill Initiated by Local Resident*, Mount Vernon News (Ohio) (Aug. 27, 2004) (available at http://www.mountvernonnews.com/local/082704/taft.yarman.html).

249 *Id.*

250 *Id.*

251 Ohio H. 369, 125th Gen. Assembly § 2921.321 at (E) (Jan. 8, 2004) (enacted) (available at http:// www.legislature.state.oh.us/bills.cfm?ID=125_HB_0369).

252 Ohio Rev. Code Ann. §§ 2929.14(A)(4), 2929.18(A)(3)(d) (West 1997); Ohio Legis. Serv. Commn., *Final Bill Analysis, Am. Sub. H.B. 369* at 7 (Ohio Legis. Serv. Commn. 2004) (available at http://www.lsc .state.oh.us/analyses125/04-hb369-125.pdf).

253 Ohio Rev. Code Ann. §§ 2929.14(A)(3), 2929.18(A)(3)(c); Ohio Legis. Serv. Commn., *supra* n. 252, at 7.

254 Ohio H. 369, 125th Gen. Assembly at § 2921.321(E)(5).

255 *Id.* at § 2921.321(B)(3).

256 *Id.* at § 2921.321(B)(5).

257 Humane Socy. of the U.S., *State Dogfighting Laws*, http://www.hsus.org/hsus_field/animal_fighting_the_final_round/dogfighting_fact_sheet/state_dogfighting_laws.html (current as of April 2004).

258 Humane Socy. of the U.S., *Cockfighting: State Laws* 1 (Humane Socy. of the U.S. Apr. 2004) (available at http://files.hsus.org/web-files/PDF/cockfighting_statelaws.pdf).

259 *Id.* at 1–2; Humane Socy. of the U.S., *Dogfighting: State Laws* 1–2 (Humane Socy. Of the U.S. Apr. 2004) (available at http://files.hsus.org/web-files/PDF/dogfighting_statelaws.pdf).

session of cocks for fighting, possession of fighting implements, or attendance at a cockfight.[260] Similar loopholes are found in state dogfighting laws.[261] Since animal fighting circles are often highly secretive, actually catching participants in the act is often difficult.[262] During the 2003–2004 session, four states worked to increase penalties for animal fighting and close loopholes in their animal fighting laws.

a. Iowa

Iowa S.F. 2249, initiated by HSUS and signed by Governor Tom Vilsack (D) on April 9, 2004, substantially strengthened Iowa's animal fighting laws, which HSUS had called one of the country's weakest.[263] Previously, Iowa law prohibited owning and operating an animal fighting establishment, promoting an animal fight, training animals for fighting, and attending an animal fight.[264] S.F. 2249 added the possession, ownership, purchase, or sale of animals or devices used for animal fighting to the list of prohibited activities[265] and increased the penalty for violations from a serious misdemeanor to a Class D felony.[266] S.F. 2249 was the second animal fighting law in two years passed in Iowa. In 2002, Iowa enacted the legislation making it illegal to train animals for fighting and attend animal fights.[267]

b. Louisiana

Animal fighting was a major issue in Louisiana this year, as both cockfighting and dogfighting legislation came to the floor. Cockfighting took on national significance when it became an issue in the re-election campaign of United States Representative Chris John (D-LA). Representative John is a vocal supporter of cockfighting, but he lost his bid for re-election.[268] However, animal fighting remains a controversial issue in Louisiana. Currently, Louisiana is one of only two states in which cockfighting is still legal, and supporters characterize it as a

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260 Humane Socy. of the U.S., *Cockfighting: State Laws*, *supra* n. 258, at 1–2.

261 Humane Socy. of the U.S., *Dogfighting: State Laws*, *supra* n. 257, at 1–2.

262 Humane Socy. of the U.S., *Animal Fighting Laws: Where Does Your State Stand?* http://www.hsus.org/legislation_laws/citizen_lobbyist_center/animal_fighting_laws_where_does_your_state_stand.html (accessed Mar. 6, 2005).

263 Humane Socy. of the U.S. & Diane Webber, *Thanks to New Law, Iowa Is No Longer a Haven for Animal Fighters*, http://www.hsus.org/ace/21154 (accessed Nov. 2, 2004) (copy on file with *Animal Law*).

264 Iowa Code § 717D.2 (2003).

265 Iowa Sen. File 2249, 80th Gen. Assembly § 5 (Apr. 9, 2004) (enacted) (available at http://coolice.legis.state.ia.us/Cool-ICE/default.asp?Category=billinfo&Service=Billbook&frame=1&GA=80&hbill=SF2249).

266 *Id.* at § 7.

267 Humane Socy. of the U.S., *Gov. Vilsack Signs Bill Strengthening Iowa Animal Fighting Law*, http://www.hsus.org/press_and_publications/press_releases/gov_vilsack_signs_bill_strengthening_iowa_animal_fighting_law.html (Apr. 29, 2002).

