RESTRICTING THE USE OF ANIMAL TRAPS IN THE UNITED STATES: AN OVERVIEW OF LAWS AND STRATEGY

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Enacting absolute bans on the use of trapping devices and on commerce in trapped animal products has been difficult. Nearly every state, however, has enacted some restrictions on who can trap, what animals can be trapped, where and when animals can be trapped, the type and size of permitted traps, and how often traps must be checked. This article summarizes past and potential approaches to curtail the use of traps in the U.S. at federal, state, and local levels. The article also notes litigation related to trapping and trapping prohibitions.

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I. INTRODUCTION

Ending the use of body-gripping traps to capture and kill animals was a major objective of American animal protection advocates during the 20th century. In one survey of subscribers to an animal rights publication, leghold trapping was viewed as the worst treatment of animals by humans among fifteen options presented.[1] While the American public has limited knowledge of traps and how they are used, a strong majority opposes the activity, particularly when done for commercial or recreational reasons.[2] Opinion surveys demonstrate public disapproval of the killing of an animal, by trapping or otherwise, for its fur.[3]

Although the level of commercial fur trapping fluctuates from year to year, the number of animals trapped for this purpose in the United States has declined significantly over a recent 20-year period from approximately 19 million in 1978,[4] to 14 million in 1988,[5] to 6 million in 1998.[6] In addition to obtaining pelts for the commercial fur industry, trapping is conducted for other purposes including population control, biological study, animal relocation, and agricultural and residential damage control. The United States Department of Agriculture's Wildlife Services Program is the largest single user of trapping devices in the United States. In fiscal year 2000, Wildlife Services used body-gripping traps to capture more than 67,000 animals.[7]

Devices employed to capture mammals fall into two main categories: kill traps and restraining traps. Common kill traps are mousetraps, neck and body snares, killing box traps, and rotating-jaw traps

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[1] Rebecca T. Richards & Richard S. Krannich, *The Ideology of the Animal Rights Movement and Activists' Attitudes Toward Wildlife*, in *Transactions of The Fifty-Sixth North American Wildlife and Natural Resources Conference* 363 (Richard E. McCabe ed., Wildlife Mgt. Inst. 1991).

[2] Responsive Mgt., *The Public and Fish and Wildlife Management: A Literature and Research Review* 4-22 (Responsive Mgt. 1997); *See also* Dena Jones Jolma, *Attitudes Toward The Outdoors: An Annotated Bibliography of U.S. Survey and Poll Research Concerning the Environment, Wildlife and Recreation* 180 (1994).

[3] Telephone Interview by I.C.R. Survey Research Group (Nov. 1995). When asked, "Do you think there are circumstances where it's perfectly okay to kill an animal for its fur or do you think it's always wrong to kill an animal for its fur?" 60% of the national sample of 1004 adults responded "always wrong." *Id.*

[4] Greta Nilsson, *Facts About Furs* 31 (3d ed., Animal Welfare Inst. 1980).

[5] Camilla H. Fox, *Trapping in North America: A Historical Overview*, in Camilla H. Fox, *Cull of the Wild: The Politics of Trapping in the United States* (Camilla H. Fox & Christopher M. Papouchis eds., Animal Protection Inst. forthcoming 2003) (manuscript at 1, 3, on file with author). The figure is an estimate only because many states combine hunting and trapping data for furbearing species and others do not collect and report any statistics for trapping.

[6] *Id.* The number of trapping licenses sold in the U.S. has also declined from 190,000 in the 1989–90 trapping season to 130,000 in the 1997–98 season.

[7] U.S. Department of Agric., Animal & Plant Health Inspection Serv., *Number of Animals Taken and Methods Used by the WS Program*, Table 10–Taken–8/20/01 (FY 2000) <http://www.aphis.usda.gov/ws/tables/00table10t.rtf> (accessed Jan. 23, 2002).

including the Conibear and Sauvageau.[8] Common restraining traps are box and cage traps, log traps, drive corrals and nets, foot snares, and various models of the steel-jaw leghold trap including those with padded, laminated, and off-set jaws.[9]

Animal advocates have used the following three main approaches to affect the use of traps, specifically kill devices and traps that grip a part of the body: 1) banning the individual devices, 2) restricting the use of the devices, and 3) prohibiting commerce in products from animals caught in the devices.[10] These restrictions have been proposed through the conventional public policy routes of state, local, and federal legislation and state administrative agency regulation.[11] In addition, animal protectionists have tried less traditional avenues including statewide ballot initiatives, federal appropriations, and international trade agreements. Other innovative strategies attempted by animal advocates include the following: securing trapping rights on state lands, requiring a warning label on fur products, and eliminating government subsidies to the fur industry.

II. STATE LAWS

A. State Legislation

State legislation has been the most popular tool for those who oppose animal trapping. Between 1901 and 1982, more than 450 anti-trapping bills were introduced in state legislatures.[12] During this time, 50% of all policy efforts to restrict or end trapping were at the state level, versus 30% at the local level, and 20% at the federal level.[13] A majority of the legislative attempts have been aimed at prohibiting or restricting the use of the leghold trap.[14]

The first anti-trapping bill was introduced in the New Hampshire Legislature in 1901.[15] However, it was the formation of the Anti-Steel-Trap League in 1925 that signified the beginning of an organized approach to reform trapping in the United States. While previous anti-trapping efforts had been motivated by concerns for dwindling furbearer populations, the Anti-Steel-Trap League sought to save individual animals from unnecessary "pain and suffering."[16] Those push-

8 Gilbert Proulx, *Mammal Trapping* 3 (Alpha Wildlife Research & Mgt. Ltd. 1999).

9 *Id.*

10 Dena Jones, *Reforming through Public Policy*, in Camilla H. Fox, *Cull of the Wild: The Politics of Trapping in the United States* (Camilla H. Fox & Christopher M. Papouchis eds., Animal Protection Inst. forthcoming 2003) (manuscript at 119, on file with author).

11 *Id.*

12 John Richard Gentile, *The Evolution and Geographic Aspects of the Anti-Trapping Movement: A Classic Resource Conflict* 53 (unpublished Ph.D. dissertation, Or. St. U. 1984) (copy on file with *Animal L.*).

13 *Id.* at 75.

14 *Id.*

15 *Id.* at 51.

16 *Id.* at 60.

ing for an end to the leghold trap because of the cruelty inflicted were joined by fox and raccoon hunters concerned about the risks that trapping posed to their dogs.[17] The Anti-Steel-Trap League's success in forming a broad base of support for its cause resulted in the passage, between 1925 and 1939, of legislation to restrict trapping in several states, including Arkansas, Georgia, Kentucky, Massachusetts, New Jersey, Pennsylvania, and South Carolina.[18]

Many of the early United States trapping bans were overturned after 1940, and campaign activity on the issue diminished significantly for much of the next three decades.[19] In fact, no new trapping restrictions were legislated at the state level until 1969 when Massachusetts passed a law requiring that all traps be designed to kill animals instantly or take them alive and unhurt.[20] In 1974, Massachusetts extended its ban to all leghold traps except water sets and those placed in and under buildings.[21] That same year, Tennessee banned the use of steel-jaw leghold traps except in burrows or under water.[22] In 1977 the Rhode Island Legislature banned leghold traps except by permit for animal damage control for a period not to exceed ninety days.[23] A complete steel-jaw leghold trap ban, offering no exemptions, was enacted by the New Jersey Legislature in 1984.[24] Since that time, no significant restrictions on use of the leghold trap have been passed by state legislatures.

