

Presidential Task Force on Trapping Policy Final Report

Prepared by

Presidential Task Force on Trapping Policy
Association of Fish and Wildlife Agencies

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Executive Summary

The Association of Fish and Wildlife Agencies' (AFWA's) Presidential Task Force on Trapping Policy (Task Force) worked over a period of two years to ensure that trapping and furbearer management is sustained and improved in the United States (U.S.), while also fulfilling commitments at the international level related to the development and use of Best Management Practices (BMPs) for Animal Traps.

The Task Force's findings and recommendations are as follows:

A. Findings

- A bilateral agreement between the U.S. and European Union (EU), the “Agreed Minute,” includes several high-level commitments pertaining to the development and use of BMPs.
- Fulfilling these obligations helps to ensure that the international markets for wild furs remain open, thereby enabling effective furbearer management by state fish and wildlife agencies.
- Threats to the integrity of furbearer management remain at the state, national, and international level.
- AFWA's and state agencies' institutional memory relating to these challenges and commitments has eroded over time.
- A general lack of awareness of the technical aspects of trapping within the wildlife profession (state and federal agencies, and academics) undermines the sustainability of furbearer management programs, and the integrity of regulated trapping as a component of those programs.
- Since the state agencies are the “competent authorities” in all aspects related to the Agreed Minute, AFWA has a permanent role in ensuring that state input in all matters pertaining to the Agreed Minute are continued, albeit as conveyed on behalf of the U.S. by the official representative, U.S. Department of Agriculture (USDA) Animal Plant and Health Inspection Service/Wildlife Services (hereafter, Wildlife Services).

B. Recommendations

The Task Force recommends:

- AFWA continue actively promoting and facilitating the use of BMPs nationwide through the Sustainable Use of Wildlife Committee (Committee) and its U.S. Furbearer Conservation Technical Work Group (Work Group).
- that the Committee and Work Group ensure that the use and understanding of BMPs by trappers and agency personnel is documented. This requires funds every five years to conduct surveys of trappers to measure their use of BMP traps.
- the Work Group use survey data to develop outreach messages to effectively explain and ensure state implementation of the Agreed Minute.
- AFWA continue to partner with Wildlife Services via a cooperative agreement to manage funding needed in support of the BMP process.
- AFWA help ensure that wildlife professionals in state and federal agencies, within the nongovernmental sector, and academics understand the importance of furbearer management programs, and the role of BMPs in sustaining those programs.

- AFWA continue to support the participation of state agency personnel in meetings of the Joint Management Committee (JMC).
- AFWA work with Wildlife Services to ensure that the American National Standards Institute (ANSI) and the U.S. Trade Representative receives an annual update on the importance of the International Organization for Standardization (ISO) standards and the Agreed Minute, respectively.

Task Force Overview

The Task Force was established by President Larry Voyles in 2015 to ensure that essential institutional knowledge on national and international commitments related to trapping and furbearer management were summarized and transmitted. This also provided an opportunity to strengthen the state/federal partnership on matters important to the furbearer management community within state and federal agencies.

Institutional knowledge of the development of AFWA's BMPs and the negotiation of the Agreed Minute (Appendix I) with the EU is important and is being lost rapidly through retirements. Understanding the intent of and definitions in the Agreed Minute are needed to sustain the effective implementation of policy. Also, the education of rising biologists to understand the policy and politics around trapping will be needed if we are to successfully sustain trapping as a management tool in the U.S.

The Task Force charge was:

1. address the U.S. Agreed Minute pertaining to the continuation of the U.S. fur trade with the EU and U.S. commitments made within the Agreed Minute and Annexes,
2. monitor developments relative to the ISO standards for trap testing and maintain appropriate involvement with the U.S. Technical Advisory Group (U.S. TAG) which operates under the auspices of the ANSI on trap testing,
3. monitor domestic and international policy as it relates to trapping, and
4. ensure that existing institutional knowledge and expertise is captured and documented relative to the negotiation of the Agreed Minute to inform future policy and program leaders.

The Task Force held meetings twice a year following its establishment. Key participants were state agency personnel, both active and retired, AFWA staff, Wildlife Services, and the U.S. Fish and Wildlife Service (USFWS) (see Table 1).¹ The Task Force developed a PowerPoint presentation on key issues. In 2016, Task Force members presented it to each of the four regional associations to raise awareness of international and national trapping issues with agency directors and commissioners. The presentations were completed in 2016.