268 *Humane USA-Election Results-Correction*, Animals in Print (online newsletter) (Nov. 8, 2004), http://www.all-creatures.org/aip/nl-20041108-humane.html.

tradition fundamental to Cajun culture.[269] In addition to emphasizing the cultural tradition of cockfighting, supporters also argue that cockfighting is a source of economic development for areas in which it occurs.[270] This view seems to have prevailed, and as a result the legislature failed to pass H.B. 681, a bill that would have banned cockfighting.[271]

In addition to triggering issues of cultural values, animal fighting also tends to pit rural residents against city dwellers. This dichotomy came to the forefront in the debate over H.B. 1244, a bill that sought to ban events involving fighting between dogs and hogs, or hog baiting.[272] Representative Warren Triche (D) called hog baiting cruel to animals, but rural proponents of the activity argued that it is harmless and necessary for the training of hunting dogs.[273] Urban influence prevailed, and Governor Kathleen Blanco (D) signed H.B. 1244 into law on May 28, 2004.[274] This bill prohibits events that involve fighting between dogs and hogs, and, at which, it is intended or reasonably foreseeable that the dogs or hogs will be injured or killed.[275] Violations of these provisions are punishable by up to six months in jail and a $1,000 fine.[276] H.B. 1244 explicitly exempts the use of dogs for hunting, managing, or herding hogs.[277]

c. Maryland

Maryland also worked to close some of the loopholes in its animal fighting laws, and Governor Robert Ehrlich (R) signed H.B. 24 into law on April 27, 2004.[278] Prior to this bill, Maryland was one of five states that did not ban possession of dogs for animal fighting and was, according to Wayne Pacelle, CEO of HSUS, experiencing a surge of pit

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269 Dahleen Glanton, *Louisiana's Traditional Cockfight Industry under Fire*, Chicago Trib. 14 (July 20, 2004) (available at http://www.gamefowlnews.com/archives/2004/Tues%2020%20Jul%202004.htm).

270 Marty Briggs, *Cockfighting: Part 1*, http://www.kplctv.com/Global/story.asp?S=1886168 (May 20, 2004).

271 Am. Socy. for the Prevention of Cruelty to Animals, *supra* n. 196, at http://www.aspca.org/site/ PageServer?pagename=lobby_sessions&s_state=LA (accessed Mar. 6, 2005).

272 *Id.*

273 The Daily News Online, *Locals among Those Who Ask Senators to Save 'Hog Dog' Events*, http://www.edailynews.info/articles/2004/05/13/news/news03.txt (May 13, 2004).

274 Am. Socy. for the Prevention of Cruelty to Animals, *supra* n. 196, at http://www.aspca.org/site/PageServer?pagename=lobby_sessions&s_state=LA (accessed Mar. 6, 2005).

275 La. H. 1244, 2004 Reg. Sess. § 1, 1 (May 28, 2004) (enacted) (available at http://www.legis.state.la.us/leg_docs/04RS/CVT2/OUT/0000LN4R.PDF).

276 *Id.* at § 1, 2.

277 *Id.*

278 Am. Socy. for the Prevention of Cruelty to Animals, *supra* n. 196, at http://www.aspca.org/site/PageServer?pagename=lobby_sessions&s_state=MD (accessed Mar. 6, 2005).

bull fighting in Prince George's County.[279] H.B. 24, sponsored by Delegate Charles Boutin (R) and State Senator John Giannetti (D), bans the possession, ownership, sale, transport, or training of dogs or cocks for fighting, and prohibits possession of implements used for cockfighting.[280] Violations of any of these prohibitions are felonies punishable by up to three years in prison and a fine of $5,000.[281] The bill also makes the attending of a cockfight a misdemeanor with a maximum penalty of ninety days in jail and a $1,000 fine.[282]

d. New York

New York A. 8586-A expanded New York's dogfighting law to include a ban on the breeding and sale of animals for animal fighting.[283] This bill, sponsored by Assemblyman Paul Tonko (D) and State Senator John Bonacic (R) was signed by Governor George Pataki (R) on July 20, 2004.[284] The new ban on breeding and sale of animals for fighting "carries a penalty of up to four years in state prison."[285]

B. Captive Exotics

There are an estimated 10,000 to 20,000 tigers "and at least 3,000 apes [privately owned] across the United States."[286] Recent high-profile attacks, such as the attack on Roy Horn of Siegfried and Roy,[287] have raised public awareness that private ownership of wild animals can be a serious safety concern. Recent outbreaks of zoonotic diseases, such as monkeypox and SARS, have focused public attention on the health risks of close contact with exotic species.[288] The federal govern-

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279 Marc Lightdale, *Senate Panel Sinks Teeth into Dogfighting Laws*, http://www.journalism.umd.edu/cns/wire/2004-editions/03-March-editions/040323-Tuesday/BitingBack_CNS-UMCP.html (March 23, 2004).

280 Am. Socy. for the Prevention of Cruelty to Animals, *supra* n. 196, at http://www.aspca.org/site/PageServer?pagename=lobby_sessions&s_state=MD (accessed Mar. 6, 2005).

281 *Id.*

282 *Id.*

283 Am. Socy. for the Prevention of Cruelty to Animals, *supra* n. 196, at http://www.aspca.org/site/PageServer?pagename=lobby_sessions&s_state=NY (accessed Mar. 6, 2005).