In addition to restricting use of the leghold trap, state legislation has also addressed other trapping devices. A complete ban on the use of snares has been enacted by the legislatures of the following five states: Connecticut,[25] New York,[26] Oklahoma,[27] Rhode Island,[28] and Vermont.[29] Maine has banned the use of snares except foot snares for taking bear on land and water sets for taking beaver.[30] The use of snares for taking all animals on land has been banned by the legislatures of two additional states, Illinois[31] and New Hampshire,[32] while

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17 *Id.* at 63.

18 *Id.* at 61–65.

19 *Id.* at 69.

20 *Id.* at 132.

21 *Id.*

22 Tenn. Code Ann. § 70-4-120 (1995) (Leghold traps with padded jaws may be used in the open or on top of the ground, provided that the trapper has permission from the landowner.).

23 R.I. Gen. Laws § 20-16-8 (1998).

24 N.J. Stat. Ann. § 23:4-22.1, -22.2, -22.3 (1997).

25 Conn. Gen. Stat. § 26-72 (1999).

26 N.Y. Envtl. Conservation Law § 11-1101 (McKinney 1997).

27 Okla. Stat. tit. 29 § 5-502 (1991).

28 R.I. Gen. Laws § 20-16-6 (1998).

29 Vt. Stat. Ann. tit. 10, § 4706 (1997).

30 12 Me. Rev. Stat. Ann. §§ 7432, 7452, 7453-b (1994).

31 520 Ill. Comp. Stat. Ann. 2.33(b) (1993).

32 N.H. Rev. Stat. Ann. § 207:10 (2001) (allowing use of water sets for trapping beaver and otter only).

the legislatures of North Carolina[33] and South Carolina[34] have banned the use of snares on land and in water, except for trapping beaver. The South Carolina[35] Legislature has also prohibited use of the Conibear trap on land as has the state of New Jersey.[36] (Table 1 shows the origin of current state leghold trapping bans).

TABLE 1. STATE LEGHOLD TRAP PROHIBITIONS[37]

Year	State	Nature of Ban	How Enacted
1972	Florida	Steel traps banned except by permit for animal damage control[38]	Regulation
1977	Rhode Island	Steel-jawed leghold traps banned except by permit for animal damage ontrol for period not to exceed 90 days[39]	Legislation
1984	New Jersey	Use, sale, manufacture, possession, import, and transport of steel-jaw leghold traps banned[40]	Legislation
1994	Arizona	Leghold traps, instant kill body-gripping traps, and snares banned on public lands except for human health and safety, rodent control, wildlife research and relocation[41]	Initiative
1996	Colorado	Leghold traps, instant kill body-gripping traps, and snares banned except for human health and safety, rodent control, wildlife research and relocation, and by permit for animal damage control (30 days per year)[42]	Initiative
1996	Massachusetts	Steel-jaw leghold traps, padded leghold traps, Conibear traps, and snares banned except for human health and safety; Conibears allowed by emergency permit for control of beaver and muskrat damage[43]	Initiative
1998	California	Use of body-gripping traps for recreation or commerce, and commerce in raw fur from animals trapped with body-gripping traps banned; steel-jaw leghold trap banned for all purposes except padded leghold trap for human health and safety[44]	Initiative

33 N.C. Gen. Stat. § 113-291.1 (2002).
34 S.C. Code Ann. § 50-11-2410 (2002).
35 *Id.*
36 N.J. Admin. Code 7:25-5.12 (2003).
37 Jones, *supra* n. 10, at 119.
38 Fla. Admin. Code Ann. r. 68A-12.009(4), 68A-24.002(3) (1979).
39 R.I. Gen. Laws § 20-16-8 (1998).
40 N.J. Stat. Ann § 23:4-22.1, -22.2, -22.3 (1997).
41 Ariz. Rev. Stat. § 17-301D (1998).
42 Colo. Rev. Stat. § 33-6-203-208 (2002).
43 Mass. Gen. Laws ch. 131, § 80A (2002).
44 Cal. Fish & Game Code Ann. § 3003.1 (West 2001).

2000	Washington	Use of body-gripping traps for recreation or commerce, and commerce in raw fur from mammals trapped with body-gripping traps, banned; use of body-gripping traps banned except Conibear trap in water, padded leghold trap, and foot snare allowed by permit for human health and safety, endangered species protection, wildlife research, or for unrelieved damage control for period not to exceed 30 days[45]	Initiative

In recent years the primary focus of anti-trapping advocates has been legislative restrictions on the use of traps for commerce in fur. However, another potential target is the so-called nuisance wildlife control industry. As fur trapping has declined in the United States, trapping to control urban or suburban wildlife conflicts by non-government operators has grown rapidly, with some wildlife management officials recommending that the emerging industry be regulated.[46] These officials believe that this regulation should include restriction of the methods used to capture and euthanize animals. Given that most nuisance trapping takes place in areas densely populated by people and their companion animals, it should be possible to prohibit the use of body-gripping traps for this purpose. However, it may be necessary from a political standpoint to exempt trapping done to protect commercial crop and livestock operations.

B. Case Law on State Legislation

Few attempts have been made to overturn legislature-enacted trapping bans; however, one notable legal challenge occurred in Massachusetts in the late 1980s. In *Commonwealth v. Black,*[47] the Supreme Judicial Court of Massachusetts upheld the lower court's dismissal of a criminal case in which the defendant argued that a padded leghold trap was neither a "steel jaw leghold trap" nor a trap designed to cause injury or suffering to a trapped animal in violation of a state law.[48] In response to this decision, the Massachusetts Division of Fisheries and Wildlife (MDFW) promulgated a regulation in 1989 al-

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[45] Wash. Rev. Code § 77.15 (2001).

[46] Thomas G. Barnes, *State Agency Oversight of the Nuisance Wildlife Control Industry*, 25 Wildlife Socy. Bull. 185 (1997). In 1998, Connecticut enacted legislation requiring that nuisance animal control operators be licensed and receive training in methods of nonlethal resolution of common wildlife problems and the humane capture, handling, and euthanasia of nuisance wildlife. Conn. Gen. Stat. § 26-47 (1999). Animal advocates also sponsored successful legislation in California in 2002 that requires the licensure of those trapping animals deemed to be a nuisance, when the trapping is done for profit. The law also prohibits those who trap nuisance animals for profit from selling the raw furs. Cal. Fish & Game Code Ann. § 4005 (West 2001). However, neither law limits the type of traps that may be used beyond those already banned.

[47] 532 N.E.2d 43 (Mass. 1989).