In the 1990s, trapping and furbearer management were threatened by both domestic and international developments. Animal activists sought to shut down the wild fur industry and end trapping as managed by conservation agencies. The [International] AFWA led a national effort to sustain and improve furbearer management. The decisions and actions made at that time remain highly relevant today, and the on-going commitments need to be understood by current policy makers and technical personnel in state agencies.

¹ USDA is the federal agency designated to serve as liaison with the European Commission on matters pertaining to implementation of the Agreed Minute. Also, under Cooperative Agreement with AFWA, Wildlife Services administers funds used to develop BMPs. The USFWS's Division of Wildlife and Sport Fish Restoration awards Wildlife Restoration grants in support of a wide variety of furbearer-related research.

Table 1: Task Force Members

Name*	Affiliation
Osbourne “Buddy” Baker	Louisiana Department of Wildlife and Fisheries
Gordon Batcheller	New York State Division of Fish and Wildlife, retired
Edward Boggess	Minnesota Department of Natural Resources, retired
Thomas Decker	U.S. Fish and Wildlife Service
Thomas DeLiberto	U.S. Department of Agriculture/APHIS/Wildlife Services
Scott Edberg	Wyoming Game and Fish Department
John Erb	Minnesota Department of Natural Resources

* Deb Hahn and Bryant White AFWA provided staff support

Agreed Minute - Background

In 1991, The European Economic Community (now the EU), with the encouragement of animal activists, adopted a trade regulation (“Wild Fur Regulation”) banning fur imports from countries using “inhumane traps” or that failed to adopt internationally accepted humane trapping standards. Canada, Russia, and the EU subsequently signed an agreement referred to as the Agreement on International Humane Trapping Standards (AIHTS), to formalize the standards and to phase out non-conforming traps. The AIHTS became effective in July 2008, following its ratification by Russia. Canada began implementing their commitments soon after signing the AIHTS in 1997.

The U.S., while a full party in the negotiations, did not sign the AIHTS because primary authorities for management of resident wildlife rest with the individual States and tribes, not with the federal government. The U.S. negotiation strategy was based on the existing AFWA initiative to develop BMPs to improve animal welfare in U.S. trapping programs, which built upon existing state agency efforts. This proactive approach was successful in avoiding the threatened EU trade ban. In December 1997, with the EU Wild Fur Regulation about to come into force, the U.S. and the EU developed a **non-binding** understanding, memorialized as an “Agreed Minute.” The Agreed Minute referenced the standards in the AIHTS, and noted similar standards on methods for testing traps subsequently certified by ISO².

In brief, the Agreed Minute recognized the fact that the competent authorities (the States) were developing BMPs for animal traps. A related “side letter” (Appendix II) further committed to phase out two specific trapping methods related to muskrat and weasel trapping, and to phase out the use of conventional foothold traps for all species. A summary of our commitments was outlined by Mr. Paul Lenzini, Esq., AFWA's former Counsel to State Fish and Wildlife Directors via an internal

² “ISO” is not an acronym. It is pronounced just the way it reads (not “I-S-O”) as *iso* means “same” in Greek, as in isosceles triangle, one with three equal sides.

memorandum from May 11, 1998 (Appendix III). The U.S. conveyed the plans and existing programs of state wildlife agencies and our good-faith intent to encourage and support the study, research, testing, and monitoring of the use and application of humane traps for 23 species of furbearing mammals. As documented in annual meetings held with the EU and the other parties, the U.S. has faithfully fulfilled these commitments.

History and Relevance of the ISO and U.S. TAG

Beginning in the 1970s, provincial fur managers in Canada began to conceive of an engineering-based approach to address public concerns related to the use of traps. National and international standards are developed by official “standards institutions” for many manufacturing and industrial applications. They reasoned that such an approach could also be applied to traps since they are mechanical devices with measureable features that could be correlated to performance, including factors related to animal welfare. Initially the Canadian National Standards Board sanctioned a Canadian-body to begin work in this arena. This work was expanded to fall under the auspices of ISO. The U.S., under the auspices of [I]AFWA, joined this effort by forming a “U.S. Technical Advisory Group” (U.S. TAG) via ANSI. State wildlife biologists from Missouri, Louisiana, Alaska, and New York actively participated in the U.S. TAG.