284 *Id.*

285 *Id.*

286 Associated Press, *MSNBC News, Groups Want Pet Tigers Banned in U.S.: As Many as 20,000 Big Cats Kept by Private Owners, Say Rescuers,*, http://www.msnbc.msn.com/id/7077921/ (updated Mar. 7, 2005); Intl. Fund for Animal Welfare, *Minnesota Passes Law against Keeping Dangerous Animals as Pets* (press release of Intl. Fund for Animal Welfare) (June 2, 2004) (available at http://www.ifaw.org/ifaw/general/default.aspx?oid=96203).

287 Humane Socy. of the U.S., *Sigfried & Roy Incident Underscores the Dangers of Exotic Pets*, http://www.hsus.org/wildlife/wildlife_news/sigried_roy_incident_underscores_the_dangers_of_exotic_pets.html (accessed Mar. 20, 2005).

288 *Miller Press Release*, *supra* n. 86; *see also* Mira Leslie et al., *CSTE Position Statement 03-ID-13: Developing Importation and Exportation Restrictions on Exotic and Native Wildlife with Potential Adverse Impact on Public Health* (available at http://

ment addressed this issue in 2003 when it passed the Captive Wildlife Safety Act, an act prohibiting the transportation of big cats across state lines.[289] Regulation of possession of wild animals still falls to the states, however, and in recent years, states have begun to strengthen their laws restricting private possession of exotic animals. In the last two years, five states have passed comprehensive new laws restricting and regulating ownership of exotic animals.[290] Two of these states, Minnesota and New York, passed laws in 2004.

1. Minnesota

Minnesota S.F. 1530, signed into law by Governor Tim Pawlenty on May 29, 2004, regulates the possession of big cats, bears, and non-human primates.[291] Prior to this bill, Minnesota was one of only sixteen states that did not prohibit ownership of big cats and had recently experienced a spate of situations involving captive exotic animals.[292] The original bill, introduced by Senator Don Betzold (DFL), would have made it illegal for private citizens to own big cats, bears, and

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www.cste.org/PS/2003pdfs/03-ID-13%20-%20FINAL.pdf) (This joint statement of the National Association of State Public Health Veterinarians (NASPHV) and the Council of State and Territorial Epidemiologists (CSTE) details the risk of transmitting zoonotic diseases and advocates increased restrictions on the importation, exportation, and movement of exotic wildlife.); Sen. Env. & Pub. Works Comm. (July 17, 2003) (testimony of Stephen Ostroff) (available at http:// www.cdc.gov/washington/testimony/er071703.htm) (Dr. Ostroff, Deputy Director of the Center for Disease Control's National Center for Infectious Disease, testified about the 2003 monkeypox outbreak and the need to control movement of wild animals in order to reduce the risk of zoonotic disease transmission.).

289 Lib. Cong., *supra* n. 94, at http://thomas.loc.gov/cgi-bin/bdquery/z?d108:HR01006:@@@L&summ2=m&.

290 Connecticut, Montana, and Utah enacted new laws or regulations regarding captive exotic animals in 2003. *See* Conn. Gen. Stat. §26-40(a) (2004) (providing that no person shall possess a potentially dangerous animal, and designated species as "potentially dangerous animal"; effective Oct. 1, 2003); Mont. Code Ann. §§ 87-5-701 through 87-5-709 (2003) (defining controlled, noncontrolled, and prohibited exotic animal; requiring permit for possession of exotic animals; effective Jan, 1, 2004); Utah Admin. Code r. 657-3 (June 3, 2003) (establishing a system of regulation for controlled, noncontrolled, and prohibited species; effective Mar. 1, 2004). The other two states are discussed *infra* this section.

291 Am. Socy. for the Prevention of Cruelty to Animals, *supra* n. 196, at http://www.aspca.org/site/PageServer?pagename=lobby_sessions&s_state=MN (accessed Mar. 6, 2005).

292 T.W. Budig, *Sen. Betzold Advances Legislation Addressing Dangers of Keeping Exotic Animals as Pets*, http://www.hometownsource.com/capitol/2004/february/19tigers.html (Feb. 19, 2004) (citing a bear named Thor that was kept in an empty swimming pool in a southern suburb of Minneapolis); *see also* Matt McKinney, *Camel, Four Big Cats Found Dead at Farm*, Star Trib. (Minneapolis, MN) 9B (Feb. 5, 2004) (Four dead tigers were found at a farm in Pelican Rapids, MN.); David Chanen, *Pet Tiger Cub Taken from Albert Lea Home*, Star Trib. (Minneapolis, MN) 1A (Feb. 12, 2003) (A tiger cub was living in the family home and sleeping in the bedroom of a fifth grade boy.); Matt McKinney, *Racine Exotic Game Park Owners Are Arrested on Charges of Buying Tiger*, Star Trib. (Minneapolis, MN) 7B (Oct. 1, 2003) (Tiger at game park reportedly bit a seven-year-old girl who was seriously injured.).

nonhuman primates.[293] This strict prohibition met opposition from animal park and exotic animal show owners, who formed the Responsible Animal Association of Minnesota to voice their concerns about Sen. Betzold's bill.[294] Although this group agreed that private possession of exotic animals raises public safety concerns, they argued that Sen. Betzold's bill would put them out of business by restricting existing facilities' ability to replace animals after they died.[295] Some of these concerns were addressed by amendments proposed by State Senator Steve Dille (R), which allowed exhibitors licensed by the United States Department of Agriculture (USDA) to breed and purchase regulated animals.[296]