[48] *Id.* at 45. Mass. Gen. Laws ch. 131, § 80A (2002) provides that

lowing the use of padded traps to take furbearers, once again permitting trapping on open land in Massachusetts.[49]

Several animal advocacy organizations then sued the MDFW in Superior Court, arguing that the regulation was inconsistent with the statute and, therefore, invalid.[50] The court granted the plaintiffs' motion for summary judgment, noting that the plaintiffs had presented "uncontradicted evidence, including scientific studies, that the padded jaw traps authorized by the regulation hurt animals."[51]

On appeal, the defendants urged the Supreme Judicial Court to hold that the statute does not prohibit the use of padded jaw traps because the designers of such traps "intended" to construct a trap that would take the animal alive and unhurt.[52] Although the court rejected the defendants' narrow reading of the statute, it also rejected the lower court's premise for invalidating the regulation, "[T]he statute does not express a zero tolerance of traps that may occasionally result in furbearing mammals being taken alive but hurt, nor does the statute prohibit the use of a trap solely because it, or a similarly designed trap, has previously caused an animal to suffer continuing pain."[53] The court, persuaded by the defendants' argument that padded jaw traps were designed to trap animals alive and unhurt,[54] vacated the lower court's judgment, and held that the regulation was consistent with the statute. In response, the Massachusetts Society for the Prevention of Cruelty to Animals and The Humane Society of the United States joined forces to sponsor a successful statewide ballot initiative in 1996, which not only banned all versions of the leghold trap in Massachusetts, but also ended the use of the Conibear trap, except by permit.[55]

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[n]o person shall use, set, place or maintain any steel jaw leghold trap on land for the capture of fur-bearing mammals except in or under buildings on land owned, leased, or rented by him. The steel jaw leghold trap may be used for the capture of fur-bearing mammals in water only if set in such a manner that all reasonable care is taken to insure that the mammal dies by drowning in a minimum length of time. No other device which is set in such a manner that it will knowingly cause continued suffering to such a mammal caught therein, or which is not designed to kill such a mammal at once or take it alive unhurt shall be used, set, placed or maintained for the capture of fur-bearing mammals; provided, however, that a person or his duly authorized agent may apply to the director for a special permit to use such traps, other than the steel jaw leghold trap, on property owned by such person. Issuance of such special permits shall be governed by rules and regulations adopted by the director pursuant to chapter thirty A.

[49] 321 Code Mass. Regs. 3.02 (1989) (providing that, under specified conditions and with specified limitations, "[p]added jaw traps may be used for the taking of fur-bearing mammals when set in water or on land . . .").

[50] *Mass. Socy. for the Prevention of Cruelty to Animals v. Div. of Fisheries & Wildlife*, 420 Mass. 639 (1995).

[51] *Id.* at 642.

[52] *Id.*

[53] *Id.* at 643.

[54] *Id.* at 644. The defendants filed numerous affidavits of trappers affirming that they had caught "thousands" of animals alive and unhurt by using padded jaw traps.

[55] Mass. Gen. Laws ch. 131, § 3003.1 (2002).

C. State Agency Regulation

Each state must review its trapping regulations every one to three years, with the state wildlife agency proposing changes that are then submitted to an oversight commission or board for approval.[56] State wildlife management agencies, dependent upon revenues generated from hunting, trapping, and fishing licenses, have traditionally catered to consumptive users. This relationship between trappers and administrative officials has made the regulatory process a more difficult avenue for achieving substantive changes in trapping laws.

In 1972, Florida became the first state to outlaw the leghold trap by administrative rule.[57] In 1975, South Carolina banned the sale, manufacture, and use of leghold traps except size three or smaller, near buildings or on personal land.[58] In 1977, Connecticut banned land use of leghold traps except in burrows.[59]

In addition to prohibiting the use of leghold traps for catching furbearers, the Florida Game and Fresh Water Fish Commission also requires use of the padded version of the trap for damage control.[60] Several other state wildlife agencies have mandated padding of leghold traps. The Massachusetts Division of Fisheries and Wildlife required padded traps in 1989,[61] as did the California Fish and Game Commission in 1990,[62] the Arizona Game and Fish Commission in 1993,[63] and the Colorado Division of Wildlife in 1995.[64] In each of the cases, wildlife agencies required use of padding in order to satisfy concerns regarding the injuries inflicted by leghold traps. However, the strategy was ineffective; the conventional leghold trap, along with the padded version, was eventually prohibited in these four states through the initiative process.

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56 Fox, *supra* n. 5, at 82.

57 Animal Welfare Inst., *Animals and their Legal Rights* (4th ed., Animal Welfare Inst. 1990) (presenting a survey of American laws from 1641 to 1990); The current version of the administrative rule was enacted in 1979. *See* Fla. Admin. Code Ann. r. 68A-12.009(4), 68A-24.002(3) (1979).

58 S.C. Code Regs. 123-180 (1975).

59 Regs. Conn. State Agencies § 26-66-5 (1977) (For use in burrows, jaws of trap must be padded.).

60 Fla. Fish & Wildlife Conservation Commn., *2000–2001 Hunting Handbook & Regulations Summary* 16 (2000).

61 Mass. Gen. Laws. ch. 131, § 80A (2002) Since 1996 the use of leghold traps, padded or otherwise, has been illegal in Massachusetts for all purposes except human health and safety.

62 Cal. Code Regs. tit. 14, § 465.5 (1990) Since 1998 the use of leghold traps, padded or otherwise, has been illegal in California for all purposes except the padded trap may be used when it is the only method available to protect human health or safety. See Cal. Fish & Game Code Ann. § 3003.1 (West 2001).

63 Ariz. Admin. Code § 12-4-307 (1993) The regulation allows the use of leghold traps with padded or offset jaws only. Since 1994 the use of all leghold traps on public lands in Arizona has been illegal for commercial, recreational, and damage control purposes. Ariz. Rev. Stat. § 17-301D (1998).

64 8 Colo. Code Regs. 1201-12 (1995).

The Conibear, or instant-kill trap, has been prohibited in Florida through agency regulation.[65] While wildlife agencies in six other states have prohibited the use of the Conibear trap on land,[66] only Florida has banned its use on land and in water. The Arizona Game and Fish Commission has completely banned the use of snares,[67] and the wildlife agencies of six additional states have banned the use of snares on land while allowing their use in water.[68]

State wildlife agencies have also closed trapping seasons on individual animal species at the behest of animal advocates. California canceled plans for trapping of red fox in 1996.[69] Colorado eliminated trapping of kit fox in 1994 and trapping of swift fox, gray fox, mink, marten, and weasel in 1995.[70] Idaho rejected a proposal by trappers to sell pelts of river otters trapped incidentally in 1998[71] and Montana closed the season on lynx trapping in 1999.[72]

While complete bans on trapping devices are rare, state wildlife agencies have placed a number of restrictions on their use.[73] In addition to restrictions on the species that may be taken, limitations exist on where traps can be set, the use of bait, the maximum size of the devices, and how often traps must be checked.[74] Regulations can also require landowner permission on unposted land, trap identification, trapper education courses, and reporting of the number of animals trapped and/or sold.[75]

Four states currently operate programs that allow the highest bidder exclusive trapping rights on particular areas of state land.[76] Since 1986 animal advocates in Connecticut have attempted to limit trap-

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65 Fla. Admin. Code Ann. r. 68A-12.009(4), 68A-24.002(3) (1979).

66 Fox, *supra* n. 5, at 82. State wildlife commissions that prohibit the use of Conibear traps on land include Connecticut (Regs. Conn. State Agencies § 26-66-5 (2003)); Maryland (Code Md. Regs. Tit. 08 § 03.06.03 (2003)); Oklahoma (Okla. Admin. Code § 800:25-1-5 (2003)); Pennsylvania (Pa. Code tit. 17, § 11.215 (2003)); South Dakota (Admin. R. S.D. 41:08:02:06 (2003)); and West Virginia (W. Va. R. tit., § 58-53-3 (2003)).

