

# 2000 LEGISLATIVE REVIEW

I.	COCKFIGHTING .....	147	R
II.	THE GREAT APE CONSERVATION ACT .....	149	R
III.	THE CHIMP ACT .....	151	R
IV.	THE SAFE AIR TRAVEL FOR ANIMALS ACT .....	153	R
V.	USDA PROPOSES NEW ANIMAL WELFARE ACT REGULATIONS...	155	R
VI.	THE DOWNED ANIMAL BILL.....	157	R
VII.	CONGRESSIONAL RESOLUTION ACKNOWLEDGING THE LINK BETWEEN ANIMAL CRUELTY AND JUVENILE CRIME .....	159	R
VIII.	STATE INITIATIVES: A REVIEW OF THOSE TO APPLAUD AND THOSE TO BEWARE OF .....	160	R
	A. <i>Anti-trapping Initiatives: Washington and Oregon</i> .....	161	R
	B. <i>Placing Constitutional Restrictions on Wildlife Initiatives: Alaska and Arizona</i> .....	162	R
	C. <i>“Right to Hunt” Referrals: North Dakota and Virginia</i> ...	164	R
IX.	STATE ANTI-CRUELTY STATUTES: 1999-2000.....	165	R
	A. <i>Alabama’s Extra Protection for Dogs &amp; Cats</i> .....	165	R
	B. <i>Colorado’s Enhanced Sentencing Provision</i> .....	166	R
	C. <i>Delaware’s Expanded Criminal Jurisdiction Over Anti- Cruelty Cases, Intolerance of Cat &amp; Dog Fur Trade, and Increased Punishment for Dogfighting</i> .....	166	R
	D. <i>Georgia’s Animal Protection Act of 2000</i> .....	167	R
	E. <i>Michigan Requires Mental Health Evaluation for Juveniles who Commit Anti-Cruelty Violations</i> .....	167	R
	F. <i>New York Criminalizes Aggravated Cruelty to Animals</i> ...	167	R
	G. <i>Virginia Increases Cruelty Penalties, Adds Anger Management for the Convicted, and Punishes the Dog &amp; Cat Fur Trade</i> .....	168	R
	H. <i>Wyoming Broadens its Anti-Cruelty Provisions</i> .....	168	R
X.	U.S. UTILIZES PELLY AMENDMENT TO COMPEL JAPAN’S COMPLIANCE WITH THE INTERNATIONAL WHALING COMMISSION’S PROHIBITIONS ON WHALING.....	169	R
	A. <i>Background</i> .....	169	R
	B. <i>Scientific Whaling under the ICRW</i> .....	170	R
	C. <i>The Pelly Amendment</i> .....	170	R
	D. <i>Trade Sanctions</i> .....	171	R

## REVIEW EDITOR'S NOTE

The year 2001 marks the third annual edition of *Animal Law's* Legislative Review Section. In recent years, animal welfare issues have consumed the media and, in turn, the public. The effects of an expanding public ethic which recognizes the value of our nonhuman animal co-habitants is driving state and federal legislatures to respond with new laws which afford animals greater protections and guarantee more humane treatment. However, not all citizens and politicians embrace the same ethic. The public's struggle to define its relationship with animals is reflected most vividly in the use of the citizen initiative process, and is reflected in the passage and defeat of several controversial bills by the 106th Congress.

This year's edition of Legislative Review reports the passage and defeat of several state and federal, administrative and legislative actions driven by this struggle. For example, Ms. Laurie Fulkerson has researched and written on four major pieces of federal legislation which include: an Animal Welfare Act amendment to ban the interstate transport and breeding of birds for cockfighting; the Great Ape Conservation Act, which offers financial assistance for the conservation of Great Apes in their natural habitat; the CHIMP Act, which establishes a federal sanctuary program to retire surplus research chimpanzees; and the Safe Air Travel for Pets Act, the purpose of which is to ensure safer air travel for animals. In addition, Mr. Chris Brown has researched and reported the lawsuit settlement which compelled the United States Department of Agriculture to include rats, mice and birds under the Animal Welfare Act's protections; the proposed federal Downed Animal Act; a congressional resolution acknowledging the link between animal cruelty and juvenile crime; and a review of state initiatives which both advance and undermine animal welfare. Ms. Amy Baggio has reviewed the passage of state anti-cruelty statutes. Finally, I have reported on the United States' Pelly Amendment certification of Japan for violating the International Whaling Commission's resolution to cease its illusory "research whaling" for minke, sperm and Bryde's whales.

We hope this section provides a useful review of the legislative and administrative actions which articulate the legal relationship between human and nonhuman animals. We welcome all suggestions for the publication of future legislative reviews.

*Alicia Finigan*  
*Legislative Review Editor*

## 2000 STATE AND FEDERAL LEGISLATIVE AND ADMINISTRATIVE ACTIONS

### I. COCKFIGHTING

In response to public outrage over animal fighting, Congress amended the Animal Welfare Act (AWA) in 1976 to prohibit the transport or sale, in interstate or foreign commerce, of any dog or other animal for fighting purposes.<sup>1</sup> However, Congress created a loophole in the AWA, which allows for the interstate transport of gamecocks for fighting purposes from states where cockfighting is illegal to states where it is legal.<sup>2</sup> Consequently, the ability of state and local officers to enforce their state ban is undermined because it allows cockfighting organizations to elude prosecution in states where cockfights are banned by claiming that they are raising fighting birds for shipment to states where it is still lawful. In an effort to close this loophole and remedy its effects, Senator Wayne Allard (R-CO) and Representative Collin Peterson (D-MN) introduced S. 345<sup>3</sup> and H.R. 1275<sup>4</sup>, respectively, to amend the AWA to remove the exception permitting interstate movement of live birds for fighting to states where such fighting is lawful.<sup>5</sup>

Cockfighting is an extremely brutal and painful “sport,” in which two or more roosters are put in a pit and forced to fight to near-fatal injury or death.<sup>6</sup> Breeders pump the birds full of stimulants, affix razor-sharp knives or ice pick-like gaffs to their legs and force the birds to attack one another, while spectators watch and bet on the fights for “entertainment.”<sup>7</sup> Fights continue until the rooster sustains debilitating injuries, preventing it from fighting back, or until it dies.<sup>8</sup> In many instances roosters must continue fighting with “punctured lungs, broken bones, and pierced eyes.”<sup>9</sup>

The violent nature of cockfighting has spurred strong public opposition and encouraged forty-seven states to ban cockfights.<sup>10</sup> Most re-

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<sup>1</sup> 7 U.S.C. § 2156 (2000).

<sup>2</sup> *Id.*

<sup>3</sup> Sen. 345, 106th Cong. (1999).

<sup>4</sup> H.R. 1275, 106th Cong. (1999).

<sup>5</sup> Humane Society of the United States, *Support S. 345 and H.R. 1275 and Close the Loophole on Cockfighting* <[http://www.hsus.org/programs/government/s345\\_hr1275fact\\_sheet.html](http://www.hsus.org/programs/government/s345_hr1275fact_sheet.html)> (accessed Feb. 22, 2001).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> United Gamefowl Breeders Association, *Gamefowl Breeder Aims to Restore Respectability of Cockfighting* <<http://www.wallowa.com/gamefowl/index.htm>> (accessed Feb. 22, 2001).

<sup>9</sup> Humane Society of the United States, *supra* n. 5.

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

cently, Arizona and Missouri banned cockfighting in 1998.<sup>11</sup> However, the possession and breeding of gamecocks with the intent to fight is still legal in twenty-one states.<sup>12</sup> Although the public strongly opposes cockfighting,<sup>13</sup> it remains legal in Louisiana, Oklahoma, and New Mexico.<sup>14</sup>

The proposed legislation, S. 345 and H.R. 1275, would ban the interstate movement of live birds for the purpose of fighting, and thus would prohibit gamecock breeders in the twenty-one states that permit the possession of gamecocks with the intent to fight from transporting their birds to the three states where cockfighting is legal.<sup>15</sup> However, the bill still permits the transport of gamecocks for reasons other than to fight, and would not affect the use of live birds for show purposes or food.<sup>16</sup> Further, this bill would not prohibit cockfighting in those states where it is currently legal.<sup>17</sup>

Both S. 345 and H.R. 1275 received support from over 100 organizations, including fifty-seven law enforcement agencies, dozens of humane organizations, several agriculture departments, the American Veterinary Medical Association, and the United States Department of Agriculture (USDA).<sup>18</sup> Law enforcement organizations support the proposed legislation because it closes a loophole, making prosecution easier by eliminating the smokescreen that has allowed for the breeding of gamecocks for transport.<sup>19</sup> Likewise, animal protection organizations, such as the Humane Society of the United States (HSUS), support S. 345 and H.R. 1275 because their members view cockfighting as a "gruesome, barbaric, and indefensible practice" and argue that closing the loophole in federal law would help state and local law enforcement agencies enforce their state laws against cockfighting.<sup>20</sup>

However, S. 345 and H.R. 1275 galvanized the cockfighting industry to pay two former Senators, Steve Symms and J. Bennett Johnston, thousands of dollars to lobby to kill both bills.<sup>21</sup> The primary groups opposing the legislation comprised those directly associated with the

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

<sup>12</sup> Sen. Rpt. 106-297, at § 3 (May 17, 2000).

<sup>13</sup> Humane Society of the United States, *supra* n. 5. Seventy-eight percent of Americans said they were in favor of a ban on cockfighting in a poll taken by Penn & Schoen in 1997. *Id.*

<sup>14</sup> Humane Society of the United States, *Timeline of State Cockfighting Bans* <[http://www.hsus.org/programs/government/cock\\_timeline.html](http://www.hsus.org/programs/government/cock_timeline.html)> (accessed Feb. 22, 2001). In New Mexico, cockfighting is banned in nine counties. *Id.*

<sup>15</sup> Sen. Rpt. 106-297, at § 3.

<sup>16</sup> *Id.* §§ 2-3.

<sup>17</sup> *Id.* § 1.