S.F. 1530, as it was enacted, allows prior owners of regulated animals to keep the animal and replace it once, but prohibits new ownership and breeding of these animals.[297] This law requires owners of regulated animals to register the animal with the local animal control, maintain records, and a veterinary care program.[298] Zoos, sanctuaries, research labs, and USDA license holders are exempt from these requirements.[299]

2. *New York*

New York enacted similar legislation restricting private possession of certain species of animals. Sponsored by Assemblyman Paul Tonko (D) and State Senator Carl Marcellino (R), S. 7616 was signed by Governor George Pataki on November 3, 2004.[300] This bill bans private possession of some wild animals, including nonhuman primates, big cats, bears, and venomous reptiles.[301] Like the Minnesota law, this bill exempts USDA licensed exhibitors, as well as zoos, research labs, and sanctuaries.[302] Prior owners of prohibited animals may keep the animals until they die, provided they have not been convicted of animal cruelty, apply for a state permit, and meet all requirements of the Department of Environmental Conservation.[303]

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293 Budig, *supra* n. 292.

294 *Id.*

295 *Id.*

296 *Id.*

297 Minn. Sen. 1530, 83d Leg. Sess. § 145.366(2) (May 29, 2004) (enacted) (available at http://www.revisor.leg.state.mn.us/bin/bldbill.php?bill=S1530.4&session=ls83).

298 *Id.* at § 145.366(3).

299 *Id.* at § 145.366(7).

300 Am. Socy. for the Prevention of Cruelty to Animals, *supra* n. 196, at http://www.aspca.org/site/PageServer?pagename=lobby_sessions&s_state=NY (accessed Mar. 20, 2005).

301 N.Y. Sen. 7616, 227th Leg., 2003–2004 Reg. Sess. § 11-0103(e)(4) (Nov. 3, 2004) (enacted) (available at WL, NY-LEGIS-OLD).

302 N.Y. Sen. 7616 at § 11-0512(2).

303 *Id.* at § 11-0512(3).

C. Dissection Choice

Dissection in schools continued to be a major issue in state legislatures during the 2003–2004 session. Before 2004, six states had laws requiring schools to allow students to choose not to participate in dissections, and three other states had similar resolutions.[304] In this most recent session alone, six states introduced legislation regarding dissection in schools.[305] Massachusetts and Virginia passed their legislation, but the Massachusetts bill was vetoed by Governor Mitt Romney.[306] The New Mexico legislature passed a joint memorial requesting the Public Education Department to study alternatives to dissection.[307]

1. Massachusetts

Dissection choice legislation has had a long history in the Massachusetts legislature and proposals to give students the right to opt out of dissection have been debated for years, often vigorously opposed by the Massachusetts Teachers Association.[308] During the recent session, the Massachusetts legislature made two attempts to pass a dissection choice measure, and both times the legislation was struck down by Governor Mitt Romney. H.B. 1252, introduced by Representative Louis Kafka (D), would have directed the Board of Education to adopt guidelines for students who object to dissection and wish to complete an al-

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304 Florida, California, Pennsylvania, New York, Rhode Island, and Illinois had dissection choice laws prior to 2004. Humane Socy. of the U.S., *Dissection Laws*, http://www.hsus.org/animals_in_research/animals_in_education/dissection_laws.html (accessed Mar. 7, 2005). Louisiana has a state resolution to allow students a choice, and the departments of education in Maine and Maryland have similar resolutions. *Id.*

305 Michigan and New Jersey introduced dissection choice legislation, but they were not enacted. *See* Mich. Legislature, *House Bill 6221 (2004)*, http://www.legislature.mi.gov/mileg.asp?page=getObject&objName=2004-HB-6221 (accessed Mar. 7, 2005) (information on Mich. H.B. 6221); Humane Socy. of the U.S., *NJ A. 2233 & S. 1739 Dissection Choice*, http://www.hsus.org/legislation_laws/state_legislation/new_jersey/nj_a_2233_s_1739_dissection_choice.html (accessed Mar. 7, 2005) (information on New Jersey A. 2233). New York, which already has a dissection choice law on the books, introduced legislation to require that students be notified of their right to opt out. Humane Socy. of the U.S, Press Release, Humane Socy. U.S., *Back to School Shouldn't Mean Back to Dissection Says The HSUS*, (press release of the Humane Socy. U.S.), http://www.hsus.org/press_and_publications/press_releases/back_to_school_shouldnt_mean_back_to_dissection_says_the_hsus.html (Sept. 23, 2004). The other three states that introduced legislation are discussed *infra* this section.

306 *See infra* this section (describing the failed attempts to pass dissection choice legislation in Massachusetts).