67 Ariz. Admin. Code § 12-4-307 (1994).

68 Fox, *supra* n. 5, at 82. State wildlife commissions that prohibit the use of snares on land include Alabama (Ala. Admin. Code r. 220-2-30 (2003)) (Neck and body snares are banned while powered foot snares are allowed.); Michigan (Mich. Depart. of Nat. Resources, *Fur Harvester Rules* <http://www.michigan.gov/dnr/0,1607,7-153-10363_10880_10998-31600—,00.html> (accessed Apr. 12, 2003); Missouri (Mo. Code Regs. Ann. tit. 3, 10-8.510 (2003)); Pennsylvania (Pa. Code tit. 58, § 141.6 (2003)); West Virginia (W. Va. R. tit., § 58-53-3 (2003)). (Neck and body snares are banned while foot snares are allowed.); and Wisconsin (Wis. Admin. Code, NR § 10.13 (2003)).

69 Cal. Code Regs. tit. 14, 460 (1996).

70 2 Colo. Code Regs. § 406-3 (1995).

71 *Commission Oks 2 Fishing Poles*, Spokesman Review (May 10, 1998).

72 Mont. Fish, Wildlife & Parks Dept., *Montana Regulations Furbearer* 2 (1999).

73 Fox, *supra* n. 5, at 82.

74 *Id.*

75 Fox, *supra* n. 5.

76 *Id.* (States currently offering allotment-bidding programs are Connecticut, Delaware, Indiana, and Maryland.).

ping in their state by submitting bids on state land allotments.[77] They succeeded in 1998 by securing 35 of 122 available tracts, a total of 47,000 acres, which they then posted off-limits to trapping.[78] In response, the Connecticut Department of Environmental Protection (DEP) initiated a regulation change requiring that prospective bidders prove they had trapped furbearing animals during a minimum of four previous trapping seasons.[79]

On September 17, 1999, the animal advocates filed a lawsuit claiming that the regulation blocked their participation in the bidding process and was, therefore, discriminatory (unreported decision). As part of a settlement agreement reached in that case, the DEP Commissioner withdrew the 1999 invitation to bid and stipulated that the DEP would not require bidders to provide proof of actual harvesting until regulations or law permitted such a condition.[80] The following season the DEP sought to require proof of trapping activity on the land after the bids had been awarded and the animal advocates sued to enjoin the trapping program.[81] The plaintiffs argued, *inter alia*, that the permit conditions violated the 1999 settlement agreement.[82] The court, however, refused to enjoin the program, finding that the balance of equities weighed heavily against shutting down the 2000 fur-bearing trapping season.[83]

D. State Citizen Initiatives

Citizen-initiated ballot measures are another method by which trapping-related laws may be enacted or amended. The initiative process allows citizens to gather petition signatures to place a proposed statutory or constitutional amendment before the voters.[84] Twenty-four states currently allow citizens to submit proposed changes in the law to voters for approval.[85] Citizens in all but two of the twenty-four

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[77] Paul Choiniere, *Animal Right Activists Trying to Outfox Trappers*, The Day (New London, Conn.) (Oct. 27, 2000).

[78] *Id.*

[79] Deborah Peterson Swift, *Activists Buy Up Trapping Rights*, The Hartford Courant (Nov. 2, 2000).

[80] *Animal Rights Groups Lose Attempt to Stop Trapping on State Lands*, Conn. Dept. of Envtl. Protection (Oct. 23, 2000).

[81] *Friends of Animals, Inc. v. Rocque*, 2000 Conn. Super. LEXIS 2588 at *1 (October 5, 2000).

[82] *Id.* at *2. (The plaintiffs also alleged that the permit conditions violated a provision of the Connecticut Environmental Protection Act and constituted invalid rulemaking.).

[83] *See id.* at **18–19.

[84] David B. Magleby, *Direct Legislation in the American States*, in *Referendums Around the World* 219 (David Butler & Austin Ranney eds. , The AEI Press 1994).

[85] *Id.* at 220. Those states where the citizen initiative process is available are: Alaska, Arizona, Arkansas, California, Colorado, Florida, Idaho, Illinois, Maine, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming.

states[86] as well as citizens in three additional states,[87] also have available the popular referendum that allows them to gather petition signatures to refer a law recently passed by the legislature to the voters. The law in question does not go into effect until approved by the voters. In addition, voters in all states but Delaware are given the opportunity to approve or reject legislature-sponsored amendments to state constitutions.[88]

The first ballot box success for anti-trapping activists occurred in 1930 when Massachusetts voters approved by a margin of two-to-one a measure to outlaw the use of trapping devices that cause suffering.[89] In 1977 and 1980, animal advocates in Ohio and Oregon, respectively, tried unsuccessfully to advance trapping bans through the initiative process.[90] The Ohio campaign was the first high-spending election related to animal protection in the United States, costing each side of the issue more than one million dollars.[91]

As a result of these losses, animal advocates abandoned use of the initiative process until 1990 when a broad coalition of environmental and animal protection groups came together in California to stop the planned trophy hunting of mountain lions and to set aside funds for the purchase of wildlife habitat. The success of the mountain lion initiative has been credited to the campaign's management by individuals with political, public relations, and grassroots organizing expertise.[92]

Encouraged by the use of the initiative process to stop mountain lion hunting in California, anti-trapping activists turned to the voters to address their concerns. Between 1994 and 2001, the initiative process was used to ban trapping in the following five states: Arizona, California, Colorado, Massachusetts, and Washington.[93] While these initiative measures included more exemptions than the laws passed by the New Jersey and Rhode Island Legislatures, they have banned the use of other body-gripping traps in addition to the leghold. All of the initiatives passed to date have enacted a ban on use of the Conibear

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86 *Id.* (Florida and Mississippi offer the citizen initiative process but not the popular referendum.).

87 *Id.* (Kentucky, Maryland, and New Mexico offer the popular referendum but not the citizen initiative.).

88 *Id.* at 221.

89 Gentile, *supra* n. 12, at 94. (The 1930 Massachusetts ban was later repealed.).

90 *Id.*

91 James W. Goodrich, *Political Assault on Wildlife Management: Is There a Defense?*, in *Transactions of the Forty-Fourth North American Wildlife And Natural Resources Conference* 331 (Kenneth Sabal ed., Wildlife Mgt. Inst. 1979). Another negative consequence of the initiative was the formation of the Wildlife Legislative Fund of America, a lobby established to fight the Ohio trapping ban that continues to be a force in fighting animal protection ballot measures throughout the country.

92 Wesley Vernon Jamison, *Resource Policy Implications of Animal Rights Activism: A Demographic, Attitudinal and Behavioral Analysis* (unpublished Ph.D. dissertation, Or. St. U. 1994) (copy on file with *Animal L.*).