<sup>18</sup> Humane Society of the United States, *House Agriculture Committee to Examine Anti-Cockfighting Bill* <[http://www.hsus.org/programs/government/pressrls\\_cockfight.html](http://www.hsus.org/programs/government/pressrls_cockfight.html)> (accessed Feb. 22, 2001).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Humane Society of the United States, *supra* n. 18. The Lobby Disclosure Act states that lobbyists were paid more than \$250,000 by the cockfighting industry. *Id.*

cockfighting industry,<sup>22</sup> such as the United Gamefowl Breeders Association and the Animal Husbandry Coalition.<sup>23</sup> The industry argued that cockfighting was innocuous because the gamecocks would kill each other anyway in a natural setting if they were not separated.<sup>24</sup>

Despite broad bipartisan support in Congress, with sixty-one cosponsors for S. 345<sup>25</sup> and 206 cosponsors for H.R. 1275,<sup>26</sup> both S. 345 and H.R. 1275 died from inaction at the close of the 106th Congressional session.<sup>27</sup> S. 345 was reported favorably without amendment by the Senate Committee on Agriculture, Nutrition, and Forestry, and placed on the Senate Legislative Calendar on May 17, 2000.<sup>28</sup> However, the Senate failed to take further action on the bill.<sup>29</sup> Similarly, H.R. 1275 was marked up and approved by the House Subcommittee on Livestock and Horticulture, but failed to make it out of the House Committee on Agriculture.<sup>30</sup> Though both bills failed to pass in the 106th Congress, as of February 15, 2001, S. 345 has been reintroduced to the 107th Congress and was referred to the Committee on Agriculture, Nutrition, and Forestry.<sup>31</sup>

## II. THE GREAT APE CONSERVATION ACT

After much prompting by the legendary zoologist Dr. Jane Goodall and many animal protection groups, including the HSUS, The Bushmeat Crisis Task Force, The Fund for Animals, and the Doris Day Animal League, the 106th Congress passed The Great Ape Conservation Act of 2000 (H.R. 4320),<sup>32</sup> and President Clinton signed it into law on November 1, 2000.<sup>33</sup> The Act directs the Secretary of the Interior to provide financial assistance for approved projects for the conservation of great apes in their natural habitat in order to sustain great ape populations in the wild.<sup>34</sup>

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<sup>22</sup> *Id.*

<sup>23</sup> In Defense of Animals, *Help Fight Cockfighting* <[http://www.idausa.org/alert/currentalerts/a\\_cockfighting.html](http://www.idausa.org/alert/currentalerts/a_cockfighting.html)> (accessed Feb. 22, 2001).

<sup>24</sup> United Gamefowl Breeders Association, *supra* n. 8.

<sup>25</sup> Thomas, *Bill Summary & Status for the 106th Congress* <<http://thomas.loc.gov/cgi-bin/bdquery/D?d106:5:/temp/d106query.html>> (accessed Feb. 22, 2001).

<sup>26</sup> Thomas, *Bill Summary & Status for the 106th Congress* <<http://thomas.loc.gov/cgi-bin/bdquery/z?d106:1:/temp/106query.html>> (accessed Feb. 22, 2001).

<sup>27</sup> *Id.*; *Bill Summary & Status for the 106th Congress*, *supra* n. 25.

<sup>28</sup> *Bill Summary & Status for the 106th Congress*, *supra* n. 25.

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

<sup>30</sup> The House Committee on Agriculture held hearings for H.R. 1275 on September 3, 2000, as its last action taken on the bill. *Bill Summary & Status for the 106th Congress*, *supra* n. 26.

<sup>31</sup> Sen. 347, 107th Cong. (2001); Thomas, *Bill Summary & Status for the 107th Congress* <<http://thomas.loc.gov/cgi-bin/bdquery/D?d107:1:/temp/d107query.html>> (accessed Feb. 22, 2001).

<sup>32</sup> H.R. 4320, 106th Cong. (1999).

<sup>33</sup> 16 U.S.C.A § 6301 (West 2001); Humane Society of the United States, *President Clinton Signs Great Ape Conservation Bill Into Law* <<http://www.hsus.org/whatnew/ape072700.html>> (accessed Feb. 22, 2001).

<sup>34</sup> Sen. Rpt. 106-472, at 2-3 (Oct. 3, 2000).

Great apes, which include gorillas, chimpanzees, bonobos, orangutans, and gibbons, have declined so dramatically that their long-term survival in the wild is in serious jeopardy.<sup>35</sup> For instance, the population of chimpanzees has decreased 80% over the past four decades.<sup>36</sup> Consequently, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)<sup>37</sup> designated great apes as “threatened with extinction” and affords them the highest level of protection from international trade.<sup>38</sup> Great apes receive additional protections under the Endangered Species Act of 1973 as federally threatened species.<sup>39</sup> Their decline is a result of many threats, including habitat destruction, poaching, and capture for the pet and research trades.<sup>40</sup> However, the most imminent threat to the survival of great apes is the “bushmeat” trade.<sup>41</sup> Although wildlife has long been part of the diet of Africans and Asians, hunting for the commercial trade of bushmeat (the meat of wild animals, including great apes) has risen due to human population growth, heightened availability of firearms, and increased accessibility to previously isolated great ape habitat due to the construction of logging and mining roads.<sup>42</sup> Wildlife experts predict the dramatic increase in the bushmeat trade will destroy all viable populations of gorillas, orangutans, bonobos, and chimpanzees living in the wild within twenty to fifty years.”<sup>43</sup>

The widespread concern that great ape populations in Africa and Asia soon will be unable to survive in the wild urged Representative George Miller (D-CA/7th) to introduce H.R. 4320<sup>44</sup> which became the Great Ape Conservation Act of 2000.<sup>45</sup> The Act is modeled after the African Elephant Conservation Act,<sup>46</sup> the Asian Elephant Conservation Act,<sup>47</sup> and the Rhino and Tiger Conservation Act,<sup>48</sup> which have resulted in a great deal of progress on behalf of the species they were designed to protect.<sup>49</sup> The purpose of the Great Ape Conservation Act is to promote efforts to preserve five species of great apes: chimpan-

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<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 2.

<sup>37</sup> *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES) (July 1, 1975 ) 27 U.S.T. 1087.

<sup>38</sup> *Id.* at App. I.

<sup>39</sup> 16 U.S.C. § 1531 (2000).

<sup>40</sup> Doris Day Animal League, *The Great Ape Conservation Act* <<http://www.ddal.org/publicationsfacts.html>> (accessed Jan. 9, 2001).

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

<sup>42</sup> *Id.*; Sen. Rpt. 106-472, at §§ 1-2.

<sup>43</sup> Congressman George Miller, *Congress Gives Final Approval to Miller's "Great Ape" Rescue Bill* <<http://resourcescommittee.house.gov/106cong/democrat/press/rel1020.html>> (accessed Jan. 30, 2001).

<sup>44</sup> H.R. 4320, 106th Cong. at 1.

<sup>45</sup> 16 U.S.C. § 6301 (2000).

<sup>46</sup> *Id.* § 4201.

<sup>47</sup> *Id.* § 4211.

<sup>48</sup> *Id.* § 5304.

<sup>49</sup> Doris Day Animal League, *supra* n. 40.

zees, gorillas, bonobos, orangutans, and gibbons.<sup>50</sup> To accomplish this goal, the Act authorizes up to five million dollars per year, through fiscal year 2005,<sup>51</sup> to support the conservation and protection of great apes by providing grants to local wildlife management authorities and other organizations in Africa and Asia committed to protecting the animals and their habitats.<sup>52</sup> Further, funds cannot be used for the captive breeding of great apes, except for their release into the wild. The Act establishes the Great Ape Conservation Fund within the Multinational Species Conservation Fund to provide such financial assistance.<sup>53</sup>

### III. THE CHIMP ACT

There are currently more than 1700 captive chimpanzees housed in laboratories in the United States for various research purposes, including infectious disease testing, AIDS research, spinal and brain injury research, and toxicity testing.<sup>54</sup> However, many of these chimpanzees are no longer used in biomedical research.<sup>55</sup> Until recently, the government failed to consider the fate of these “surplus” chimpanzees.<sup>56</sup> Congress passed the Chimpanzee Health Improvement, Maintenance, and Protection Act (CHIMP Act),<sup>57</sup> which was sponsored by Representative James Greenwood (R-PA) and Senator Bob Smith (R-NH), in an effort to provide a permanent sanctuary for surplus chimpanzees who are considered no longer necessary or useful for scientific research. President Clinton signed the Act into law on December 20, 2000.<sup>58</sup>

In 1986, the National Institutes of Health (NIH) initiated a breeding program for chimpanzees designated for AIDS research.<sup>59</sup> NIH did not plan for the chimpanzees’ long term care because they expected the chimps to die early from complications relating to research.<sup>60</sup> However, chimpanzees proved to be unsuitable specimens for AIDS research, and as a result, the federal government now owns a surplus of

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<sup>50</sup> Sen. Rpt. 106-472, at § 3.

<sup>51</sup> *Id.*

<sup>52</sup> Humane Society of the United States, *supra* n. 33.

<sup>53</sup> Sen. Rpt. 106-472, at § 3. The Multinational Species Conservation Fund was established in Title 1 of the fiscal year 1999 Department of Interior and Related Agencies Appropriations Act to consolidate three existing conservation grant programs. 16 U.S.C. § 4246 (2000). The Great Ape Conservation Act is now included as a separate account in the Multinational Species Conservation Fund. *Id.*

<sup>54</sup> 146 Cong. Rec. H10554 (daily ed. Oct. 24, 2000) (statement by Rep. Maloney).

<sup>55</sup> Doris Day Animal League, *Chimpanzee Health Improvement, Maintenance and Protection Act* <<http://www.ddal.org/factsheettext/textCHIMP.html>> (accessed Jan. 9, 2001).

<sup>56</sup> 146 Cong. Rec. at H10554.

<sup>57</sup> 42 U.S.C. § 210 (West 2001).

<sup>58</sup> Doris Day Animal League, *supra* n. 55.

<sup>59</sup> Sen. Rpt. 106-494, at 1 (Oct. 10, 2000).