307 *Id.*

308 Ethical Science and Educ. Coalition, New England Anti-Vivisection Socy., *A-R News: Activists Protest Massachusetts Teachers Association for Dissection Choice*, http://lists.envirolink.org/pipermail/ar-news/Week-of-Mon-20030908/006097.html (Sept. 8, 2003) ("The MTA's interference in lobbying against H.1252 has kept passage of this bill at bay for years.").

ternative project.[309] This bill received overwhelming support in both the House and Senate, passing unanimously in the House and by a 35-3 vote in the Senate.[310] Yet, despite this support, on July 31, 2004, Governor Romney vetoed H.B. 1252, citing concerns that this legislation would indicate to Massachusetts biomedical research companies that "animal research is frowned upon."[311] Less than two months later, the Massachusetts legislature again passed a dissection choice measure, this time as a part of a supplemental budget bill.[312] Governor Romney line-item vetoed this measure from the bill.[313]

2. *Virginia*

The Virginia legislature was more successful than the Massachusetts Legislature in its attempt to pass dissection choice legislation, and Governor Mark Warner (D) signed H.B. 1018 into law on April 15, 2004.[314] This bill, sponsored by Delegate James Dillard (R), "[r]equires school[s] to provide students with alternatives to . . . dissection."[315] Like the failed Massachusetts H.B. 1252, Virginia H.B. 1018 also "[d]irects the state Board of Education to develop guidelines," and instructs the Board to address potential alternatives and notification procedures.[316]

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309 Am. Socy. for the Prevention of Cruelty to Animals, *supra* n. 196, at http://www.aspca.org/site/PageServer?pagename=lobby_sessions&s_state=MA (accessed Mar. 14, 2005).

310 New England Anti-Vivisection Socy., *Programs & Campaigns, Massachusetts Governor Mitt Romney—Busy Signing Books While Refusing to Sign Laws*, http://www.neavs.org/programs/pressreleases/mitt_romney_won't_sign_laws.htm (Aug. 1, 2004).

311 *Id.*

312 Elise Castelli, *Legislature Gives Students a Pass on Dissection Rite*, http://www.boston.com/news/education/k_12/articles/2004/09/10/legislature_gives_students_a_pass_on_dissection_rite/ (Sept. 10, 2004).

313 People for the Ethical Treatment of Animals & Jacqueline Domac, *Don't Let Massachusetts Governor Romney Veto Dissection Choice Legislation!* http://www.teachkind.org/AlertItem1.asp?id=1128 (accessed Mar. 20, 2005).

314 Am. Socy. for the Prevention of Cruelty to Animals, *supra* n. 196, at http://www.aspca.org/site/PageServer?pagename=lobby_sessions&s_state=VA (accessed Mar. 8, 2005).

315 *Id.*

316 *Id.* The issue of dissection in Virginia schools received media attention a few years ago when two Virginia Tech students went on a hunger strike to protest mandatory dissection policies of required introductory biology classes. Ian Zack, *Protest Ends after Meeting*, Roanoke Times & World News NRV1 (Mar. 24, 1999). Currently, although there are no laws that guarantee college students the right to choose an alternative to dissection, over twenty colleges and universities across the United States have dissection choice policies. People for the Ethical Treatment of Animals, *College, Cut out Dissection, Know Your Rights*, http://www.collegeactivist.com/c-rights.html (accessed Mar. 8, 2005).

3. *New Mexico*

New Mexico also addressed the issue of dissection in schools, but it took a more conservative approach than those states that have instituted dissection choice requirements. Representative Mimi Steward (D) and State Senator Mary Kay Papen (D) sponsored HJM 08, a memorial requesting the Public Education Department to study the acceptability of virtual alternatives to dissection, and both the House and the Senate passed the joint memorials with a large margin.[317] The report, prepared by Dr. Richard J. Reif, a science consultant with the New Mexico Public Education Department, was submitted to the Legislative Education Study Committee in September 2004.[318] The report details the current New Mexico science standards, surveys of science teachers regarding dissection, position papers of professional organizations, research on the effectiveness, and cost of alternatives.[319] It concludes that virtual alternatives could satisfy the state science standards, but notes that teachers strongly support the inclusion of actual dissection in their curriculum.[320] Dr. Reif also states that research on the effectiveness of alternatives to dissection is not conclusive.[321] He recommends allowing virtual alternatives for students with ethical, moral, cultural, or religious objections to dissection, but also recommends the continued inclusion of real dissection in life sciences curriculum.[322] With the completion of this report, the Public Education Department has begun the process of promulgating a regulation requiring teachers to offer alternatives to students that object to dissection for ethical, moral, religious, or cultural reasons.[323]

D. Foie Gras

California legislation aimed at prohibiting the production and sale of foie gras was the subject of much debate this session between the producers of foie gras and the animal advocacy community, and also within the animal advocacy community itself.

Governor Schwarzenegger signed S.B. 1520 into law on September 29, 2004, making California the first state to adopt a law prohibiting the force feeding of birds to produce foie gras and the sale of products

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317 N.M House Jt. Meml. 08, 46th Leg., 2d Sess. 1 (2004) (available at http://www.apvnm.org/2004_legislation/dissection_choice/HJM008.pdf); Animal Protection Voters, *04 State Legislature, Dissection Choice*, http://www.apvnm.org/2004_legislation/dissection_choice/ (accessed Mar. 20, 2005).

318 Report from Richard J. Reif, Sci. Consultant, N.M. Pub. Educ. Dept., to Legis. Educ. Study Commn, *Virtual Anatomy Alternatives to Dissection* (Sept. 2004) (copy on file with *Animal Law*).

