



Feral and Free-Ranging Cat Work Group

Legal and Regulatory Subgroup Report

AFWA Annual Meeting

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ASSOCIATION of
FISH & WILDLIFE
AGENCIES

INTRODUCTION

In March 2016, the Feral and Free-Ranging Cat Work Group (Work Group) was established pursuant to an Association of Fish and Wildlife Agencies (AFWA) vote at the 81st North American Wildlife and Natural Resources Conference in Pittsburgh, Pennsylvania. A subgroup formed within the Work Group to analyze legal and regulatory issues surrounding regulation, removal, and management of feral and free-ranging cats on state lands managed for wildlife. This Work Group operates in support of AFWA [Resolution 1997-05-08](#) (Control and Management of Feral and Free-Ranging Cats).

This subgroup aims to fulfill the Work Group's missions of "review[ing] regulatory language and identify[ing] current restrictions on release, feeding, and/or maintaining feral and free-ranging cats on state lands..."; "identify[ing] existing regulations for domestic animals that may encompass feral...cats" and "present[ing] a report on these tasks" to the Bird Conservation Committee as well as other Committees whose members serve on this Work Group.

Several state fish and wildlife agencies have adopted regulations, and several legislatures have passed statutes, that address domesticated animals on agency lands. However, a high degree of ambiguity clouds management programs for feral and free-ranging cats—animals or their offspring that at one time may have been, but are no longer, domesticated.

This report (I) describes the compilations of statutes and regulations created by AFWA staff and law clerks, (II) summarizes our process of developing a survey to gauge state attorney engagement with these issues, (III) presents and analyzes the survey's results, and (IV) sets forth recommendations for further study.

I. PREVIOUS WORK PERFORMED BY AFWA STAFF

To provide guidance on cat policy and recommendations on statutory language, the subgroup researched and compiled regulations related to feral or free-ranging domestic animals (including cats) that already exist in all fifty states. States with an explicit policy on cats were identified for reference. The delegation of authority in the municipality for conducting or governing a related action was also identified. Statutory provisions on feral or free-ranging animals were further distinguished into categories of prevention, regulation, control and management, and enforcement. Provisions related to prevention were typically related to pet ownership responsibilities, shelters, and population control. Provisions related to regulations provide the structure and oversight on actions allowed and those that are not permitted. Control and management provisions define the authority of who can do what and under what conditions certain actions can occur. Lastly, enforcement provisions identify circumstances by which an agency can institute penalties and defines those penalties. All four provisions provide important oversight on the issue of feral cats. In many states, one or the other provision is lacking under existing statutes, thereby weakening the state's ability to properly control, enforce or let alone identify issues related to cats.

The subgroup also compiled summaries for each state including definitions on animals, cats, and/or feral versus domestic when defined. A summary of duties as provided for in each state was also compiled including pet ownership responsibilities and if provided for, trap/neuter/release (TNR) programs. Lastly, these summaries included the regulation, removal and enforcement authority for each state. These summaries offer a valuable form of comparison between states, some offering scant legal authority or definitions, with others having extensive authority and oversight.

II. SURVEY DEVELOPMENT

In spring 2017, the Work Group developed a survey to send to state agency attorneys, law enforcement personnel, and wildlife managers. The goal of this survey was to determine whether sources of authority compiled by AFWA staff and law clerks (including existing statutes, regulations, guidance, and opinions pertaining to cats) are brought to bear in managing cats on state conservation lands, and whether ambiguities in existing language hinder such efforts.

To that end, we created summaries for the survey—one for each state—briefly setting forth what members of our Legal and Regulatory subgroup determined to be the relevant (1) statutory and regulatory definitions, (2) responsibilities of cat owners and/or shelters, and (3) authorizations to regulate, remove, and/or enforce prohibitions on feral and free-ranging cats.

We followed these summaries with a short series of questions including:

- Which [of the options presented in the survey] describes your professional role within your state fish and wildlife agency?
- Generally speaking, does the summary you just reviewed accurately describe how your state's agency treats feral and free-ranging cats?
- If [not], what types of programs, procedures, or informal collaborative efforts does your state's agency have to regulate cats on state lands?

The survey went out to subscribers and participants in AFWA's state attorney listserv in June.

III. PRESENTATION AND ANALYSIS OF SURVEY RESULTS

Twelve jurisdictions responded to our legal and regulatory survey. Of our individual respondents, 75 percent were wildlife attorneys, 16.67 percent were wildlife managers, and 8.33 percent were other (not specified).