<sup>60</sup> *Id.* at 1-2.

several hundred chimps.<sup>61</sup> The surplus chimpanzees remain in expensive federally funded research laboratory facilities.<sup>62</sup> In 1994, the NIH requested advice from the National Research Council (NRC) on options for the long-term care of chimps in research.<sup>63</sup> The NRC recommended that chimpanzees that are no longer necessary for research and breeding should be placed in sanctuaries “capable of providing for [their] long-term care and well-being . . . to achieve the best and most cost-effective solutions.”<sup>64</sup> Their report rejected the option of euthanization of surplus chimps due to input from the scientific community and the general public, who demanded the chimps be retired and provided with a suitable environment.<sup>65</sup> Further, the NRC report acknowledged a “moral responsibility” for the long-term care of chimps used in scientific research for the benefit of humans.<sup>66</sup>

Despite the NRC’s finding that sanctuaries are the “best and most cost-effective” solution for surplus chimps,<sup>67</sup> NIH strongly opposed any sanctuary system.<sup>68</sup> NIH opposes a permanent sanctuary system for surplus chimpanzees because it argues that 1) many surplus chimps would pose a significant health threat to caretakers and unaffected animals due to their diseases, 2) retired chimps would be inaccessible if the need for future biomedical research were to arise, and 3) sanctuary systems would be too costly.<sup>69</sup>

As a result of NIH’s opposition to a permanent sanctuary system for chimps, the CHIMP Act (S. 2725)<sup>70</sup> was amended prior to its enactment to include an exception allowing retired chimpanzees to be returned to research facilities in certain circumstances.<sup>71</sup> For example, a sanctuary chimpanzee could be returned to research under the exception if the chimp is required because of a research protocol he endured in the past, combined with a technological advance that was not available or invented at the time he was released, and if he could provide extremely useful information essential to address an important public health need.<sup>72</sup> Further, the proposed research can only involve minimal pain and distress to the chimpanzee and its social group.<sup>73</sup> In ad-

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<sup>61</sup> *Id.* at 2.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* (NRC 1997 report to NIH, *Chimpanzees in Research: Strategies for their Ethical Care, Management and Use*).

<sup>65</sup> *Id.* at 2.

<sup>66</sup> Doris Day Animal League, *supra* n. 55.

<sup>67</sup> Sen. Rpt. 106-494, at 2.

<sup>68</sup> 146 Cong. Rec. H10553 (daily ed. Oct. 24, 2000) (statement by Rep. Dingell).

<sup>69</sup> *Id.*

<sup>70</sup> Sen. 2725, 106th Cong. (2000).

<sup>71</sup> 146 Cong. Rec. S11654 (daily ed. Dec. 6, 2000) (statement of Sen. Smith) (the amendment came forth as a House amendment to Sen. 2725 in the form of H.R. 3514, which passed and became the CHIMP Act. *See* H.R. 3514, 106th Cong. (2000)).

<sup>72</sup> *Id.*

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



dition, only applicants who have never violated the AWA may seek the research.<sup>74</sup>

Despite this exception, the CHIMP Act will improve the welfare of many chimps and has received overwhelming support by the biomedical research community, zoological community, and animal welfare groups,<sup>75</sup> such as the HSUS, the Society for Animal Protective Legislation, and People for the Ethical Treatment of Animals.<sup>76</sup> Contrary to the claims of NIH, the Congressional Budget Office concluded that “the cost of caring for a chimpanzee in an external sanctuary would be less expensive on a per capita basis than if the government continued to house the animals in federally owned and operated facilities.”<sup>77</sup> Most importantly, the CHIMP Act sanctuaries will provide a far more humane environment and higher quality of life for the chimps because the chimps will live together in groups in a natural setting, rather than deteriorate alone in cages.<sup>78</sup>

#### IV. THE SAFE AIR TRAVEL FOR ANIMALS ACT

An estimated 5000 animals suffer from injury or death from airline transportation due to extreme temperatures, inadequate oxygen supplies, mishandling by baggage handlers, damage to kennels, and unsafe cargo design.<sup>79</sup> There are 2516 documented instances of dogs and cats suffering from severe injuries as a result of air travel.<sup>80</sup> For instance, “[i]n 1990, 32 puppies on a Delta flight and 24 dogs on a United flight suffocated after delays depleted their oxygen supplies.”<sup>81</sup> In response to such tragedies to animal companions, Senator Frank Lautenberg (D-NJ) and Representative Robert Menendez (D-NJ) intro-

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<sup>74</sup> *Id.*

<sup>75</sup> 146 Cong. Rec. H10554 (daily ed. Oct. 24, 2000) (statement of Rep. Brown).

<sup>76</sup> Humane Society of the United States, *Law Animal Bills Signed By President Clinton* <<http://www.hsus.org/programs/government/humanelines.html>> (accessed Jan. 21, 2000).

<sup>77</sup> 146 Cong. Rec. at S11654. It would cost \$8 to \$15 per day to care for each chimp in a sanctuary in comparison to the \$20 to \$30 per day currently spent to maintain each chimp in laboratory cages. *Id.*

<sup>78</sup> 146 Cong. Rec. at H10554.

<sup>79</sup> Humane Society of the United States, *President Clinton Signs “Safe Air Travel For Animals Act” Into Law As Part of FAA Bill* <<http://www.hsus.org/news/pr/040500.html>> (accessed Nov. 2, 2000); People For the Ethical Treatment of Animals, *Factsheets: Companion Animals* <<http://www.peta-online.org/mc/facts/fsc17.html>> (accessed Jan. 26, 2001).

<sup>80</sup> Humane Society of the United States, *Facts About S. 1193 and H.R. 2776—The Safe Air Travel For Animals Act* <[http://www.hsus.org/programs/government/safeair\\_facts.html](http://www.hsus.org/programs/government/safeair_facts.html)> (accessed Jan. 26, 2001).

<sup>81</sup> People for the Ethical Treatment of Animals, *supra* n. 79.

duced S. 1193<sup>82</sup> and H.R. 2776,<sup>83</sup> which led to the passage of the Safe Air Travel For Animals Act.<sup>84</sup>

The purpose of the Act is to make air travel safer for animals by creating reporting requirements on animal incidents, mandatory training for baggage handlers, redesign of cargo holds, and increased liability for airlines.<sup>85</sup> First, the airlines would be required to provide monthly reports to the U.S. Department of Transportation Secretary, including a complete description of any incidents involving the loss, injury, death, or mishandling of any animal during a commercial flight.<sup>86</sup> These reports would be made available to the public and sent to the USDA for investigation of possible Animal Welfare Act violations.<sup>87</sup> Currently, there are no requirements in place to ensure that problems or fatalities are reported, therefore, the number of air transportation tragedies that really occur is unknown. Second, the proposed act would require mandatory training in animal care and "safe transport techniques" for baggage personnel.<sup>88</sup> Third, airlines would be required to retrofit their airplanes for fire prevention and improved temperature control and ventilation systems.<sup>89</sup> Finally, the legislation would raise civil penalties imposed on airlines due to pet injury, death, or loss from \$2500 to \$5000 per incident and increase the amount of money recoverable by a pet owner to twice the amount recoverable for a piece of luggage.<sup>90</sup>

Although the opposition was few in numbers, it was well funded and successful in eliminating both the cargo hold design provision and increased monetary compensation from the Act. The airlines attacked the proposed legislation for being unnecessary and expensive to implement.<sup>91</sup> They assert that staff is specially trained to accommodate the needs of traveling pets and insist the public voice keeps them in check.<sup>92</sup>

However, the training and reporting requirements of the Safe Air Travel For Animals Act were adopted in the Federal Aviation Administration Reauthorization Act, which was signed into law by President

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<sup>82</sup> Sen. 1193, 106th Cong. (2000).

<sup>83</sup> H.R. 2776, 106th Cong. (2000).

<sup>84</sup> 49 U.S.C. § 41721 (West 2001) (Sen. 1193 and H.R. 2776 were defeated and an amended version was introduced as part of H.R. 1000, which was eventually enacted as the Safe Air Travel for Animals Act).

<sup>85</sup> Humane Society of the United States, *supra* n. 80.

<sup>86</sup> *Id.*

<sup>87</sup> Humane Society of the United States, *Still Waiting On Safer Skies For Animals* <<http://www.hsus.org/programs/government/humanelines.html>> (accessed Dec. 6, 2000).

<sup>88</sup> *Id.*

<sup>89</sup> Humane Society of the United States, *supra* n. 80.

<sup>90</sup> *Id.*

<sup>91</sup> Cindy Skrzycki, *Bill's Pet Provision Peeves Airlines*, Wash. Post E01 (Nov. 12, 1999).

<sup>92</sup> *Id.*

Clinton on April 5, 2000.<sup>93</sup> Proponents of the Act remain supportive because it represents a first step toward safer airline travel for animals,<sup>94</sup> yet acknowledge that efforts to further improve conditions for the air transport of animals need to continue.<sup>95</sup> Unfortunately, despite the passage of many months since the training and reporting requirements became law, the Department of Transportation has yet to develop the regulations to specify the format and content of the airline reports and training procedures.<sup>96</sup> Until these regulations are developed, the airlines will not implement these new protections for animals.<sup>97</sup>

#### V. USDA PROPOSES NEW ANIMAL WELFARE ACT REGULATIONS

In 1999, the Alternatives Research & Development Foundation sued the USDA to force the agency to remove its regulatory exemption<sup>98</sup> for rats, mice, and birds from protection under the AWA.<sup>99</sup> The settlement specifically overturns current regulations which exempt rats, mice, and birds as protected animals.<sup>100</sup> However, Congress stalled implementation of the proposed rule by injecting an eleventh hour amendment in the Fiscal Year 2001 Agriculture Appropriations Bill forbidding any funds from being used to enforce the protection of mice, rats, and birds.<sup>101</sup>

The AWA mandates the humane treatment of animals used for scientific research through the governance of testing protocols, mandatory husbandry guidelines, and euthanization procedures. Although Congress used a broad definition of “animal” in the AWA, which included all warm-blooded animals used in research, except horses, livestock, and poultry, the USDA promulgated regulations which exempted rats, mice, and birds from the AWA’s protections.<sup>102</sup> The USDA claimed there were not enough funds to provide for inspectors.<sup>103</sup> The exclusion effectively removed from protection approximately 95% of the animals used in research in the United States.<sup>104</sup>

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<sup>93</sup> 49 U.S.C. § 41721.