While originally conceived to yield a *performance* standard, the final ISO standards on animal traps yielded *testing* standards for both restraining and killing traps. The reason for this is simple: Once animal activists realized that an ISO performance standard could circumvent the EU’s Wild Fur Regulation banning trade, they put political pressure on national standards institutions to name delegates sympathetic to animal activists. Those delegates in turn voted to scuttle the ISO performance standard. Instead, relatively noncontroversial testing standards were adopted for both restraining and killing traps.

Recognizing the importance of developing some sort of performance standard for animal traps as a means of enabling compliance with the Wild Fur Regulation, and to avoid a complaint filed under the auspices of the World Trade Organization, the European Commission sanctioned the formation of a “Quadrilateral Working Group.” The Quadrilateral Working Group’s purpose was to develop an “internationally recognized humane trapping standard,” thereby enabling compliance with the Wild Fur Regulation.

The Quadrilateral Working Group had representatives from the European Commission, Canada, Russia, and the U.S. Once again, [I]AFWA fielded a delegation to serve on the Quadrilateral Working Group that included state agency biologists from Louisiana, Wyoming, and New York; along with representatives from the USFWS, and Wildlife Services. The deliberations of the Quadrilateral Working Group led directly to the ultimate adoption of the AIHTS and Agreed Minute.

The ISO testing standards remain valid today and has been used for more than 20 years in AFWA’s BMP research, as well as in Canada’s extensive trap research program. In the fall of 2016, however, those testing standards were nearly withdrawn by the ISO governing authorities due to their erroneous conclusions that they were no longer needed. This decision was reversed only with the due diligence of U.S. and Canadian officials and past participants in an urgent series of phone calls

and emails to ensure that those ISO officials understood that the testing standards remain highly relevant. This illustrates the importance of institutional memory and vigilance. It also underscores the fact that the work stemming from the U.S. commitments remain highly relevant, and that those commitments are in fact permanent.

International Commitments Related to the EU Wild Fur Regulation

Because the EU's Wild Fur Regulation had enormous implications for the future of wildlife management in the U.S. and Canada, [I] AFWA took a lead role in shaping the subsequent negotiations. Throughout that process, Canadian and U.S. officials from provincial and state authorities collaborated closely. That said, because each country ultimately would need to reach their own arrangement with the EU on a government to government basis, [I] AFWA authorized the U.S. members of the Fur Resources Committee (FRC) to form a negotiation team drawn from the states. In turn, those representatives conferred closely with representatives of a technical subcommittee operating under the FRC. In practice, every aspect of the negotiations process with the European Commission was led by technical experts who in turn reported to policy-level agency personnel, and subsequently to [I] AFWA's Executive Committee. [I] AFWA, in turn, communicated the U.S. position to the U.S. Trade Representative's Office to represent our position to the European Commission.

[I] AFWA worked directly with the U.S. Trade Representatives' Office to name two state agency personnel (Louisiana and New York) as officially designated members of the U.S. Negotiation Team. After the U.S. Negotiation Team successfully negotiated the Agreed Minute, the Wildlife Services was named as the official liaison between the state fish and wildlife agencies and the European Commission on all matters pertaining to the implementation of the Agreed Minute.

Implicit in the Agreed Minute, and the primary reason why the U.S. negotiated separately from Canada and Russia, is the constitutional role of the states in managing wildlife under the public trust doctrine. The Agreed Minute explicitly recognizes the states as the "competent authorities" in all aspects related to the Agreed Minute. This means that AFWA has a permanent role in ensuring that state input in all matters pertaining to the Agreed Minute is continued, albeit as conveyed by our official spokespersons in Wildlife Services.

In the early years of the negotiations process preceded by the work of ISO, U.S. representatives had the opportunity to meet with wildlife professionals from various European countries. It soon became apparent that these professionals are dealing with many of the issues common to all countries with abundant or recovering wildlife populations, including methods of capture for restoration, management, or control of wildlife. Those professional collaborations are important to continue as our knowledge of European wildlife management practices strengthens our position when we are discussing the obligations of the Agreed Minute with officials from the European Commission.