50 percent of respondents were "unsure" whether the summary of their state's laws and regulations pertaining to feral and free-ranging cats were accurate, while 16.67 percent somewhat disagreed that they were accurate. 8.33 percent strongly disagreed.

Of those who said that the summary was inaccurate, one (Alaska) commented that a member of the public had recently submitted a TNR proposal that would soon be heard by the state's Board of Game—so a few stated disagreements may result from pending or proposed changes in law that are not yet enacted or codified. Furthermore, 73 percent of respondents said there was no law or

regulation in their state prohibiting cats on state lands that our summaries failed to mention.

No respondent knew of any court or agency decision describing jurisdiction over feral and free-ranging cats.

In brief, this survey demonstrated that there is not necessarily strong and sustained engagement by state attorneys in this issue area, as indicated by the low participation rate (11 states and the District of Columbia), and the prominence of certain responses (e.g., a high rate of “unsure” alongside a prevalence of “no law/regulation we failed to mention”).

IV. RECOMMENDATIONS FOR FURTHER STUDY

i. Issues to Study and Gaps to Fill

Fifteen states have delegated authority to municipalities to regulate feral and free-ranging cats in some capacity (Part I, this report); hence, 35 states have not done so. Furthermore, half of the states have no explicit policy whatsoever with regard to regulating feral and free-ranging cats. The gaps here show ample room for opportunity to empower state fish and wildlife agencies to act where necessary. Such gaps, however, require research, persuasion, and extensive legislative and regulatory drafting exercises to remedy.

Other groups with less interest in conservation on state lands may endeavor to fill these gaps with TNR programs, which may hinder agencies’ ability to manage cat populations. In August 2017, for example, the American Bar Association’s (ABA) Tort Trial and Insurance Practice Section passed a resolution that:

[U]rges state, local, territorial, and tribal legislative bodies and governmental agencies to interpret existing laws and policies, and adopt laws and policies, to allow the implementation and administration of [TNR] programs for community cats within their jurisdictions so as to promote their effective, efficient, and humane management.¹

This resolution may have impacts disproportionate to its provenance, serving as evidence for cat-friendly NGOs to solicit state and local lawmakers in pursuit of TNR programs. In effect, this document could symbolize endorsement of TNR by the legal profession, alongside other professional groups (e.g., veterinarians).

ii. Litigating the Science of TNR

The ABA asserts that studies relied on by conservationists, showing that feral cats should be removed from state lands, are critically flawed.² These include a 2013 review of studies by researchers at the Smithsonian Conservation Biology Institute and the U.S. Fish and Wildlife Service, published in *Nature Communications*, which found that feral and free-ranging cats kill at least 1.3

¹ Am. Bar Ass’n, Tort Trial and Ins. Practice Section, *Resolution 102B*, Aug. 2017, available at https://www.americanbar.org/news/reporter_resources/annual-meeting-2017/house-of-delegates-resolutions/102b.html [hereinafter *Resolution 102B*], at 1.

² *Id.* at 2-3, 8 nn.56-57

billion birds and 6.3 billion mammals per year.³ The 2013 review acknowledged sources of uncertainty and called for further research into patterns of predation with respect to birds, native and non-native mammals, and herpetofauna.⁴ The ABA report favors studies showcasing particular TNR successes, including in Florida, North Carolina, Rome, and Rio de Janeiro,⁵ but it generally fails to address its own cited study's findings that "it has yet to be shown whether the [TNR] strategy can be adequately scaled up to remain effective over larger areas or can reduce the number of cats impounded in shelters" and, indeed, "even relatively small [cat] communities...might overwhelm the existing local TNR capacity."⁶

The ABA report further cites a law review article by a stray pet advocate who offers uncited assertions that cat predation studies are subject to a "wide range of potential problems" and focuses on a pair of studies from 2000 and 2005 to question more recent findings regarding native versus non-native, and living versus previously-killed birds (drawing on studies conducted largely in the Southern Hemisphere rather than in the United States).⁷

iii. Legal Hurdles and Cases of First Impression

The ABA report further cites high public support for TNR as a reason that it should be fostered where the legal and regulatory environment may be difficult⁸, whether due to ambiguities in the law or due to clear hurdles relating to ownership, feeding, licensing, and non-abandonment.⁹