93 Dena Jones, *Statewide Ballot Measures on Animal Protection* (Animal Protection Inst. 2000). Arizona's ban on trapping is limited to public lands. Ariz. Rev. Stat. § 17-301D (1998).

trap, with exceptions.[94] The measures also banned snares, with exceptions,[95] although the Arizona Fish and Game Commission previously banned all uses of snares on all lands[96] before the passage of the initiative which banned snares, with exceptions, on public lands.[97] The Massachusetts initiative also banned the use of hounds to hunt bears and bobcats[98] and changed the requirements of membership on the state wildlife board.[99] Furthermore, the use of poisons to kill wildlife was covered by the initiative measures passed in Arizona,[100] California,[101] Colorado,[102] and Washington.[103]

Groups interested in preserving trapping have responded to the success of citizen initiatives by sponsoring legislation that will guarantee the right to trap and will limit the use of the initiative process for wildlife management issues. Between 1996 and 2001, six states approved initiatives or constitutional amendments designed to safeguard the right of individuals to take wildlife.[104] In 1996 Michigan voters passed a legislative referendum giving the state Natural Resources Commission exclusive authority to regulate the taking of game.[105] Alabama[106] and Virginia[107] voters in 1996 and 2000 respectively, approved constitutional amendments to establish the right to hunt and fish. Voters in Minnesota (1998)[108] and North Dakota (2000)[109] passed referendums to "identify hunting as a valued part of the state heritage to be preserved." In 1998, Utah approved a Constitutional amendment requiring a two-thirds majority for any initiative governing the take of wildlife.[110] However, in the 2000 election, voters in Arizona defeated an amendment requiring a supermajority vote for wildlife measures, and Alaska voters defeated an amendment that would have banned citizen ballot measures relating to the taking of wildlife.[111]

Counter-measures to ensure rights to consumptive use of wildlife are not the only downside to changing public policy through the ballot initiative process. The process is complex, and the outcome of ballot measures is dependent upon a number of factors, many of which are not under the control of those sponsoring the measures. Sponsoring

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94 *Supra* nn. 41–45.
95 *Supra* nn. 42–45.
96 Ariz. Admin. Code § 12-4-307 (2003).
97 Ariz. Rev. Stat. § 17-301D.
98 Mass. Gen. Laws ch. 131, § 21A (2002).
99 Mass. Gen. Laws ch. 21, § 7 (2002).
100 Ariz. Rev. Stat. § 17-301D.
101 Cal. Fish & Game Code Ann. § 3003.2 (West 2001).
102 Colo. Rev. Stat. § 33-6-203-208 (2002).
103 Wash. Rev. Code Ann. § 77.15.196 (2001).
104 Jones, *supra* n. 93.
105 Mich. Comp. Laws § 324.40113A (2001).
106 Ala. Const. amend. 597.
107 Va. Const. art. XI, § 4.
108 Minn. Const. art. XIII, § 12.
109 N.D. Const. art. XI, § 27.
110 Utah Const. art. VI, § 1.
111 Jones, *supra* n. 93.

statewide initiatives is also costly. Between 1992 and 2001, approximately $4,500,000 was spent by animal protection interests on initiative attempts to limit trapping.[112] The result has been the passage of partial bans in five states, all of which contributed less than two percent of trapping for fur in the United States prior to passage of the bans.[113] The utility of the initiative process to address trapping is seriously limited by the fact that the practice occurs for one purpose or another in all fifty states, and many of those states with the highest level of trapping activity do not allow citizen initiatives.

E. Case Law on State Initiatives

Legislative decisions, even when made by the voters themselves, are rarely final. Initiative results can be challenged in the state legislature and can be back at the ballot box in a subsequent election, or in the courts. All but one of the state trapping bans passed by initiative have been challenged by litigation.

Four years after the passage of the trapping ban on public lands in Arizona in 1994, four fur trappers were convicted of setting a leghold trap in violation of Arizona law.[114] On appeal, the defendants argued that the statute violated the Equal Protection Clauses of the United States Constitution and the Arizona Constitution because it criminalized behavior on public lands that remained legal on private land.[115] The defendants asserted that the only rational means of furthering the State's interest in preventing cruelty to animals, assuming that leghold traps were cruel, would be to enact a general law prohibiting the use of leghold traps throughout the state on both public and private land.[116] In affirming the defendants' convictions, the Court of Appeals held that the statute did not violate either the state or federal constitution because it was rationally related to a legitimate governmental purpose of prevention of cruelty to animals and injury to others.[117]

One month following the passage of California's trapping ban in 1998, five not-for-profit organizations, led by the National Audubon Society, sued the State of California to allow the use of the leghold trap to protect federally protected bird species from predation.[118] Federal agencies used leghold traps throughout California to protect livestock and other private property in addition to the protection of certain bird species, pursuant to the Animal Damage Control Act.[119] The plaintiffs argued that California's trapping prohibition was invalid because it vi-

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112 Dena M. Jones, *Protecting Animals at the Ballot Box: An Analysis of Statewide Initiative Measures, 1990–2000* 29 (unpublished rpt. 2001) (copy on file with *Animal L.*).

113 *Id.*

114 Ariz. Rev. Stat. § 17-301(D) (1998).

115 *State v. Bonnewell*, 2 P.3d 682, 684 (Ariz. App. 1999).

116 *Id.* at 685.

117 *Id.* at 687.

118 *Natl. Audubon Socy. v. Davis*, 144 F. Supp. 2d 1160 (N.D. Cal. 2000).

119 7 U.S.C. §§ 426–426c (2000).

olated the Supremacy Clause of the United States Constitution and was preempted by the Endangered Species Act[120] and the Migratory Bird Treaty Act.[121]

The coalition of animal advocacy groups that sponsored the ballot initiative, which led to the passage of the trapping ban,[122] intervened in the suit on the side of the State. The coalition contended, *inter alia*, that the trapping ban was not preempted by federal law because the ban could be interpreted so as not to conflict with federal conservation efforts.[123] Shortly thereafter, the National Trappers Association, along with other groups and individuals with similar interests, moved to intervene on the side of the plaintiffs. The trappers challenged the ban on the grounds that it violated the Commerce Clause and Due Process Clause of the United States Constitution and was preempted by the Endangered Species Act and Animal Damage Control Act.[124]

Nearly two years after the initial suit was filed, the District Court for the Northern District of California granted the plaintiffs' motion for summary judgment and dismissed the National Trappers Association's claims.[125] The animal advocacy coalition, the State, and the trappers have appealed that decision to the Ninth Circuit Court of Appeals.

In 2000, a trapper in Pitkin County, Colorado was charged with violating Colorado's anti-trapping law.[126] The trial court acquitted the defendant, holding that the anti-trapping amendment was unconstitutional because it violated the initiative process and the public trust doctrine.[127] On appeal, the defendant reasserted a violation of the Equal Protection Clause, a claim the trial court had failed to address.[128] In reversing the acquittal, the appellate court found that even if the constitutionality of the anti-trapping amendment could be raised in a criminal proceeding, it was not unconstitutional.[129] The court also held that the public trust doctrine does not apply to a citizen initiative amendment of the state constitution.[130]

In a case similar to the National Trappers Association's attempt to invalidate California's trapping ban, trappers in Washington state

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120 16 U.S.C. §§ 1531–1544 (2000).

121 16 U.S.C. § 701–719 (1994) Although the plaintiffs originally did not allege that the trapping ban was preempted by the National Wildlife Refuge System Improvement Act, 16 U.S.C. § 668dd (2000), they subsequently amended their complaint to reflect this allegation.

122 ProPAW, *Ban Cruel Traps: Vote Yes on 4* <http://www.volunteerinfo.org/proppaw> (accessed Sept. 16, 2002).

123 16 U.S.C. §§ 1531–1544.