319 *Id.*

320 *Id.* at 11.

321 *Id.*

322 *Id.* at 10–11.

323 E-mail from Richard J. Reif, Sci. Consultant, N.M. Pub. Educ. Dept., to Tami Santelli, Assoc. Editor, Animal L., Lewis & Clark L. Sch., *Virtual Anatomy Alternatives to Dissection Study* (Jan. 20, 2005, 1:57 EDT) (copy on file with *Animal Law*).

resulting from this practice.[324] Foie gras, French for "fat liver," is the liver of a duck or goose, sold in restaurants as a delicacy.[325] Producers of foie gras induce massive growth of the liver by placing a tube down the bird's esophagus and using the tube to pump large quantities of grain into the bird's stomach.[326] "This process causes [the liver to become diseased and to enlarge] to ten times its normal size."[327] Animal advocates have long called this procedure cruel and inhumane, but producers of foie gras disagree, arguing that the process takes advantage of the birds' natural capacity to overeat, since wild ducks and geese gorge themselves prior to migration and store the excess fat in their liver.[328] There are only three producers of foie gras in the United States.[329] A California company, Sonoma Foie Gras, produces approximately "ten percent of the domestic supply," while two New York companies, Hudson Valley Foie Gras and La Belle Poultry, produce the remaining ninety percent.[330]

Among the animal advocacy community, some groups, like HSUS, hailed S.B. 1520 as an "unprecedented victory for animals."[331] Others, however, were less optimistic and pointed to provisions in the bill that substantially weaken the prohibition. For example, while S.B. 1520 does prohibit force feeding a bird, these prohibitions do not become effective until July 1, 2012, giving producers time to "modify their business practices."[332] A second provision prohibits civil or criminal lawsuits challenging force feeding until July 1, 2012, and requires that

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[324] Tamiko Thomas, *The Humane Socy. of the U.S., California Decides to Permanently Pull Foie Gras off the Menu*, http://www.hsus.org/farm_animals/farm_animals_news/california_decides_to_permanently_pull_foie_gras_off_the_menu.html (Oct. 8, 2004).

[325] *Id.* at "What's in a Name?"; Gordon T. Anderson, *Crisis in the foie gras biz; An icon of edible luxury is getting seared on all sides*, http://money.cnn.com/2004/6/10/pf/goodlife/foie_gras/foie_gras/index.htm (June 11, 2004).

[326] Thomas, *supra* n. 324, at "What's in a Name?"

[327] Cal. Sen. Bus. & Prof. Comm., Sen. 1520, *Third Reading* 7 (Apr. 26, 2004) (quoting the Chief Justice of the Israeli Supreme Court in an August, 2003 decision) (available at http://info.sen.ca.gov/pub/03-04/bill/sen/sb_1501-1550/sb_1520_cfa_20040506_152512_sen_floor.html).

[328] *Id.* at 12.

[329] Thomas, *supra* n. 324, at "What's in a Name?"

[330] Cal. Sen. Bus. & Prof. Comm., SB 1520, *Third Reading* at 5–6 (available at http://info.sen.ca.gov/pub/03-04/bill/sen/sb_1501-550/sb_1520_cfa_20040506_152512_sen_floor.html). New York has introduced S. 2083 to ban foie gras in 2005. Humane Socy. of the U.S., *NY S. 2083 Ban Force Feeding of Animals*, http://www.hsus.org/legislation_laws/state_legislation/new_york/ny_s_2083_force_feeding.html (accessed Mar. 10, 2005).

[331] Thomas, *supra* n. 324, at http://www.hsus.org/farm_animals/farm_animals_news/california_decides_to_permanently_pull_foie_gras_off_the_menu.html (quoting Michael Appleby, Vice President of The HSUS's Farm Animals and Sustainable Agriculture section).

[332] Cal. Sen. 1520, 2003–2004 Sess. § 25984(a), (c) (Sept. 29, 2004) (enacted) (available at http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_1501-1550/sb_1520_bill_20040929_chaptered.pdf).

any pending litigation be dropped.[333] For the animal advocacy community, this provision is especially troubling since a lawsuit was filed against Sonoma Foie Gras in October 2003.[334] This suit, filed by a local animal protection group and the national nonprofit group In Defense of Animals, alleged that force feeding birds is illegal under existing animal cruelty laws.[335] If this suit had been successful, it might have resulted in an immediate ban on force feeding of birds. This lawsuit will now be dropped.[336]

The debate over whether foie gras production is humane or inhumane illustrates a fundamental divide in the animal advocacy community—a divide between animal welfare proponents and animal rights proponents. While animal welfarists advocate the humane treatment of animals used for human benefit, animal rights proponents emphasize the inherent rights of animals and advocate the cessation of all animal exploitation.[337] Animal welfare groups, like HSUS, emphasize that force-feeding is cruel and inhumane and welcomed this legislation as a step toward more humane treatment of farm animals.[338] This welfarist perspective, however, can be interpreted to imply that humane uses of animals might be acceptable, and animal rights proponents take issue with this concept.[339]

In an open letter to the animal advocacy community, Gary Francione, a professor at Rutgers School of Law, voiced concern that laws banning farming practices because they are inhumane convey to the public that it would be acceptable to farm and kill animals if more humane methods could be found.[340] Professor Francione questions the value of the animal welfare perspective, noting that "there is virtually no historical evidence that animal welfare leads to abolition; on the contrary, it tends to result in greater public acceptance of animal exploitation."[341] Professor Francione points out that Guillermo Gonzalez, owner of Sonoma Foie Gras, supported this bill.[342] Gonzalez said that he intends to use the next seven years to show that foie gras production is not inhumane, saying that he would work with scientists and scholars to prove that birds do not suffer.[343] Francione argues that if

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333 *Id.* at § (b)(1).