<sup>94</sup> Humane Society of the United States, *supra* n. 80.

<sup>95</sup> *Id.*

<sup>96</sup> Humane Society of the United States, *supra* n. 87.

<sup>97</sup> *Id.*

<sup>98</sup> 9 C.F.R. § 1.1 (2000) (explicitly excluding birds, rats of the genus *Rattus*, and mice of the genus *Mus* bred for use in research).

<sup>99</sup> 7 U.S.C. §§ 2131-2159.

<sup>100</sup> 64 Fed. Reg. 10400 (Mar. 4, 1999). This is only a proposed rule. At the printing date of this law review it has not yet been finalized.

<sup>101</sup> Pub. L. No. 106-387, 114 Stat. 1549 (2000).

<sup>102</sup> 9 C.F.R. § 1.1.

<sup>103</sup> Janet Raloff, *Of Rats, Mice, and Birds: Fireworks Erupt Over an Extension of Rules that Protect Lab Animals*, 158 Science News 21 (Nov. 18, 2000) (available in 2000 WL 8830998).

<sup>104</sup> Wilson Valentin, *USDA Agrees to Alter Animal Welfare Act* <<http://www.foxnews.com/science/100300/usda.sml>> (Oct. 3, 2000).

As part of the settlement, the USDA agreed to several conditions to ensure implementation of the new regulations. The USDA must now promulgate standards for food, water, housing, and pain relief for these animals, in addition to amending its definition of animal to include rats, mice, and birds.<sup>105</sup> The new rule will require inspectors to check labs for cage size, food and water dishes, and sanitation;<sup>106</sup> however, new funding for extra inspectors has not been established.<sup>107</sup>

Funding for these new inspections is a great concern. Currently, inspectors check every cage of every single animal on an annual basis.<sup>108</sup> The USDA spends about \$10 million each year on inspections.<sup>109</sup> Expenses for additional inspections will either come out of current funds or Congress will need to increase funding. If Congress does not approve additional funds, the USDA will need to decide on a new method of inspections. USDA inspection officers have said they will use sampling inspections or they will adopt an inspection scheme where they check larger institutes more regularly than small research locations.<sup>110</sup>

Although research institutions oppose the new regulations, larger research institutions will experience little effect from the proposed amendment because the U.S. Public Health Service regulations are very similar to the USDA's.<sup>111</sup> The regulations control where research funding from the NIH is invested.<sup>112</sup> Many of these larger research institutes already meet the proposed USDA regulations for animal welfare because they also meet the requirements of the U.S. Public Health Service.<sup>113</sup> Thus, the major obstacles that these research institutes face are more paperwork and some confirmation of compliance with the new regulations.<sup>114</sup> However, smaller research institutes do not compete for funding from the NIH; therefore, these organizations will be forced to comply with the new regulations at great cost.<sup>115</sup> Both groups' concerns stem from these compliance costs. As such, Johns Hopkins University worries that research on animals will become too expensive to continue.

Animal rights groups applaud the new AWA regulations because they would increase oversight of animals used for scientific research.

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

<sup>106</sup> Dan Vergano, *Law Injected Into Animal Testing: Researchers Cite Obstacles if Mice, Rats, and Birds Are Protected*, USA Today D10 (Oct. 31, 2000) (available in 2000 WL 5794088).

<sup>107</sup> Nicholas Wade, *What's Next? Rights for Mites?*, N.Y. Times Abstracts 2 (Oct. 15, 2000) (available in 2000 WL 31908038).

<sup>108</sup> Vergano, *supra* n. 106.

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

<sup>110</sup> Wade, *supra* n. 107.

<sup>111</sup> Vergano, *supra* n. 106.

<sup>112</sup> *Id.*

<sup>113</sup> Raloff, *supra* n. 103.

<sup>114</sup> Vergano, *supra* n. 106.

<sup>115</sup> The industry estimates these costs to range between \$80 million and \$200 million for compliance. Valentin, *supra* n. 104.

These groups' concerns focus on ensuring that mice, rats, and birds are protected under the AWA, and on finding effective alternatives to using these animals for research.<sup>116</sup> European scientists use approximately forty available alternatives to animal research.<sup>117</sup> For example, England, France, and Germany regularly use alternatives to animal research, and regulate experimentation on mice, rats, and birds, yet they remain leaders in scientific research.<sup>118</sup>

The groups' hopes were thwarted at the end of the 106th Congress when Senator Thad Cochran (R-Miss.) added an eleventh hour amendment to the Fiscal Year 2001 Agriculture Appropriations Act.<sup>119</sup> Research groups successfully convinced Senator Cochran to propose the amendment so that they had time for comments and public hearings before the USDA.<sup>120</sup> The amendment removed funding necessary for the enforcement of the new regulations.<sup>121</sup> Although temporarily stalled, the new regulations will pass and research groups will need to adjust. The cost associated with implementing the new regulations may cause a very large change in the way research is done in the United States by limiting testing on animals.

## VI. THE DOWNED ANIMAL BILL

"Downed animals," primarily cows, are those that are too weak to stand or walk.<sup>122</sup> Many of these animals are kicked, prodded, or dragged to meat auctions and market.<sup>123</sup> This practice causes animals to suffer injuries ranging from bruises to torn ligaments and broken bones.<sup>124</sup> Industry groups estimate that about seventy-five to ninety percent of downers can be prevented.<sup>125</sup> Since downed animals make up a small part of the livestock industry, removal of these animals from the market stream will result in little economic loss.

State anti-cruelty statutes and federal animal welfare laws fail to protect downed animals because the statutes generally exempt "normal agricultural operations."<sup>126</sup> For example, the Packers and Stockyard Act of 1921<sup>127</sup> only deals with the handling of animals at

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<sup>116</sup> Raloff, *supra* n. 103.

<sup>117</sup> Vergano, *supra* n. 106.

<sup>118</sup> Valentin, *supra* n. 104.

<sup>119</sup> Raloff, *supra* n. 103.

<sup>120</sup> Vergano, *supra* n. 106.

<sup>121</sup> Raloff, *supra* n. 103.

<sup>122</sup> Humane Society of the United States, *Keep Downers Out of the Grocery Store* <<http://www.hsus.org/whatnew/downerban012501.html>> (accessed Jan. 25, 2001).

<sup>123</sup> *Id.*

<sup>124</sup> Farm Sanctuary, *Downed Animal . . .* <<http://www.nodowners.org>> (accessed Feb. 25, 2001).

<sup>125</sup> Humane Society of the United States, *Government Affairs* <[http://www.hsus.org/programs/government/downed\\_fact\\_sheet.html](http://www.hsus.org/programs/government/downed_fact_sheet.html)> (Mar. 2000).

<sup>126</sup> Farm Sanctuary, *supra* n. 124; Pamela Fransch, Stephen K. Otto, Kristen M. Olsen & Paul A. Ernest, *State Animal Anti-Cruelty Statutes: An Overview*, 5 Animal L. 69 (1999).

<sup>127</sup> 7 U.S.C. §§ 181–229 (2000).

stockyards.<sup>128</sup> Additionally, the AWA<sup>129</sup> specifically excludes agricultural animals from its protection. To remedy these problems, Congress proposed the Downed Animal Bill, banning the sale or transfer of downed animals.

Representative Gary Ackerman (D-N.Y./5th) and Senator Daniel Akaka (D-Haw.) introduced identical bills criminalizing the sale or transfer of any livestock that is “nonambulatory,” unless the animals have been “humanely euthanized.”<sup>130</sup> Nonambulatory livestock includes those animals that are “unable to stand and walk unassisted.”<sup>131</sup> Humane euthanization of an animal entails killing it “by mechanical, chemical, or other means that immediately render the animal unconscious, with this state remaining until the animal’s death.”<sup>132</sup>

The proposed Downed Animal Protection Act includes civil penalties up to \$2500 for each violation, and each day the violation continues will be considered a separate violation.<sup>133</sup> Similarly, criminal violations may be filed for up to one year after violations occur.<sup>134</sup> The new section does not take effect until one year after passage of the bill.<sup>135</sup>

Supporters of the legislation, such as the HSUS and Farm Sanctuary, advocate for the humane treatment of animals before they become downed. Since seventy-five to ninety percent of downers are preventable, these groups hope animals will receive better care and treatment when they become sick to prevent them from becoming downed.<sup>136</sup> Many industry groups already attempt to disallow downed animals from being sold before they are euthanized. The American Veterinary Medical Association and the Livestock Marketing Association both support bans on the sale of downed animals—however, industry efforts to prevent the sale of downed animals have been unsuccessful.<sup>137</sup>

The Downed Animal Protection Act proposed the addition of a new section to the Packers and Stockyards Act. However, both bills stalled in congressional committees. The bills are expected to be re-introduced in the 107th Congress.<sup>138</sup> Impressively, the Downed Animal Protection Act garnered wide support in both branches of Congress. One hundred

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<sup>128</sup> Farm Sanctuary, *supra* n. 124.

<sup>129</sup> 7 U.S.C. §§ 2131-2159.

<sup>130</sup> H.R. 443, 106th Cong. § 2(a) (1999); Sen. 515, 106th Cong. § 2(a) (1999) [the language of both bills are the same; therefore, hereinafter both bills will be referred to as the “Downed Animals Protection Act”].

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.* § 2(b).

<sup>136</sup> *Id.*

<sup>137</sup> Farm Sanctuary, *Support the Downed Animal Protection Act (H.R. 443 and S. 515)* <[http://www.nodowners.org/intro\\_dapa.html](http://www.nodowners.org/intro_dapa.html)> (accessed Feb. 6, 2001).

<sup>138</sup> For further information, see <<http://www.hsus.org/programs/government/leglineup.html>>.

forty members of the House and ten senators, from Senator Bob Smith (R-NH) to Senator Dianne Feinstein (D-CA), cosponsored the separate bills.