124 7 U.S.C. §§ 426–426c.

125 *Natl. Audubon Socy. v. Davis*, 144 F. Supp. 2d 1160 (N.D. Cal. 2000) (order granting summary judgment).

126 Colo. Rev. Stat. § 33-6-201-209 (2002).

127 *State v. Gredig*, No. 99 M 162 (Pitkin Super. Ct. Colo. 1999).

128 *State v. Gredig*, No. 00CV198 (Colo. App. Jan. 22, 2001).

129 *Id.*

130 *Id.*

sued the state over its trapping ban that was enacted on election day 2000.[131] The trappers alleged that the form and content of the law violated the state constitution and the Commerce Clause of the United States Constitution. As in the California case, the sponsors of the ballot initiative were granted leave to intervene on behalf of the State. The court entered final judgment in favor of the State on January 25, 2002. On February 21, 2002, plaintiffs filed a notice of appeal.[132]

F. State Anti-Cruelty Laws

Anti-cruelty statutes, enacted in all fifty states, have not proven effective in protecting wild animals from the cruelty of body-gripping traps. The anti-cruelty laws of thirty-four states specifically exempt the regulated activities of hunting, fishing, and trapping.[133] In a test of this issue, a New Mexico rancher was charged and found guilty of animal cruelty for killing two deer by catching them in snares. Although the decision was upheld by the New Mexico Court of Appeals, it was later reversed by the New Mexico Supreme Court on the grounds that the state Game and Fish Commission holds exclusive authority to regulate the manner in which "game" animals are killed.[134]

III. LOCAL LAWS

A. Municipal and County Ordinances

Enacting legislation at the local and state level became the strategy of choice for the early animal protectionists when their efforts to get women to give up furs proved futile. Between 1925 and 1939, anti-trapping ordinances were enacted in eighty-four United States cities and counties.[135] While the primary purpose of a majority of the bans was to prevent cruelty to animals, a number of counties passed trapping prohibitions during this time to conserve dwindling numbers of furbearing animals.[136]

As was the case with efforts at the state level, local anti-trapping activity slowed considerably after 1940, and by the end of World War II, trapping bans remained in effect in only a few scattered counties.[137] With the exception of one county in Virginia, no local attempts to ban

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131 *Citizens for Responsible Wildlife Mgt. v. State*, No. 01-2-00168-7 (Thurston County Sup. Ct. Wash. filed Jan. 26, 2001).

132 *Citizens for Responsible Wildlife Mgt. v. State*, No. 72186-6 (Wash. Nov. 19, 2002).

133 Pamela D. Frasch et al., *State Animal Anti-Cruelty Statutes: An Overview*, 5 Animal L. 69 (1999). The states that exempt wildlife from their animal cruelty statutes are: Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Missouri, Nebraska, New Jersey, New Mexico, North Carolina, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Washington, West Virginia, and Wisconsin.

134 *State v. Cleve*, 980 P.2d 23, 36 (N.M. 1999).

135 Gentile, *supra* n. 12, at 129.

136 *Id.* at 65.

137 *See id.* at 70.

trapping have been documented for the twenty-eight year period from 1940 through 1967.[138] Political initiatives to end trapping, at the state and local levels, resumed in the late 1960s. Between 1968 and 1982, local trapping bans were enacted in numerous locations including ten counties in Alabama, three counties in Maryland, ten counties in New Jersey, several counties in North Carolina, and twenty-four towns and cities in Minnesota.[139]

Anti-trapping initiatives at the local level continued throughout the 1990s and into the new century, with protection of companion animals and people most often cited as the primary goal.[140] While city-wide bans have not been challenged, most likely because they pose no threat to the commercial fur industry, prohibitions at the county level have been subjected to judicial review.

B. Local Case Law

Two cases demonstrate that anti-trapping ordinances must be narrowly tailored to achieve an identified public safety purpose to withstand legal challenge. In 1987, the California Department of Fish and Game requested an Attorney General Opinion on whether a county may prohibit the use of leghold traps in its jurisdiction.[141] The Attorney General weighed the provision of the state constitution empowering the legislature to enact laws to protect fish and game within districts throughout the state[142] against the provision of the state constitution empowering counties to adopt ordinances that protect the health and safety of persons.[143] The Attorney General noted the significance of the nature of the area affected by an ordinance, its impact upon the trapping of game and furbearing mammals, and the degree of public access and use of the area.[144]

The Attorney General concluded that a county may, by ordinance, ban the use of steel-jawed leghold traps within its jurisdiction where such action is necessary to protect the public health and safety and where the ordinance only incidentally affects the field of hunting preempted by the California Fish and Game Code.[145]

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138 *See id.* at 131.

139 *See id.* at 133.

140 The purpose of the leghold trap ban of Sacramento, California is: "to protect the public health and safety by prohibiting the use of steel-jawed leg-hold traps which pose great potential for injury to domestic pets and children." Sacramento City Code (Cal.) § 9.44.310 (2003).

141 70 Cal. Atty. Gen. Op. 210 (1987).

142 Cal. Const. art. IV, § 20.

143 Cal. Const. art. XI, § 7.

144 70 Cal. Atty. Gen. Op. at 213 (noting that an ordinance banning steel-jawed leghold traps in the City and County of San Francisco, an almost entirely urbanized area, would likely be held to have public safety as its principal purpose with hunting only incidentally affected. Contrary findings might be expected with respect to the same ban in a rural county with a significant fur trapping tradition.).

145 70 Cal. Atty. Gen. Op. at 214.

Following issuance of the opinion, the state of California, joined by the California Farm Bureau, sued to overturn the trapping ban in predominantly rural Nevada County.[146] The state Fish and Game Department explained that it had not challenged other county and city prohibitions against trapping because those areas did not have large coyote populations that it felt could only be controlled by trapping.[147] The Nevada County Superior Court later struck down the trapping prohibition (unreported decision).

In 1997, Rockland County, New York passed a similar trapping ban that was also defeated in court.[148] On appeal, the New York Supreme Court, Appellate Division, found that the county's enactment of the trapping ban was circumscribed by the New York State Constitution and the Municipal Home Rule Law.[149] Relying on a case in Suffolk County, New York,[150] in which the court had invalidated a similar law, the New York Supreme Court, Appellate Division, held that the county ban was inconsistent with state environmental law on wildlife traps.[151] Shortly before the Supreme Court, Appellate Division upheld the lower court case, the Rockland County legislature passed another trapping ban, which remains in effect.[152]

IV. FEDERAL LAWS

A. Federal Legislation

In 1957, the first national anti-trapping bill was introduced in the United States Congress.[153] Though not a proposed ban on the use of body-gripping traps, the legislation would have discouraged the use of steel-jaw leghold traps by directing the Secretary of the Interior to issue regulations prescribing acceptable methods for the capture of mammals and birds on lands under federal control.[154] Similar bills were introduced in the next three sessions of Congress.[155]

In the 1970s, anti-trapping efforts were assisted by the nation's growing awareness of environmental causes and the passage of landmark animal protection legislation such as the Endangered Species Act[156] and the Marine Mammal Protection Act.[157] Legislation was

146 *Calif. Atty General Sues for Repeal of County's Trap Ban*, Fur Age Weekly (Sept. 4, 1989).