Important Details of the Agreed Minute

The Agreed Minute (Appendix II) contains several terms and phrases of crucial importance. The correct and consistent interpretation of these terms is central to fulfilling our obligations and sustaining the integrity of furbearer management in the U.S.

i. “Phase out”

The Agreed Minute uses the term “phase out” of conventional steel-jawed leghold traps. This term neither implies nor means the regulatory/legal elimination of an entire class of animal capture devices. BMPs constitute a voluntary system for consideration by individual states on a case-by-case basis. In some cases, individual states may adopt aspects of BMPs into their trapping regulatory scheme; in other cases, the states adopt BMPs through their inclusion in trapper education and outreach materials. In both cases, a phase out is implied both in practice and principle.

ii. “Conventional”

The term “conventional” is not defined now, and it was not defined during the negotiations process leading to the adoption of the Agreed Minute. While the term officially remains undefined, and it should remain undefined, by popular usage the term has come to mean the absence of mechanical or design features shown, through BMP research, to improve animal welfare conditions for animals captured in such devices. For this reason, AFWA has documented the use of traps by U.S. trappers including the use of traps with mechanical or design features that are known to improve animal welfare in captured animals. Those data are central to the body of evidence demonstrating the full and faithful compliance of the competent authorities in both the letter and spirit of the Agreed Minute.

iii. “Restraint trap”

There are two broad classifications of animal capture devices: restraining traps and killing traps. A typical killing trap, for example, is the body-gripping style of design (commercially, one trap of this style is called the “Conibear” trap after the original inventor/manufacturer). Foothold traps may also be used in a killing system, and may be a common use in certain circumstances. For example, foothold traps may be set in a killing system for aquatic furbearers (e.g., muskrat and beaver), or as a killing system for certain furbearers caught on land (e.g., long-tailed weasel). Typical restraining traps include box or cage traps, foot encapsulating traps, cable restraint systems, or foothold traps³. All those devices may be used in a trapping system designed to restrain the animal alive.

iv. Observer status to Joint Management Committee

When the Agreed Minute was signed in 1997, the U.S. was invited to participate in JMC meetings as an official observer. The JMC was established by Canada, the European Commission, and Russia to update each other on the implementation of their separate agreement to which the U.S. is not a party. Attendance at the annual JMC meetings is an important commitment and should be continued. Wildlife Services typically serves as head of the U.S. Delegation, though in some years, a

³ State fish and wildlife agencies have adopted the correct term “foothold trap” instead of “leghold trap” to recognition of the fact that these devices hold animals by their feet, not leg.

state agency representative was named as the official Head of Delegation. It is during these meetings that the U.S. delivers a formal report summarizing the actions of the competent authorities in implementing the Agreed Minute. These records constitute an enduring body of documentation that clearly show that the competent authorities in the U.S. are faithfully implementing our obligations.

National Commitments to BMPs

AFWA has maintained a strong and enduring commitment to the validity of trapping as a crucial wildlife management tool, including the on-going improvement of animal traps via the BMP program. Specific policy and programmatic statements pertaining to trapping include the following:

1. [I]AFWA's former Executive Vice President "Max" Peterson summarized AFWA's commitment to improvements in trapping: "The Association has long promoted the testing and development of improved animal traps and has worked actively since 1984 through its Fur Resources Committee to test traps in the field. In 1987 the Association resolved formally to endorse the development of international standards for restraining traps under the auspices of the ISO, subsequently devoting state expertise and substantial resources to the ISO effort." (R.M. Peterson, Association Executive Vice President letter to C. Barshefsky, Acting U.S. Trade Representative, Dec. 11, 1996).
2. [I]AFWA adopted a resolution to support Traps, Trapping and Furbearer Management in 1991. This resolution supports the use of trapping for its many benefits to the public and wildlife populations amongst all State and Provincial agencies. "State wildlife agencies... intensified their efforts to identify more humane traps. Already a multi-state initiative, in cooperation with several federal agencies of the United States, has been launched to develop BMPs for traps and trapping methods." (D. Shroufe, Association President letter to C. Barshefsky, Acting United States Trade Representative, Jan. 13, 1997).
3. In 2011, a resolution was passed by AFWA that continues support for regulated trapping programs and advocates that states and provinces use the North American Trapper Education Program developed by AFWA. Since 1997, federal, state and provincial wildlife agencies have invested ~40 million dollars to evaluate traps and trapping techniques in North America.
4. Progress on developing and using BMPs: The U.S. is developing BMPs for 23 species of furbearers. To date, BMPs have been developed for 22 species, with a project being planned to complete the final BMP (wolverine) soon. BMPs are living documents. New devices and modifications continue to advance the technology of trapping and research must continue to stay abreast of these developments. Over 450 trap types have been evaluated so far following internationally accepted animal welfare standards and protocols for testing traps. BMP results are available at http://fishwildlife.org/?section=best_management_practices
5. Surveys: National surveys of trappers (1992, 2005, 2015), state and provincial agencies (trapping regulations) (1995, 2007, 2015) and public attitudes toward the use of regulated trapping (2001, 2016) have been conducted. These studies were implemented with the support of the USFWS through the Division of Wildlife and Sport Fish Restoration.