Although both bills are expected to be reintroduced, HSUS and Farm Sanctuary are pursuing other methods to prohibit the sale of downed animals. Animal protection groups convinced the USDA to adopt a policy stating it would no longer purchase meat from downed animals for federal programs, most notably the national school lunch program.<sup>139</sup> Additionally, the Food and Drug Administration is also considering a ban on all downed animals being used for food.<sup>140</sup> California, Maryland, and Illinois have already banned the sale of downed animals.<sup>141</sup> Thus, even if Congress does not pass these protections, downed animals may be banned from sale by administrative and state action in the near future.

#### VII. CONGRESSIONAL RESOLUTION ACKNOWLEDGING THE LINK BETWEEN ANIMAL CRUELTY AND JUVENILE CRIME

In the past several years, violence has been committed by children against other children, including the shootings at Columbine High School in Colorado and at Thurston High School in Oregon. The perpetrators of these crimes all abused animals before committing their crimes against humans. As such, Congress has been compelled to address this link in the form of a resolution.<sup>142</sup>

Representatives Tom Lantos (D-CA) and Christopher Shays (R-CT) introduced a concurrent resolution recognizing the link between juvenile crime and the abuse of animals. Twenty-one members of the House co-sponsored the resolution.<sup>143</sup> The resolution

[e]xpress[es] the sense of Congress regarding the link between violence against animals and violence against humans and urging greater emphasis upon identifying and treating individuals who are guilty of violence against animals . . . in order to prevent violence against humans and urging research to increase understanding of the connection between cruelty to animals and violence against humans.<sup>144</sup>

The resolution acknowledges several existing links between violence to animals and violence to humans. For example, studies conducted by the FBI identify animal abuse as part of the homicide triad indicating a violent personality.<sup>145</sup> In addition, the resolution recog-

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<sup>139</sup> Humane Society of the United States, *supra* n. 122; Farm Sanctuary, *USDA Says No Downers in School Lunch Program* <<http://www.nodowners.org/schoollunch.html>> (accessed Feb. 6, 2001).

<sup>140</sup> Humane Society of the United States, *supra* n. 122.

<sup>141</sup> Farm Sanctuary, *Legislative Work* <<http://www.nodowners.org/hearing.htm>> (Sept. 28, 1994).

<sup>142</sup> H.R. Con. Res. 338, 106th Cong. (1999).

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

nizes that a high number of criminals currently in prison admit to abusing animals; recent school violence has been committed by students who first abused animals; those who abuse animals are more likely to commit spousal and child abuse; abuse of animals may fuel the desire to commit violence against people; and animal abuse is a strong warning signal of future violence against people.<sup>146</sup> Finally, the resolution supports the enactment of animal abuse laws because they give law enforcement officials the chance to bring potentially violent people into the criminal justice system before they commit violence against people.<sup>147</sup>

Through this recognition, the resolution urges all caregivers and others who work with people to be aware of the connection so they are able to monitor and evaluate those who commit violence against animals.<sup>148</sup> It also recommends that agencies encourage research to increase understanding of the connection between nonhuman animal and human violence, and suggests that law enforcement treat cases of animal cruelty seriously because of the potential for violence against humans.<sup>149</sup> Although the resolution does not allocate funding or have any legislative force, agencies would be able to develop policies to address these congressional concerns.

The resolution was introduced on May 25, 2000 and sent to the Committees on Commerce, Agriculture, and the Judiciary for consideration. Each committee referred the resolution to its respective subcommittees. No action has taken place since the referrals on June 8, 2000. At the time of press, the bill did not have enough political support to work its way through Congress.<sup>150</sup>

#### VIII. STATE INITIATIVES: A REVIEW OF THOSE TO APPLAUD AND THOSE TO BE AWARE OF

Many states have direct ways for the general public to introduce new laws and constitutional amendments through initiatives, referrals and referendums.<sup>151</sup> The initiative process has recently become critical to the development of animal protection laws in each state, as well as a driving force behind federal legislation. Although the initiative process can be an asset to animal protection, it can also be a detriment. This

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<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> Telephone Interview with Nancy Perry, Dir. of Govt. Affairs, Humane Socy. of the U.S. (Feb. 6, 2001).

<sup>151</sup> Initiatives are measures that come directly from the people of the state. Referrals are measures that are sent from the state legislature for confirmation to the people. Referrals often include constitutional amendments and other very controversial issues. Referendums occur when a state legislature votes on a bill in session and the people, through a signature process, force the measure to be voted on by all the people of the state.



section discusses the pro- and anti-animal initiatives that were passed in 2000.

A. *Anti-trapping Initiatives: Washington and Oregon*

Washington and Oregon voters faced similar anti-trapping measures in 2000. The initiatives proposed to ban the use of particular traps and two poisons often used in the trapping industry. In both states, the new proposals made it through the initiative process. The law passed in Washington<sup>152</sup> 1,315,903 votes to 1,093,587 votes (or 54.61% to 45.38%). However, in Oregon the measure failed by a vote of 606,939 to 867,219 (39% to 61%).<sup>153</sup> Because the measures were nearly identical, only the Washington law will be discussed.

The law bans “the use of any steel-jawed leghold trap, neck snare, or other body-gripping trap to capture any mammal for recreation or commerce in fur.”<sup>154</sup> Body-gripping traps include steel-jawed leghold traps, padded-jaw leghold traps, Conibear traps, neck snares, and non-strangling foot snares.<sup>155</sup> It also bans the sale or trade of an animal who was captured using any of these trapping methods.<sup>156</sup> Finally, the law bans the use of sodium fluoroacetate or sodium cyanide to poison any animal.<sup>157</sup> California, Arizona, Massachusetts, and Colorado have already passed similar measures.<sup>158</sup>

The measure allows the Director of the Fish and Wildlife Commission to grant permits that allow trapping in special circumstances. Permits may be granted to protect public health and safety when an “animal problem” exists on a person’s property and reasonable alternative methods to trap the animal have been used and failed or cannot be used. Also, both the state agency and the U.S. Fish and Wildlife Service may grant permits for the protection of listed endangered and threatened species. An “animal problem” exists when an animal threatens or damages private property, livestock, or any other domestic animal.<sup>159</sup> There are also exemptions for trapping that is necessary to conduct legitimate wildlife research.<sup>160</sup> In addition, the law still allows the use of “cage and box traps, suitcase-type live beaver traps, and common rat and mouse traps.”<sup>161</sup> A violation of the measure is a gross misdemeanor.<sup>162</sup> In addition to criminal penalties, a violator’s

<sup>152</sup> Initiative 713, Chapter 77.15 of Wash. Rev. Code Ann. (Wash. 2000); State of Washington, *Washington State Election Results* <<http://www.vote.wa.gov/vote2000/results/index.tpl>> (Nov. 7, 2000).

<sup>153</sup> Measure 97 (Or. 2000).

<sup>154</sup> Initiative 713 § 3(1).

<sup>155</sup> *Id.* § 2(2).

<sup>156</sup> *Id.* § 3(2).

<sup>157</sup> *Id.* § 4.

<sup>158</sup> Paul Queary, *Ballot Box Becomes Battleground in War Over Hunting Rights Game*, L.A. Times B5 (Nov. 5, 2000) (available at 2000 WL 25914598).

<sup>159</sup> Initiative 713 § 2(5).

<sup>160</sup> *Id.* § 3(4)(d).

<sup>161</sup> *Id.* § 2(2).

<sup>162</sup> *Id.* § 5.

trapping license is revoked for five years.<sup>163</sup> If there is a second violation, the license is permanently revoked.<sup>164</sup>

Many animal protection groups supported both initiatives in Washington and Oregon. The HSUS, the Progressive Animal Welfare Society, the Fund for Animals, the American Society for the Prevention of Cruelty to Animals, the Audubon Society, and members of veterinary groups all supported the measures.<sup>165</sup> These groups were concerned about inhumane and indiscriminate traps injuring wildlife and family pets.<sup>166</sup>

The greatest opposition to the initiatives came from groups who were concerned there were not enough exemptions in the measures—specifically the absence of an exemption for moles and gophers. Before the election, opponents of the measures pointed out that there were no exceptions for mole or gopher traps, although there were exceptions for mouse and rat traps.<sup>167</sup> This was thought to be the major reason responsible for the initiative's defeat in Oregon and is still a concern in Washington. In fact, the Washington Fish and Wildlife Division and Attorney General's office have interpreted the act as applying to mole and gopher traps.<sup>168</sup> Thus, it is now illegal to trap moles in body-gripping traps.

Oregon groups continue to fight for anti-trapping measures. They are currently lobbying for an amended bill with the Oregon legislature,<sup>169</sup> which will address the concerns that opponents had during the election period.<sup>170</sup>

### *B. Placing Constitutional Restrictions on Wildlife Initiatives: Alaska & Arizona*

The recent success of animal protection groups has galvanized those who support the right to hunt and fish across the country. Arizona voters passed an anti-trapping initiative similar to the Oregon and Washington measures in 1994, and an Alaska initiative prevented "land-and-shoot" wolf hunting in 1996.<sup>171</sup> Partly in response to these pro-animal measures, the Arizona and Alaska legislatures referred constitutional restrictions on wildlife initiatives to their respective citi-

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<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> Linda Ashton, *Animal, Land Sides Battle on Trap Ban*, *The Oregonian* B2 (Nov. 3, 2000) (available in 2000 WL 27105390).

<sup>166</sup> *Id.*

<sup>167</sup> Jon Hahn, *New Trap Ban Lack Tunnel Vision*, *Seattle Post-Intelligencer* E2 (Jan. 30, 2001) (available in 2001 WL 3552517).

<sup>168</sup> *Id.*

<sup>169</sup> Tomoko Hosaka, *Animal Rights: From Protest to Policy*, *The Oregonian* D4 (Jan. 31, 2001) (available in 2001 WL 3584010).