334 Patricia Henley, *Sonomanews.com, Ducks Hatch Lawsuit Duel*, http://www.sonomanews.com/articles/2003/10/24/news/top_stories/news03.txt (Oct. 24, 2003).

335 *Id.*

336 Open Ltr. from Gary Francione, Prof., Rutgers Sch. of L., *California Senate Bill 1520* (Oct. 7, 2004) (copy on file with *Animal Law*).

337 Gary L. Francione, *Rain without Thunder: The Ideology of the Animal Rights Movement* 1–6 (Temple U. Press 1996).

338 *See* Thomas, *supra* n. 324 (discussing the physical effects of force feeding and noting that, despite the seven year delay, California will "join the humane community that wants to pull foie gras off the menu permanently").

339 Francione, *supra* n. 337.

340 Ltr., *supra* n. 336, at 2.

341 *Id.*

342 *Id.* at 1.

343 *Id.* at 2.

Gonzalez can find enough experts to support this view before July 1, 2012, the California legislature could easily repeal the law or modify it to allow force-feeding as long as suffering is minimized.[344] Governor Schwarzenegger himself stated in his signing message that the prohibition would not occur if producers successfully "evolve and perfect a humane way for a duck to consume grain to increase the size of its liver through natural processes" before July 2012.[345] A staff veterinarian for the California Department of Food and Agriculture has already said that ducks have no gag reflex, and the force-feeding is "noninjurious."[346] In light of these concerns, Professor Francione rejected the view that S.B. 1520 is a victory for animals, instead calling it "an absolutely stunning victory for the California foie gras industry."[347]

While the ramifications of S.B. 1520 are unclear, at least one animal advocate notes that the California law reflects a broader international movement toward more humane approaches to animal husbandry. At least fourteen countries have banned the practice of force feeding birds to make foie gras, including Israel, once the world's fourth largest foie gras producer.[348] Dr. Paul Waldau, Director of the Center for Animals and Public Policy at Tufts University, noted, "Like the Europeans, Americans are beginning to challenge extremely inhumane food production systems."[349] This, Waldau suggests, reflects an important trend—"A certain segment of the population is beginning to consume with conscience."[350]

E. Legislation to Facilitate Spaying and Neutering of Companion Animals

Legislation intended to reduce pet overpopulation and fund low-cost spay/netuer programs was prevalent in the 2003–2004 session. States proposed to fund programs by creating specialty license plates, establishing income tax check-offs, and increasing the price of pet licenses.

1. Specialty License Plates

Arizona and Florida enacted legislation creating specialty license plates, proceeds from which will fund a low-cost spay-neuter program. Arizona H.B. 2323, sponsored by Representative Marian McClure (R),

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344 *Id.*

345 Ltr. from Gov. Arnold Schwarzenegger to the Cal. State Sen., *Senate Bill 1520* (Sept. 29, 2004) (available at http://www.governor.ca.gov/govsite/pdf/press_release/SB_1520_sign.pdf).

346 Patricia Leigh Brown, *Is Luxury Cruel? The Foie Gras Divide*, N.Y. Times F10 (Oct. 6, 2004).

347 Ltr., *supra* n. 336, at 3.

348 Farm Sanctuary, *About Foie Gras*, "Legislative Remedies," http://www.nofoiegras.org/FGabout.htm (accessed Mar. 20, 2005).

349 Brown, *supra* n. 346, at F10.

350 *Id.*

was signed into law by Governor Janet Napolitano (D) on May 27, 2004.[351] This bill permits the establishment of a license plate at the initiative of a non-profit organization that will provide money for the initial costs.[352] After those initial costs are repaid, a percentage of the price of the license plates will be placed in fund to be distributed to organizations that perform low cost spaying and neutering of companion animals.[353] H.B. 2323 also establishes a committee to allocate money from the funds.[354]

Florida enacted a similar law when Governor Jeb Bush (R) signed S.B. 2020 on June 18, 2004.[355] Representative Nan Rich (D) and State Senator Debbie Wasserman Schultz (D) sponsored the bill, which added an Animal Friend license plate to other types of available specialty license options.[356] "After the department has recovered all startup costs [a percentage of the profits will] be distributed to [HSUS] for animal welfare programs and spay and neuter programs in the state."[357]

2. *Income Tax Check-offs*

Maine and Oklahoma established tax check-off systems to create pet overpopulation funds, which are similar to a program in Colorado.[358] In 2000, the Colorado legislature approved a voluntary check-off on state income tax forms, allowing people to designate some of their tax return to fund a pet overpopulation fund.[359] Money from this fund goes to help subsidize spaying and neutering surgeries, and, in 2001, the Colorado check-off system generated over $240,000 and

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351 Am. Socy. for the Prevention of Cruelty to Animals, *supra* n. 196, at http://www.aspca.org/site/PageServer?pagename=lobby_sessions&s_state=AZ (accessed Mar. 20, 2005).