Reports from these surveys are available at http://fishwildlife.org/?section=furbearer_management_resources. Information gathered from these critical surveys allows the U.S. to evaluate how trappers are using BMPs and how states have incorporated BMPs into trapping and trapper education programs. Many (42%) trappers are aware of BMPs for trapping and the vast majority use traps that meet BMP criteria to capture furbearers. It is clear also that most states have incorporated BMPs in their trapping programs and are using BMPs to educate trappers and agency staff. However, surveys also reveal that a robust awareness of BMPs within state agencies is lacking. Attitudes and awareness of key federal agency personnel (e.g., within the National Wildlife Refuge System) is unknown. Surveys of public attitudes on trapping have been used to develop key messages that agencies can use to communicate effectively with the public about trapping. Several surveys completed over the last 15 years indicated that a majority of U.S. citizens support regulated trapping for specific management purposes. However, surveys also reveal a general lack of understanding of those furbearer management programs, and the associated benefits of regulated trapping.

6. Agency workshops: Often agency staff are not familiar with regulated trapping but they must communicate with the media and public about the subject. AFWA developed the “Trapping Matters Workshop” to provide professional development to agency staff to educate them about furbearer management, regulated trapping and how to effectively communicate with the media and public about trapping. This workshop has been used to educate over 5,000 agency personnel since 2001. These workshops have been jointly sponsored by AFWA, the USFWS, The Wildlife Society, and regional state fish and wildlife agency associations.
7. Trapper education curricula: The North American Trapper Education Program was developed to offer basic instruction in trapper education and provide trappers with a knowledge of BMPs. A trapper education manual and online interactive trapper education program (<http://conservationlearning.org>) have been developed. This program allows for reciprocity of licensing because it has standardized learning objectives and content. Numerous state agencies use this program to educate trappers and there are ~7,000 graduates since 2003.

U.S. Strategy Going Forward

Societal conditions, agency personnel, fur markets, and other factors change through time, necessitating regular and effective “messaging” in both state and federal fish and wildlife agencies. This requires effective interchange between research and outreach. We recommend the following strategies to ensure that trapping and furbearer management is both improved and sustained in the U.S.

- a. Identify a diverse informal ‘advisory committee’ that would meet/talk annually (or as needed) to review and summarize current trapping challenges, market trends, and opportunities. The group should minimally consist of at least 2 state agency representatives, representatives from AFWA, representatives from Wildlife Services and USFWS, and a representative from both the fur industry and national trapping organizations. This advisory committee can help identify key needs for proactively or defensively responding to issues or