<sup>170</sup> *Id.*

<sup>171</sup> Paul Queary, *Ballot Box Becomes Battleground in War Over Hunting Rights Game*, *L.A. Times*, B5 (Nov. 5, 2000) (available in 2000 WL 25914598).

zens.<sup>172</sup> The Alaskan measure was defeated by a vote of 96,253 to 179,552 (34.90% to 65.10%).<sup>173</sup> The Arizona proposition was defeated by a vote of 538,104 to 896,500 (38% to 62%).<sup>174</sup>

The Alaska measure proposed to amend Article XI, § 7 of the Alaska Constitution to say, “the initiative process shall not be used to . . . permit, regulate, or prohibit the taking or transportation of wildlife, [or] prescribe seasons or methods for the taking of wildlife.”<sup>175</sup> The Arizona measure proposed to add section 23 to Article XXII of the Constitution of Arizona and would have limited “an initiative that permits, limits, or prohibits the taking of wildlife, or the methods or seasons, thereof, [to] not become law unless approved by at least two-thirds of the votes cast on the proposition.”<sup>176</sup>

These measures would have effectively prevented most, and in Alaska’s case all, wildlife initiatives. The Arizona restriction would only apply to initiatives and not to legislative bills or referrals to the voters.<sup>177</sup> The same would be true of the Alaska measure because the language specifically refers only to initiatives.<sup>178</sup> However, their full effects would be difficult to determine due to the measures’ undefined and broad language.

Sponsors of the Alaska measure are concerned that wildlife management is being accomplished on an ad-hoc, uninformed basis, rather than by professionals with scientifically backed information.<sup>179</sup> They further advocate that the Alaska Department of Fish and Game (ADFG) is the proper agency to initiate wildlife management decisions, and that the current advisory system to the ADFG indicates the agency’s willingness to include public input.<sup>180</sup> They remain concerned that non-Alaskans are forcing measures upon Alaskans without being truly concerned about the “Alaskan way of life.”<sup>181</sup>

In contrast, opponents of the Alaska measure viewed this amendment as too restrictive on the rights of Alaskans, and argued that Alaskan voters should have the ability to decide wildlife issues when

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<sup>172</sup> Alaska H. Jt. Res. 56, 21st Leg. (2000) (available at Alaska Division of Elections, *2000 General Election Ballot Measures* <<http://www.gov.state.ak.us/ltgov/elections/oep2000/bm00.htm>>); Ariz. Sen. Con. Res. 1006, 44th Leg., 2d Reg. Sess. (2000) (available at <http://www.azleg.az.us/legtext/44leg/2r/bills/scr1006h.htm>).

<sup>173</sup> State of Alaska, *Election Summary Report* <<http://www.gov.state.ak.us/ltgov/elections/elect00/00genr/data/results.htm>> (Dec. 5, 2000).

<sup>174</sup> Arizona Secretary of State, *State of Arizona Official Canvass* <<http://www.sosaz.com/election/2000/General/Canvass2000GE.pdf>> (Nov. 27, 2000).

<sup>175</sup> Alaska H. Jt. Res. 56, at § 1.

<sup>176</sup> Ariz. Sen. Con. Res. 1006, at § 3.

<sup>177</sup> *The Propositions on Today’s Ballot*, The Ariz. Republic A10 (Nov. 7, 2000) (available in 2000 WL 8081759).

<sup>178</sup> Alaska H. Jt. Res. 56.

<sup>179</sup> Alaska Division of Elections, *2000 General Election Ballot Measures: Statement in Support* <<http://www.gov.state.ak.us/ltgov/elections/oep2000/bm00.htm>> (accessed Jan. 30, 2001).

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

needed.<sup>182</sup> The opposition even quoted the Commissioner of the ADFG who opposed this measure.<sup>183</sup> Although these particular measures failed, animal rights groups can expect that other initiatives and referrals will be introduced on future ballots. The newly galvanized opposition to animal rights groups continues to resist against future protection measures.

C. “Right to Hunt” Initiatives: North Dakota & Virginia

As in Arizona and Alaska, North Dakota and Virginia hunting groups were concerned about recent successes of animal protection initiatives across the nation. The pro-hunting groups used these recent animal welfare successes to form coalitions and convince their respective legislatures that something needed to be done to stop these measures.

North Dakota and Virginia both passed constitutional amendments to guarantee the right to hunt and fish during the last election. The measures were referred to the people by their legislatures. The Virginia measure passed with 1,448,154 votes in favor to 970,266 votes against (59.9% to 40.1%).<sup>184</sup> In North Dakota, the measure passed with 206,443 votes in favor, with 61,531 votes against (77.04% to 22.96%).<sup>185</sup>

North Dakota’s measure added a new section to Article XI of the State Constitution: “[h]unting, trapping, and fishing and the taking of game and fish are a valued part of our heritage and will be forever preserved for the people and managed by law and regulation for the public good.”<sup>186</sup> Virginia’s measure is substantially the same, and adds Section 4 to Article XI (Conservation) to codify that “[t]he people have a right to hunt, fish, and harvest game, subject to such regulations and restrictions as the General Assembly may prescribe by general law.”<sup>187</sup> There are no other provisions to the amendments. These two states joined Minnesota and Alabama as states who have recently added “right to hunt” clauses to their state constitutions.<sup>188</sup>

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<sup>182</sup> Alaska Division of Elections, *2000 General Election Ballot Measures: Statement in Opposition* <<http://www.gov.state.ak.us/ltagov/elections/oep2000/bm00.htm>> (accessed Jan. 30, 2001).

<sup>183</sup> “The ADFG believes that removing wildlife management issues from the initiative process will lead to more conflict, public cynicism, and divisiveness among Alaskans.” *Id.*

<sup>184</sup> Commonwealth of Virginia, *Official Election Results* <[http://www.sbe.state.va.us/web\\_docs/election/results/2000/nov/nov2000/](http://www.sbe.state.va.us/web_docs/election/results/2000/nov/nov2000/)> (Nov. 7, 2000).

<sup>185</sup> State of North Dakota, *2000 November 7 General Election North Dakota* <<http://www.state.nd.us/sec/Elections/2000unofficial/2000officialgeneralresults110700.htm>> (Nov. 20, 2000).

<sup>186</sup> N.D. H. Con. Res. 3018, 1999 Sess. Laws (2000) (available at <<http://www.state.nd.us/sec/Elections/2000genconstmeauren01ballotlanguage.htm>>).

<sup>187</sup> Va. Proposed Constitutional Amend. 2 (2000) (available at <[http://www.sbe.state.va.us/Election/Ballot\\_Issues/Nov2000/proposed\\_constitutional\\_amendment2.htm](http://www.sbe.state.va.us/Election/Ballot_Issues/Nov2000/proposed_constitutional_amendment2.htm)>).

<sup>188</sup> Stephanie Simon, *Hunters Win Constitutional Cover*, L.A. Times A5 (Nov. 21, 2000) (available in 2000 WL 25920593).

Hunters in North Dakota were concerned about the proliferation of animal protection statutes cropping up across the nation.<sup>189</sup> “We see what’s happening in the rest of the U.S., and we don’t want that to happen here. We like to hunt and fish. And we don’t see that it’s a problem.”<sup>190</sup> The arguments in Virginia were similar. “The right to hunt and fish is already part of the common law. By giving the right to hunt and fish on a constitutional basis, we afford this right more integrity.”<sup>191</sup>

Opponents argued that the measures were not a threat. Generally, animal rights groups were unconcerned because, under both measures, the states retain the right to regulate hunting and fishing.<sup>192</sup> For example, the ability of the North Dakota legislature to regulate for “the public good” protects any legislation that it may pass. Even proponents of the amendments were somewhat concerned that there could be over-regulation of this newfound constitutional right to hunt.<sup>193</sup> Ultimately, however, the right to hunt and fish is now protected in North Dakota and Virginia, though there may not be an immediate effect because all states have the ability to regulate, and continue to regulate, hunting and fishing.

#### IX. STATE ANTI-CRUELTY STATUTES: 1999-2000

This section provides an overview of states that have passed legislation in 1999 and 2000 to strengthen anti-cruelty laws. This section does not purport to provide a comprehensive review of all anti-cruelty legislation, but only recent developments with a specific focus on the anti-cruelty provisions.

##### A. *Alabama’s Extra Protection for Dogs & Cats from Cruelty*

House Bill 182, prohibiting torture and cruelty to dogs and cats, became effective on August 1, 2000.<sup>194</sup> The statute broadly defines “torture” to include “inhumane treatment or gross physical abuse meant to cause said animal intensive or prolonged pain or serious physical injury” or death.<sup>195</sup> The statute defines “cruel” as “[e]very act, omission, or neglect, including abandonment, where unnecessary or unjustifiable pain or suffering, including abandonment, is caused or where unnecessary pain or suffering is allowed to continue.”<sup>196</sup> The commission of an act of cruelty against a dog or cat is cruelty in the

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<sup>189</sup> *Id.*

<sup>190</sup> *Id.* (quoting Senator Bob Stenehjem).

<sup>191</sup> Pamela Stallsmith, *Ballot Questions: One Hot, One Not: Voters Face Right to Hunt, Lottery Issues*, Richmond Times-Dispatch C4 (Nov. 5, 2000) (quoting Delegate R. Creigh Deeds) (available in 2000 WL 5052142).

<sup>192</sup> Simon, *supra* n. 188.

<sup>193</sup> *Id.*

<sup>194</sup> Ala. Code § 13A-11-240 (2000).

<sup>195</sup> *Id.* § 13A-11-240(a).