While this Work Group notes that the ABA's attention here does not primarily go to protecting state lands, both entities can likely agree that "[c]onsistent interpretation and/or adoption of laws throughout the country...would provide much-needed guidance to state, local, territorial, and tribal management entities..."¹⁰

The potential problems posed by disparate treatment of feral cats among municipalities where delegation has occurred¹¹ merit further discussion. One key issue is the balance of interests that governs whether regulatory authority falls under a municipality's traditional roles and responsibility for affairs that are "local

³ Scott R. Loss et al., *The impact of free-ranging domestic cats on wildlife of the United States*, NATURE COMM'NS, Jan. 29, 2013, available at <https://www.nature.com/articles/ncomms2380.pdf>.

⁴ *Id.* at 2-3.

⁵ Resolution 102B, at 2-3.

⁶ J.K. Levy et al., *Effect of high-impact targeted trap-neuter-return and adoption of community cats on cat intake to a shelter*, 201 VETERINARY J. 269, 270 (2014).

⁷ Resolution 102B, at 2 n.11 (citing Laurie D. Goldstein, *All Dollars and No Sense: Critique of Dr. David Pimentel's Estimated Economic Impact of Domestic Cat Predation*, 2 MID-ATLANTIC J. ON L. & PUB. POL'Y 153, 158-63 (2013) (author was a founding member of Stray Pet Advocacy).

⁸ Resolution 102B, at 1 n.7; 2-3.

⁹ *Id.* at 6-7. See also Joan E. Schaffner, *Community Cats: Changing the Legal Paradigm for the Management of So-Called "Pests"*, 67 SYRACUSE L. REV. 71, 92-98 (2017).

¹⁰ Resolution 102B, at 2. See also 2 n.8 (noting that most jurisdictions do not *de jure* recognize TNR programs).

¹¹ See *id.* at 5.

in nature rather than State or national.”¹² One court in Illinois held in 2014 that feral and free ranging-cats are not a purely local issue.¹³

Finally, a case of first impression is pending in federal court regarding the taking by feral cats of piping plovers on Long Island—a species listed as threatened under the Endangered Species Act (ESA).¹⁴ In this case, a member of the American Bird Conservancy (ABC) sued the Commissioner of the New York Office of Parks, Recreation, and Historic Preservation (Parks Office) for neglecting to prevent the public from contributing to the proliferation of feral cats, which threaten the piping plover, and for failing to remove these cats (despite being aware of them)—thereby conducting an illegal take under the ESA.¹⁵ It is relatively uncommon for an ESA take claim to involve a state agency’s inaction/omission, but the presiding judge found as follows:

If...the Parks Office is the only entity authorized to remove the feral cats from Jones Beach, and the only entity authorized to control access of members of the public to the area to build shelters and/or feed feral cats...then the Commissioner’s failure to take such measures represents the causative link needed to connect her actions and/or inactions to the Plaintiffs’ harm.¹⁶

While the Parks Commissioner argued that, “in the absence of a specific statutory duty requiring the Parks Office to take some action with respect to feral cats...” plaintiffs lack standing, the Court disagreed, finding a “broad affirmative duty to take such measures as are reasonably necessary to protect threatened species within [a governmental agency’s] jurisdiction.”¹⁷

Conservationists should watch the progress of this litigation with interest, though settlement discussions are ongoing as of this writing. Novel forms of litigation, in addition to engagement by NGOs in legislative and regulatory processes, promises to change the already complex landscape at the nexus between regulation of domesticated animals and management of wildlife and habitat.

CONCLUSION

This report is intended to summarize the work carried out by one half of the Work Group, but we hope that its findings and recommendations will be useful to the full membership, as well as to the Bird Conservation Committee, as it evaluates the Work Group’s work over the course of its first full year of operation.

¹² Schaffner, *supra* note 9, at 102 (citing *County of Cook v. Village of Bridgeview*, 8 N.E.3d 1275, 1278-81 (Ill. App. Ct. 2014)).

¹³ *Id.* at 102-03.

¹⁴ *American Bird Conservancy v. Harvey*, 2:16-cv-01582-ADS-AKT (E.D.N.Y. Feb. 6, 2017) (denying motion to dismiss). (The American Bird Conservancy and New York Office of Parks, Recreation, and Historic Preservation are working to resolve the dispute.)

¹⁵ *Id.* at 6-7.

¹⁶ *Id.* at 21.

¹⁷ *Id.* at 25-26.

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