352 Ariz. H. 2323, 46th Leg., 2d Reg. Sess. § 3, 2 (June 3, 2004) (enacted) (available at http://www.azleg.state.az.us/legtext/46leg/2r/bills/hb2323c%2Epdf).

353 *Id.* at § 3, 3, § 7, 7.

354 *Id.* at § 7, 6.

355 Am. Socy. for the Prevention of Cruelty to Animals, *supra* n. 196, at http://www.aspca.org/site/ PageServer?pagename=lobby_sessions&s_state=FL (accessed Mar. 10, 2005).

356 *Id.* The bill also established eleven other specialty plates, including Save Our Seas, Aquaculture, Family First, Sportsmen's National Land Trust, Live the Dream, Florida Food Banks, Discover Florida's Oceans, Family Values, Parents Make a Difference, Support Soccer, and Kids Deserve Justice. Ltr. from Jeb Bush, Gov. of Fla., to Glenda E. Hood, Sec. of St., *Senate Bill 2020* (June 18, 2004) (available at http://www.myflorida.com/myflorida/government/laws/2004legislation/pdfs/SB_2020_letter.pdf).

357 Fla. Sen. 2020, Reg. Sess. 2004 12–13 (June 18, 2004) (enacted) (available at http://www.myfloridahouse.gov/loadDoc.aspx?FileName=_s2020er.html&DocumentType=Bill&BillNumber=2020&Session=2004).

358 Stephanie Davis, *OKVMA Sponsors State Tax Refund Check-off System*, DVM Newsmagazine (Mar. 1, 2004) (available at http://www.dvmnewsmagazine.com/dvm/article/articleDetail.jsp?id=88384).

359 *Id.*

funded 5,600 surgeries.[360] This year, the program needed to be reauthorized by the legislature for another three years.[361] The passage of S.B. 207, sponsored by Senator Jack Taylor, called for renewal of the program, and Governor Bill Owens (R) signed it into law on June 4, 2004.[362]

Maine passed legislation establishing a similar program last session. Maine L.D. 1763, sponsored by Representative Patrick Colwell (D), establishes a voluntary tax check-off with proceeds funding the Companion Animal Sterilization Program.[363] Money from this fund will help people with low income cover the costs of getting their companion animals spayed or neutered.[364] This bill was supported by a variety of Maine non-profit organizations, and received additional support from Loretta Swit, former star of M*A*S*H, who joined Rep. Colwell to present the plan.[365] Governor John Baldacci (D) signed the bill into law on May 6, 2004.[366]

Oklahoma created both a tax check-off and specialty license plates to fund spaying and neutering of companion animals this session.[367] Governor Brad Henry (D) signed H.B. 2557 into law on May 27, 2004.[368] This bill, sponsored by Representative Bill Nations (D), and backed by the Oklahoma Veterinary Medical Association, provides that money generated will go into a pet overpopulation fund, which will be used to support veterinarians who participate in spay/neuter programs[369]

3. *Increased Costs of Dog Licenses*

Vermont H. 772, signed by Governor Douglas on June 10, 2004, also addressed the need to facilitate spaying and neutering of compan-

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360 *Id.*

361 *Id.*

362 Am. Socy. for the Prevention of Cruelty to Animals, *supra* n. 196, at http://www.aspca.org/site/PageServer?pagename=lobby_sessions&s_state=CO (accessed Mar.10, 2005).

363 Am. Socy. for the Prevention of Cruelty to Animals, *supra* n. 196, at http://www.aspca.org/site/PageServer?pagename=lobby_sessions&s_state=ME (accessed Mar. 10, 2005).

364 *Id.*

365 Patrick Colwell, *Hollywood Joins Maine to Support Spaying and Neutering of Pets*, http://www.maine.gov/legis/speaker/newsspayneutering021104.htm (Feb. 11, 2004).

366 Am. Socy. for the Prevention of Cruelty to Animals, *supra* n. 196, at http://www.aspca.org/site/PageServer?pagename=lobby_sessions&s_state=ME (accessed Mar. 10, 2005).

367 Okla. Veterinary Med. Assn., *Animal Friendly License Plate*, http://www.okvma.org/displaycommon.cfm?an=1&subarticlenbr=182 (accessed Mar. 20, 2005).

368 Animal Rescue Found., *Population Control License Plate*, http://arf.ladytkd.com/cgi-bin/yabb/YaBB.pl?board=news;action=display;num=1091464728 (accessed Feb. 19, 2005).

369 Davis, *supra* n. 358.

ion animals.[370] This bill "[establishes] a program to provide low-cost spay/neuter services to" people with low incomes.[371] It also increases the mandatory dog license charge by two dollars to pay for the program.[372]

[370] Am. Socy. for the Prevention of Cruelty to Animals, *supra* n. 196, at http://www.aspca.org/site/PageServer?pagename=lobby_sessions&s_state=VT (accessed Mar. 10, 2005).

[371] *Id.*

[372] *Id.*