<sup>196</sup> *Id.* § 13A-11-240(b).

first degree if a person intentionally tortures or skins the cat or dog, or “offers for sale or exchange or offers to buy or exchange the fur, hide, or pelt of a domestic dog or cat.”<sup>197</sup> First degree cruelty is a class C felony.<sup>198</sup> Second degree cruelty occurs when a person “in a cruel manner, overloads, overdrives, deprives of necessary sustenance or shelter, unnecessarily or cruelly beats, injures, mutilates” a dog or cat, and is a class A misdemeanor.<sup>199</sup>

### B. *Colorado’s Enhanced Sentencing Provision*

Cruelty to animals is a class one misdemeanor in Colorado.<sup>200</sup> The Colorado legislature passed H.B. 1330 in 2000, a bill that amended the animal cruelty laws to remove the discretion from the judge in sentencing any person convicted of cruelty to animals.<sup>201</sup> Because of the amendment, the court must order an evaluation of any person convicted of cruelty to animals, and if necessary, based on the results of the treatment, the person must complete an anger management program or other similar treatment program.<sup>202</sup>

### C. *Delaware’s Expanded Criminal Jurisdiction Over Anti-Cruelty Cases, Intolerance of Cat & Dog Fur Trade, and Increased Punishment for Dogfighting*

Delaware passed S.B. No. 374 on June 30, 2000, which established a prohibition against the unlawful trade in dog and cat by-products.<sup>203</sup> Delaware expanded the original jurisdiction of justices of the peace to include cruelty to animals if punishable as class A and B misdemeanors, provisions which cover the prohibitions of S.B. No. 374.<sup>204</sup> Persons may be convicted of a class B misdemeanor if he or she knowingly or recklessly trades in the fur or hair of a dog or cat.<sup>205</sup> Persons may be convicted of a class A misdemeanor if he or she knowingly or recklessly trades in the flesh of a dog or cat.<sup>206</sup> Any person who is convicted under the new Delaware law may not possess a domestic dog or cat for fifteen years (with an exception for licensed dealers who rely on such sale for at least twenty-five percent of his or her annual gross income), is subject to a \$2500 fine, and must forfeit any dog or cat owned.<sup>207</sup> Further, Delaware also approved H.B. No. 599 on July 13, 2000, which

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<sup>197</sup> *Id.* § 13A-11-241(a).

<sup>198</sup> *Id.*

<sup>199</sup> *Id.* § 13A-11-241(b).

<sup>200</sup> Colo. Rev. Stat Ann. § 18-9-202(2)(a) (West 2001).

<sup>201</sup> *Id.* § 18-9-202(2)(a.5)(III).

<sup>202</sup> *Id.*

<sup>203</sup> Del. Code Ann. tit. 11, § 1325A (2000).

<sup>204</sup> *Id.* § 2702.

<sup>205</sup> *Id.* § 1325A(a).

<sup>206</sup> *Id.* § 1325A(b).

<sup>207</sup> *Id.* § 1325A(c).

changed the classification for the offense of dog fighting or baiting from a class A misdemeanor to a class G felony.<sup>208</sup>

*D. Georgia's Animal Protection Act of 2000*

On April 27, 2000 Georgia passed the Animal Protection Act of 2000, an extensive law encompassing numerous protections for animals. The general cruelty provision criminalized any act by a person that caused "death or unjustifiable physical pain or suffering to any animal by an act, an omission, or willful neglect."<sup>209</sup> A violation of this provision results in a term of imprisonment up to one year and a fine up to \$5000.<sup>210</sup> The statute provides separate elements and punishment for the crime of aggravated cruelty: "A person commits the offense of aggravated cruelty to animals when he or she knowingly and maliciously causes death or physical harm to an animal by rendering a part of such animal's body useless or by seriously disfiguring such animal."<sup>211</sup> The punishment for a conviction of aggravated cruelty to animals is imprisonment up to five years and a fine up to \$15,000.<sup>212</sup> The judge has discretion to order a psychological evaluation of the offender as part of the sentencing.<sup>213</sup>

*E. Michigan Requires Mental Health Evaluation for Juveniles who Commit Animal Anti-Cruelty Violations*

On June 20, 2000, a new bill, S.B. 754, was signed into law and became effective on October 1, 2000.<sup>214</sup> This new law establishes mandatory mental health evaluations for juveniles convicted of violating the State's anti-cruelty statutes,<sup>215</sup> by providing that "the court shall order that the juvenile be evaluated to determine the need for psychiatric or psychological treatment."<sup>216</sup>

*F. New York Criminalizes Aggravated Cruelty to Animals*

The New York legislature passed an aggravated cruelty law which became effective November 1, 1999.<sup>217</sup> The statute provides that an act falls within the statutory prohibition when a person "with no justifiable purpose . . . intentionally kills or intentionally causes serious physical injury to a companion animal with aggravated cruelty" by acting to cause the animal extreme physical pain, or with especially de-

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<sup>208</sup> *Id.* § 1326.

<sup>209</sup> Ga. Code Ann. § 16-12-4(b) (2000).

<sup>210</sup> *Id.* § 16-12-4(b).

<sup>211</sup> *Id.* § 16-12-4(c).

<sup>212</sup> *Id.*

<sup>213</sup> *Id.* § 16-12-4(d).

<sup>214</sup> Mich. Comp. Laws Ann. § 712A.181 (West 2000).

<sup>215</sup> *Id.* § 750.50(b) (anti-cruelty law).

<sup>216</sup> *Id.* § 712A.181.

<sup>217</sup> NY Agric. and Markets Laws § 353-a (McKinney 2000).

praved or sadistic intent.<sup>218</sup> Violations of the statute result in a felony conviction, which is punishable by imprisonment for up to two years.<sup>219</sup>

*G. Virginia Increases Cruelty Penalties, Adds Anger Management for the Convicted, and Punishes the Dog & Cat Fur Trade*

On March 28, 1999, the State of Virginia revamped its existing anti-cruelty statute.<sup>220</sup> The revised law provides that any act of cruelty, including willfully inflicting unnecessary “inhumane injury or pain” or anyone who “unnecessarily beats, maims, mutilates or kills any animal” or “instigates, engages in, or in any way furthers any act of cruelty to any animal” and where the animal was euthanized because of the abuse, is guilty of a class 6 felony.<sup>221</sup> The amendments also provide that the court may order any person convicted of animal cruelty to attend anger management counseling, psychological or psychiatric treatment, or some other treatment program, the costs to be paid by the person convicted.<sup>222</sup> Finally, the 1999 amendments to the anti-cruelty statute state: “It is unlawful for any person to kill a domestic dog or cat. A violation of this subsection shall constitute a class 1 misdemeanor. A second or subsequent violation of this subsection shall constitute a class 6 felony.”<sup>223</sup> In addition, Virginia passed a separate bill outlawing the sale of garments containing cat or dog fur.<sup>224</sup> The law provides: “It is unlawful for any person to sell a garment containing the hide, fur, or pelt which he knows to be that of a domestic dog or cat. A violation of this section shall be punishable by a fine of not more than \$10,000.”<sup>225</sup>

*H. Wyoming Broadens its Anti-Cruelty Provisions*

Wyoming established its general anti-cruelty laws in 1982. Although the Wyoming anti-cruelty law had previously exempted those actors who injured animals “without lawful authority,” the statute was revised on March 14, 2000 to disallow such an exemption and to apply to any person who acts “with intent to cause death, injury or undue suffering.”<sup>226</sup> Further, although the predecessor statute prohibited cruelty to animals where a person “[c]arries an animal in a cruel or inhumane manner,” the revised statute provides that it is a violation when one “[c]arries an animal in a manner that poses undue risk of injury or death.”<sup>227</sup>

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<sup>218</sup> *Id.* § 353-a(1).

<sup>219</sup> *Id.* § 353-a(3).

<sup>220</sup> Va. Code Ann. § 3.1-796.122 (2000).

<sup>221</sup> *Id.* § 3.1-796.122(B).

<sup>222</sup> *Id.* § 3.1-796.122(G).

<sup>223</sup> *Id.* § 3.1-796.122(H).

<sup>224</sup> *Id.* § 3.1-796.128.

<sup>225</sup> *Id.*

<sup>226</sup> Wyo. Stat. Ann. § 6-3-203(a) (2000).

<sup>227</sup> *Id.* § 6-3-203(a)(iii).



X. U.S. UTILIZES PELLY AMENDMENT TO COMPEL JAPAN'S  
COMPLIANCE WITH THE INTERNATIONAL WHALING COMMISSION'S  
PROHIBITIONS ON WHALING

September 13, 2000 marks the third occasion the United States has utilized the Pelly Amendment of the Fisherman's Protective Act<sup>228</sup> to compel Japan to stop "research whaling" in violation of the International Convention for the Regulation of Whaling (ICRW).<sup>229</sup> Japan and the United States are both contracting governments of the ICRW. The ICRW regulates the global conservation of whales through recommendations and resolutions from the International Whaling Commission (IWC). The IWC imposed a moratorium on commercial whaling in 1986; however, since 1987 Japan has unilaterally conducted illegal "research whaling" by harvesting approximately 540 minke whales annually from the Antarctic and the North Pacific.<sup>230</sup>

A. Background

The United States first certified Japan for research whaling in 1998 for harvesting minke whales in the Southern Hemisphere, and again in 1995, for expanding its take to minke in the North Pacific.<sup>231</sup> In April of 2000, Japan declared its intent to expand its "research" program to encompass two additional species: sperm and Bryde's whales.<sup>232</sup> A majority of the IWC members opposed Japan's research program and passed an IWC Resolution that questioned the scientific merits of Japan's research whaling and its proposed methodology.<sup>233</sup> The Resolution further recognized the feasibility of non-lethal means to collect identical data.<sup>234</sup> Despite several diplomatic efforts, including an unprecedented visit to Japan by ambassadors and other high-ranking officials from fifteen countries,<sup>235</sup> Japan's whaling fleet departed on July 29, 2000.<sup>236</sup> Reports confirmed that Japan actively hunted all three species under the auspices of "research whaling."<sup>237</sup>

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<sup>228</sup> 22 U.S.C. § 1978 (2000).

<sup>229</sup> *International Convention for the Regulation of Whaling* (Nov. 10, 1948) 63 Stat. 1716 [hereinafter ICRW]; Norman Y. Mineta, White House Press Briefing, *Press Briefing by Chief of Staff John Podesta, Secretary of Commerce Norman Y. Mineta, NOAA Administrator D. James Baker, NOAA Deputy Assistant Secretary for International Affairs, Roland Schmitten on U.S. Actions on Japanese Whaling* (The White House, Sept. 13, 2000) (copy of transcript at <<http://www.noaa.gov/whales/briefing.htm>>).

<sup>230</sup> National Oceanic and Atmospheric Administration (NOAA), *History of Japanese Scientific Whaling Fact Sheet* <<http://www.noaa.gov/whales/japanhistory.htm>> (accessed Feb. 2, 2001).

<sup>231</sup> *Id.*

<sup>232</sup> *Id.* Both Sperm and Bryde's whales are protected under the Marine Mammal Protection Act. 16 U.S.C. §§ 1361-1421 (2000). Additionally, sperm whales are listed as endangered under the Endangered Species Act. 16 U.S.C. §§ 1531-1544 (2000).