147 *County Snared in Trap Dispute*, Sacramento Bee (Sept. 14, 1992).

148 *State v. County of Rockland*, No. 98-0973 (N.Y. Sup. Ct. 9th Dist. May 27, 1998).

149 *State v. County of Rockland*, 272 A.D. 2d 605 (N.Y. App. Div. 2000).

150 *State v. County of Suffolk*, 165 A.D. 2d 869 (N.Y. App. Div. 1990) (holding that the trapping ban violated the state constitution in that it was preempted by state law and inconsistent with a general state law).

151 N.Y. Envtl. Conservation Law § 11-1101 (5), (6) (McKinney 1997).

152 Laws of Rockland County (N.Y.) § 351 (2003).

153 Jones, *supra* n. 10, at 119.

154 *Id.*

155 *Id.*

156 *State v. Bonnewell*, 2 P.3d 682 (Ariz. App. 1999).

157 16 U.S.C. §§ 1361–1421h (2000).

introduced in 1973 to ban commerce in steel-jaw leghold traps and in furs from animals taken in leghold traps. Similar legislation has been introduced in all but one subsequent session of Congress.[158] During the 1975–76 session alone a total of twenty-three anti-trapping bills were introduced.[159] Despite the persistence of this effort, only two hearings have been held to date on the trapping issue and no legislation has passed out of committee.[160]

The failure of federal anti-trapping legislation has been credited to the efforts of lobby groups representing hunting, trapping, agricultural, and commercial fur interests, and to defense of the activity by federal and state agencies.[161] As noted previously, the Wildlife Services Program of the United States Department of Agriculture, operating under the authority of the Animal Damage Control Act,[162] is the largest user of traps in the United States.[163]

While, thus far, federal legislation to directly restrict the use of traps has failed, animal protection lobbyists have succeeded in making use of the federal appropriations process to deal a blow to the fur industry. In 1995, the United States Congress approved an amendment to the Agriculture Appropriations bill to end a multi-million dollar federal subsidy to the mink industry that funded fashion shows and other fur promotions in foreign markets where the majority of United States mink products are sold.[164]

After nearly fifty years of lobbying, animal protection advocates saw their first congressional vote to restrict trapping in 1999 when an amendment was offered to the Department of the Interior Appropriations bill to eliminate funding of commercial or recreational trapping programs using steel-jaw leghold traps or neck snares on National Wildlife Refuges.[165] The House of Representatives voted 259 to 166 to approve the measure.[166] However, following strong lobbying by hunters, trappers, and state wildlife agencies, the Senate voted sixty-four to thirty-two to table similar legislation, in effect killing the

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158 Jones, *supra* n. 10, at 119.

159 *Id.*

160 *Id.*

161 Gentile, *supra* n. 12, at 71.

162 7 U.S.C. §§ 426–426c (2000).

163 *See* USDA APHIS, *supra* n. 7 (providing number of animals taken and methods used by the Wildlife Services in fiscal year 2000).

164 Camilla Fox & Dale Bartlett, Animal Protection Inst., *The Demise of Fur: A Multilateral Approach* <http://www.api4animals.org/doc.asp?ID=672> (accessed Apr. 10, 2003).

165 H.R. Amend. 280, 106th Cong. (1999) (amendment to H.R. 2466). The amendment was introduced by Representative Sam Farr of California to "prohibit the use of any jawed leghold trap or neck snare in any unit of the National Wildlife Refuge System except for research, subsistence, conservation or facilities protection." In 1997, 280 of the 517 units of the National Wildlife Refuge System allowed trapping of animals. Camilla H. Fox, *Trapping on National Wildlife Refuges: The History and Current Status of Trapping on The National Wildlife Refuge System* 1 (Animal Protection Inst. 1999).

166 U.S. H., *Final Vote Results for Roll Call 291* (July 14, 1999) (available at <http://clerkweb.house.gov/cgi-bin/vote.exe?year=1999&rollnumber=291>).

amendment.[167] In recent years, animal protectionists have also lobbied, unsuccessfully, to limit the use of traps by the Wildlife Services Program through promoting congressional cuts in the program's funding for lethal animal control.[168]

B. Federal Agency Regulation

Trapping on national park lands, a program administered by the Department of the Interior, is prohibited except where specifically sanctioned by Congress.[169] However, trapping is permitted subject to state laws and regulations on federal lands administered by the Department of the Interior's Bureau of Land Management and the Department of Agriculture's Forest Service.[170] Trapping on the National Wildlife Refuge System, administered by the Department of Interior's Fish and Wildlife Service (FWS), is generally allowed under the authority of FWS regulations.[171] To date, few efforts have been made to limit trapping through changing federal agency regulation or policy. Although it is unlikely that federal agencies will prohibit trapping outright on public lands, animal protectionists should consider the feasibility of placing restrictions on the use of specific traps through administrative petition.

C. Federal Case Law

In 1984 the National Rifle Association of America, joined by the Wildlife Legislative Fund of America, challenged the National Park Service regulation[172] prohibiting hunting and trapping in the National Park system except where specifically authorized by Congress.[173] The plaintiffs argued that the regulation arbitrarily and capriciously reversed a Park Service policy of permitting hunting and trapping in recreational areas of the National Park System.[174] The District Court for the District of Columbia found that although the language of the Na-

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167 S. Amdt.1571, 106th Cong. (1999) (available at <http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=106&session=1&vote=00268>).

168 U.S. H., *Final Vote Results for Roll Call 382* (July 11, 2000) (available at <http://clerkweb.house.gov/cgi-bin/vote.exe?year=2000&rollnumber=382>). The amendment to H.R. 4461, the 2000 appropriations bill for the U.S. Department of Agriculture, was offered by Representative Peter DeFazio of Oregon: ". . . prohibit funds in the bill from being used to conduct campaigns for the destruction of wild animals for the purpose of protecting stock." H.R. Amend. 973 was defeated 190 to 228.

169 36 C.F.R. § 2.2(b) (2002).

170 *Id.*

171 50 C.F.R. § 31.1 (2002).

172 36 C.F.R. § 2.2 (2002).

173 *Natl. Rifle Assn. of Am. v. Potter*, 628 F. Supp. 903 (D.D.C. 1986). Regulations currently permit trapping in Curecanti Recreation Area (36 C.F.R. § 7.51 (2002)); Lake Meredith Recreation Area (36 C.F.R. § 7.57 (2002)); Big Thicket National Preserve (36 C.F.R. § 7.85 (2002)); Big Cypress National Preserve (36 C.F.R. § 7.86 (2002)); and in Denali National Park and Preserve (36 C.F.R. § 13.63 (2002)).

174 *Natl. Rifle Assn.*, 628 F.Supp. at 907.

tional Park Service Organic Act[175] was not inconsistent with the concept of limited hunting and trapping, Congress placed specific emphasis on conservation.[176] The court held, therefore, that the regulation was a reasonable interpretation of legislative intent.[177]

In 1990, trappers in the State of Michigan attempted to invalidate the same Park Service regulation[178] as it applied to two units of the Park Service.[179] After failing to have the regulation invalidated in district court, the plaintiffs appealed to the Sixth Circuit.[180] In upholding the lower court ruling, the Court of Appeals for the Sixth Circuit reviewed relevant legislation, including the enabling act that created the two Park Service units.[181] Following the decision in *National Rifle Association of America v. Potter*,[182] the court found that the Park Service's interpretation of legislative intent was reasonable and upheld the regulation.[183]

V. RESTRICTING THE SALE OF FUR

Animal advocates have also attempted to reduce the use of body-gripping traps by working to restrict the sale of products from animals taken with certain devices. In addition, federal anti-trapping legislation has addressed interstate commerce in products from animals caught with the leghold trap in order to bring the issue under federal jurisdiction.[184] The statewide trapping bans passed by citizen initiative in California[185] and Washington[186] also include a prohibition on the sale of raw fur of animals trapped with body-gripping traps.