<sup>233</sup> NOAA, *supra* n. 230.

<sup>234</sup> *Id.*

<sup>235</sup> Mineta, *supra* n. 229.

<sup>236</sup> NOAA, *supra* n. 230.

<sup>237</sup> *Id.*

### B. *Scientific Whaling under the ICRW*

Scientific whaling is permissible under the ICRW if it is consistent with established criteria governing the issuance of research whaling permits.<sup>238</sup> Although the ICRW allows Contracting Governments to issue special permits unilaterally for lethal research whaling, these permits must be reviewed by the IWC before issuance.<sup>239</sup> For example, the ICRW's Scientific Committee:

advises the IWC whether the objectives and methodology of the research: are intended to assist the Comprehensive Assessment or other "critically important" issues for which answers cannot be obtained by non-lethal means; will produce reliable answers to the questions being addressed; and will not have an adverse affect on the stock.<sup>240</sup>

Because Japan's past and current scientific whaling programs have failed to meet the IWC's criteria, the IWC has consistently passed at least one resolution annually from 1987 to 2000, except for 1988 and 1995, denying approval of Japan's proposed research whaling permits.<sup>241</sup>

Conservationists supporting meaningful trade sanctions against Japan, pursuant to the Pelly Amendment, for its repeated violation of the IWC's resolutions, assert that "some of the criteria that Japan fails to meet strike at the heart of the IWC's efforts to control whaling."<sup>242</sup> For example, IWC Resolutions prohibit hunting whales in the Southern Ocean Sanctuary, yet Japan continues to kill 440 minke whales in the Southern Ocean Sanctuary.<sup>243</sup>

### C. *The Pelly Amendment*

The Secretary of Commerce is authorized by the Pelly Amendment to "certify" that nationals of a foreign country, directly or indirectly, are either: "conducting fishing operations in a manner or under circumstances which diminishes the effectiveness of an international fishery conservation program," or "engaging in trade or a taking which diminishes the effectiveness of any international program for endan-

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<sup>238</sup> Chris Wold, *Petition to Certify Japan Pursuant to 22 U.S.C. § 1978 for Trading in the Meat of Minke, Bryde's, and Sperm Whales from the North Pacific and the Southern Hemisphere*, 7 (unpublished legal petition, Nov. 14, 2000) (on file with International Environmental Law Project, Northwestern School of Law of Lewis & Clark College).

<sup>239</sup> *Id.* Research whaling permits should specify, "the objectives of the research; the number, sex, size and stock of animals to be taken; opportunities for participation in the research by scientists for other countries; and possible effects on conservation of the stocks." *Id.*

<sup>240</sup> *Id.* at 7 (summarizing the requirements of IWC Resolution 1995-9).

<sup>241</sup> IWC Resolutions 1987-4 (Southern Hemisphere); 1989-3 (Southern Hemisphere); 1990-2 (Southern Hemisphere); 1991-2 (Southern Hemisphere); 1992-5 (Southern Hemisphere); 1993-7; 1994-10 (North Pacific); 1994-11 (Southern Hemisphere); 1996-7 (Southern Hemisphere and North Pacific); IWC/52/37 (Southern Hemisphere).

<sup>242</sup> Wold, *supra* n. 238, at 7.

<sup>243</sup> IWC Resolution 1995-9.

gered or threatened species.”<sup>244</sup> Once the Secretary of Commerce certifies to the President that a country is violating the Pelly Amendment, the President is authorized to direct the Secretary of the Treasury to impose trade sanctions on any product of the offending country that is consistent with the General Agreement on Tariffs and Trade (GATT).<sup>245</sup>

#### D. Trade Sanctions

In response to Secretary Mineta’s certification of Japan for diminishing the effectiveness of the ICRW, President Clinton announced his immediate decision to deny Japan access to allotments for fishing in United States waters.<sup>246</sup> However, there is currently no foreign fishing in the United States’ exclusive economic zone,<sup>247</sup> though the mackerel and herring fisheries are expected to be reopened in 2001 to foreign fleets.<sup>248</sup> Despite Japan’s exclusion from these future allocations, it will realize no current economic loss as a result of this preliminary action.

Following the Secretary’s certification, the President has a statutory duty to report to Congress any action taken pursuant to the Pelly Amendment within sixty days.<sup>249</sup> Upon Secretary Mineta’s certification on September 13, 2000, President Clinton directed his Cabinet to examine “trade and economic measures, and to assess the economic activity in Japan associated with whaling.”<sup>250</sup> On December 29, 2000, President Clinton reported to Congress his dissatisfaction with Japan’s continued whaling and recited the steps the United States is committed to take in an effort to compel Japan to obey its international obligations.<sup>251</sup> President Clinton emphasized that the United States’ goal remains to compel Japan to substitute nonlethal techniques for its scientific whaling program.<sup>252</sup> However, aside from diplomatic efforts, the President declined to utilize the power vested in him by the Pelly Amendment to impose any meaningful trade sanctions on Japan. The President summarized his political strategy as follows:

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<sup>244</sup> 22 U.S.C. § 1978.

<sup>245</sup> *Id.* § 1978(b); *General Agreement on Tariffs and Trade (GATT)* (Oct. 30, 1947) 55 U.N.T.S. 187.

<sup>246</sup> NOAA, *President Clinton Directs U.S. Actions in Response to Japanese Whaling – Fact sheet* <<http://www.noaa.gov/whales/clinton.htm>> (accessed on Feb. 4, 2001).

<sup>247</sup> The exclusive economic zone extends 200 miles from the shore of the United States, and is solely under U.S. jurisdiction. NOAA, *Exclusive Economic Zone of the United States of America* <<http://www.noaa.gov/whales/clinton-whalesdecision.htm>> (accessed Feb. 4, 2001).

<sup>248</sup> NOAA, *supra* n. 246.

<sup>249</sup> 22 U.S.C. § 1978(b).

<sup>250</sup> NOAA, *supra* n. 246.

<sup>251</sup> *Letter from President Clinton to Speaker of the House of Representatives and the President of the Senate, December 29, 2000* <<http://www.noaa.gov/whales/clinton-whalesdecision.htm>> (accessed Feb. 4, 2001).

<sup>252</sup> *Id.*

I would consider actions regarding any imports from whaling equipment manufacturers, as well as actions regarding a broader range of imported products, should they be warranted by lack of progress from our bilateral and multilateral efforts; however, I do not believe that import prohibitions would further our objectives at this time.<sup>253</sup>

While President Clinton reiterated the United States' repulsion and frustration with Japan's blatant disregard for its legally binding international obligations under the ICRW, the Pelly Amendment's potential to effect real penalties in the form of significant trade sanctions is clearly being ignored.

The President is authorized to effect trade sanctions against Japan as long as it continues to violate its ICRW obligations. The compelling legal question remains what kinds of trade sanctions are consistent with the GATT and will provide a meaningful deterrent, as intended by the Pelly Amendment, to compel Japan to end its scientific whaling program. Unlike past trade sanctions on products whose harvest harmed internationally protected wildlife, such as tuna and shrimp, a sanction on the import of whalemeat fails to provide a meaningful deterrent since the United States does not import whale products. This raises a legal question as to how closely related the trade sanction must be to the illegal act under the GATT.

While the United States has refrained from confronting this controversial question, environmentalists and animal protection groups urge the government to impose significant trade sanctions. HSUS, represented by Chris Wold, Director of the International Environmental Law Project at Northwestern School of Law of Lewis & Clark College, formally petitioned the Secretary of the Interior on November 14, 2000 to certify Japan pursuant to the Pelly Amendment for trading in whale meat and contravening CITES.<sup>254</sup> This petition is based on the same violations by Japan but is submitted to the Secretary of the Interior, who oversees CITES,<sup>255</sup> and who is authorized under the Pelly Amendment to make the same certification to the President. HSUS requests the United States to impose significant trade sanctions against Japan until it ceases its scientific whaling program. The petitioners suggest trade sanctions that "target products that may contain whale products derived from Japan's scientific whaling," and "that trade restrictions focus on those companies that engage in whaling, support the whaling operation, or engage in trade in whale meat."<sup>256</sup> The petitioners allege that these trade sanctions are lawful and consistent with the Article XX environmental exceptions of the GATT because the Pelly Amendment is a measure to "ensure the protection of species and the environ-

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<sup>253</sup> *Id.*

<sup>254</sup> Wold, *supra* n. 238 (petition was originally intended to request certification for undermining ICRW as well, but since the Secretary of Commerce accomplished this on September 13, 2000, the petition became unnecessary. As such, the legal analysis of possible trade sanctions consistent with the GATT is legally the same).

<sup>255</sup> 27 U.S.T. 1087.

<sup>256</sup> Wold, *supra* n. 238, at 11.

ment when nationals of a country diminish the effectiveness of international fishery and endangered and threatened species programs.” The GATT, Article XX exception reads:

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures . . .

. . .

(b) necessary to protect human, animal or plant life or health;

. . .

necessary to secure compliance with laws and regulations which are not inconsistent with the provisions of [the GATT] . . .;

. . .

relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.<sup>257</sup>

Additionally, petitioners rely on two recent WTO Appellate Body decisions interpreting Article XX exceptions, *Reformulated Gasoline* and *Shrimp/Turtle*, which support the imposition of trade sanctions against Japan pursuant to the Pelly Amendment.<sup>258</sup>

As of press time, the Secretary of the Interior has yet to respond to the Humane Society’s petition. It remains to be seen what, if any, action against Japan the newly elected President Bush will pursue. In the meantime, diplomatic efforts are failing to protect the minke, sperm, and Bryde’s whales from slaughter.

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<sup>257</sup> 55 U.N.T.S. 187.

<sup>258</sup> *United States—Import of Certain Shrimp and Shrimp Products*, WT/DS58/AB/R, AB\_1998\_4 (Oct. 12, 1998); *United States—Standards for Reformulated and Conventional Gasoline*, AB\_1996\_1, Doc. No.96\_1597, Apr. 29, 1997, reprinted in 35 I.L.M. 603 (May 1996).