Two United States municipalities have held public referendums on the right to sell finished fur products. In 1986, the City Council of Aspen, Colorado, voted to prohibit the sale of furs from animals caught in areas allowing use of the steel-jaw leghold trap. However, an outcry from local businesses put the issue before Aspen voters who, in Febru-

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175 16 U.S.C. § 1 (2002).

176 *Natl. Rifle Assn.*, 628 F.Supp. at 909.

177 *Id.*

178 36 C.F.R. § 2.2 (2002).

179 *Mich. United Conservation Clubs v. Lujan*, 1990 U.S. Dist. LEXIS 8384 (W.D. Mich. 1990) The two Park Service units at issue were Pictured Rocks National Seashore and Sleeping Bear Dunes National Seashore.

180 *Mich. United Conservation Clubs v. Lujan*, 949 F.2d 202 (6th Cir. 1991). On appeal, the National Rifle Association and the International Association of Fish and Wildlife Agencies filed *amicus curiae* briefs.

181 *Id.* at 210. The enabling acts that created Pictured Rocks National Seashore and Sleeping Bear Dunes National Seashore specifically permitted hunting and fishing, but did not mention trapping.

182 628 F.Supp. 903 (D.D.C. 1986).

183 *Mich. United Conservation Clubs*, 949 F.2d at 210.

184 Jones, *supra* n. 10, at 119.

185 Cal. Fish & Game Code § 3003.1 (West 2001).

186 Wash. Rev. Code § 77.15.194 (2001) (The intent of this provision is to extend the impact of the leghold trap ban by eliminating any economic incentive to trap animals for damage control with other body-gripping traps not banned outright by the measure.).

ary 1990, defeated the ban, 65% to 35%.[187] In 1999, animal activists sponsored a referendum in Beverly Hills, California, that proposed requiring fur sellers attach labels to their products explaining how the animals were killed. Any garment or other item sold for more than fifty dollars would have been required to carry a warning that the animals used may have been electrocuted, gassed, poisoned, clubbed, stomped, drowned, or caught by steel-jaw leghold traps. On May 11, 1999, voters turned down the measure, 64% to 36%.[188]

While voters in some states have agreed to prohibit the sale of fur products from animals caught in body-gripping traps, it is doubtful that the public, or its representatives, will be willing to restrict the rights of retailers to sell, and the rights of consumers to buy, all products made of animal fur. Sponsoring a city or state ban on the sale of fur products can be an effective means of increasing public awareness of the trapping issue, but it is unlikely to be successful as a public policy strategy.

VI. INTERNATIONAL LAWS AND AGREEMENTS

A thorough review of international laws and trade agreements affecting trapping and the sale of fur products is beyond the scope of this article. However, recent developments at the international level have the potential to impact the use of trapping devices in the United States in the near future and, therefore, warrant brief mention.

In 1991, the European Union took up the trapping issue and passed a regulation aimed at prohibiting the import of furs from countries that had not banned leghold traps.[189] However, trapping proponents succeeded in weakening the measure through the addition of an option that allowed imports to continue from countries that had adopted "internationally agreed humane trapping standards." The passage of the European Union regulation was followed by an intensive effort by the International Organization for Standardization (ISO) to set trap standards. By 1994 negotiations had broken down over the definition of "humane," and as a result no agreement came out of the ISO process to avoid implementation of the European Union ban on the leghold trap.[190]

Seeking to avoid the loss of the European market for its products, fur interest groups in the United States and Canada charged that a European Union ban of American furs would violate the free trade provisions of the General Agreement on Trade and Tariffs (GATT).[191] They also lobbied European and United States officials to accept their

187 *Aspen Fur Ban Rejected 65% – 35%,* Rocky Mt. News (Feb. 14, 1990).

188 *Furrier Issue Beaten at Polls*, The Daily News of L.A. N1 (May 12, 1999).

189 Fox, *supra* n. 5. Countries that comprise the European Union are: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, and the United Kingdom.

190 *Id.*

191 *Id.*

promise to develop national "Best Management Practices" guidelines as part of a publicly funded National Trap Testing Program. Fearful of a North American challenge of the regulation under international free trade agreements, the European Union capitulated to the pressure and, on December 18, 1997, signed an understanding with the United States that allows continued use of leghold traps.[192]

The understanding calls for the phase-out of conventional leghold traps within the United States over a six-year period after ratification of agreements with Canada and Russia.[193] The term "conventional" is undefined, however, and may exclude modified traps such as the padded and offset-jaw versions. Another loophole provides for the use of certain traps until testing produces traps that meet standards included in the understanding.[194] In addition, the agreement is nonbinding and allows the federal government to delegate responsibility for trapping regulation to the states that are under no obligation to prohibit the use of leghold traps and replace them with more humane devices.[195] The international regulation against use of the leghold trap has led to more testing of trapping devices and may paradoxically result in further entrenchment of its use in the United States.[196]

VII. CONCLUSION

Ending the use of body-gripping animal traps is a complex and ambitious objective, requiring employment of a combination of conventional and creative public policy approaches. Statewide bans appear to offer the best hope of eliminating the use of specific trapping devices. To date, partial or complete statewide bans have been enacted on the use of leghold traps in eight states,[197] Conibear traps in fourteen states,[198] and snares in twenty-one states.[199] The citizen initiative process has been responsible for five of the eight current statewide bans on use of the leghold trap. It is unlikely this process can be used to make significant further progress, because most trapping occurs in non-initiative states. Statewide regulation of trapping for the nascent nuisance animal control industry presents a potential avenue for restricting the use of specific devices for this particular purpose.

While bans at the local level have been relatively easy to attain, their impact has been affected by the limited amount of trapping that occurs in these areas. In addition, some municipal and countywide bans have been overturned on constitutional grounds.

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192 *Id.* The "understanding" between the U.S. and European Union is weaker than an international agreement in that it does not require ratification and is nonbinding.

193 *Id.*

194 *Id.*

195 *Id.*

196 *Id.*

197 *Supra* nn. 38–45.

198 *Supra* nn. 35–36, 38, 41–45, 65.

199 *Supra* nn. 25–34, 42–45, 67–68 .

The political power of hunters and the fur industry makes a broad federal ban on trapping unlikely in the near future. Limiting the target to trapping on federal lands or federal government funding of trapping programs appears more promising. Use of the citizen petition process to change federal agency regulations governing the practice may also be a viable approach to restricting trapping. International standards and restrictions have the potential to greatly affect trapping in the United States, although, unfortunately, not necessarily in a manner conducive to animal welfare. Finally, attempting to ban the sale of all fur products may be an effective means of generating awareness about the trapping issue; however, it probably has limited potential for changing public policy.