- opportunities, and to make advisory recommendations that help guide the activities of the U.S. Furbearer Resources Technical Work Group (Work Group). The Work Group will take the lead on compiling appropriate information for review by the advisory committee, including, but not limited to: (1) periodic social science surveys, targeting specific audiences as needed, to assess changes in attitudes towards trapping. This should include assessment or review of the effectiveness of various communications media and messages in reaching/influencing various audiences, (2) periodic social science surveys regarding attitudes of state and federal agency personnel towards trapping, (3) annual query of state furbearer biologists to identify current controversial topics related to trapping, including a summary of attempts to legally restrict trapping, (4) annual compilation of trapper numbers and fur harvest data, (5) periodic assessment of BMP ‘implementation’ statistics (e.g., trap use surveys).
- b. Develop effective communications and outreach with members of state and federal Sportsmen’s Caucuses for addressing legislative and policy challenges to trapping. We believe this will be most effective if supporters of trapping and furbearer management are diverse with messaging that highlights benefits and considers the most ‘marketable’ values to both political parties (e.g., lifestyle choice, heavily regulated, humane capture methods, economics of fur trade, use of traps in wildlife research and conservation, human health/safety).
 - c. Ensure support and ‘implementation’ of BMPs by taking the following actions: (1) ongoing trap research, and appropriate ‘side studies’ (e.g., selectivity issues), (2) outreach to trappers, (3) engagement with trap manufacturers, (4) BMP use/awareness in wildlife research and university wildlife curriculum, (5) surveys of state and federal agency professionals, and (6) conduct training of agency professionals regarding communications on these topics.
 - d. Ensure future engagement of federal agencies: The USFWS, U.S. Forest Service, Bureau of Land Management, Department of Defense, and National Park Service, among other federal agencies, control and management vast areas of public lands. Wildlife Services has provided federal liaison on all matters pertaining to the Agreed Minute. It is therefore essential to ensure that appropriate agency personnel are aware of BMPs and the importance of furbearer management, and facilitate appropriate opportunity to access these resources on federal lands, and in representing the interests of the states in international dialogue. Moreover, federal agencies may be required to comment on proposed legislation before Congress on matters impacting furbearer management at both the state and federal level. It is therefore imperative that appropriate agency personnel understand the facts about furbearer management and the development of BMPs. The best way to accomplish both objectives is to ensure that federal agencies actively participate in a constructive manner on matters of importance to state fish and wildlife agencies relative to furbearer management and BMPs.
 - e. Develop audience-specific public relations strategies (including collection of any data necessary to inform them) that states can use for both responding to threats to trapping and pursuing a pro-active strategy to better inform various audiences of the many benefits from trapping.

AFWA's Role

The Task Force supports AFWA's continued leadership role in ensuring that our national and international commitments are met relative to the implementation of BMPs, and sustaining and improving trapping and furbearer management in the U.S. The specific actions the Task Force recommends are:

- a. that the AFWA Executive Committee ensures that the Sustainable Use of Wildlife Committee, through the U.S. Furbearer Conservation Technical Work Group, continues to lead the effort to develop, improve, and use BMPs;
- b. that AFWA staff help ensure that directors and wildlife chiefs are kept aware of key developments relative to BMPs, and associated international commitments;
- c. that AFWA staff help ensure that directors and wildlife chiefs are kept aware of new domestic challenges to trapping faced by any of its member states;
- d. that AFWA help ensure the cooperative agreement with Wildlife Services is maintained to support the BMP program, state agency and AFWA staff travel to meetings of the Furbearer Technical Work Group, the JMC, and other important professional trapping related meetings;
- e. that AFWA maintain international trapping issues in the portfolios of both the Trapping Policy Program Manager and the International Relations Director and continue to include responsibilities for furbearer management, trap testing and staff support for the Sustainable Use of Wildlife Committee in the portfolio of the Trapping Policy Program Manager;
- f. that AFWA help facilitate garnering funding support to periodically conduct surveys assessing: (1) current use of BMPs by agencies and the trapping community, (2) trap use for various species amongst trappers, (3) awareness and attitudes of the public and agency staff concerning regulated trapping, and (4) state laws and regulations pertaining to traps and trapping;
- g. that AFWA engage appropriate agencies within the Department of the Interior to: (1) promote support for trapping on federal refuges and other public lands, (2) eliminate interpretation of federal laws and policies that lead to restrictions on harvest of furbearers including by trapping on federal lands, and, (3) promote support for sustainable use concepts in developing positions to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);
- h. that the U.S. Head of Delegation for the Agreed Minute and the JMC and the AFWA International Relations Director will communicate with ANSI annually about the importance of the ISO standards to U.S. interests; and
- i. that AFWA will continue to partner with The Wildlife Society, Max McGraw Wildlife Foundation, USFWS, Wildlife Services, and other appropriate entities to deliver workshops such as "Trapping Matters" to enhance communications and outreach on furbearer management and BMPs.

Summary

The members of the Task Force have fulfilled the President's charge, made in 2015 to ensure that essential institutional knowledge on national and international commitments related to trapping and furbearer management were summarized and transmitted. The details are provided in the 2016 power point and this report.

Our commitments to BMPs, the Agreed Minute, and to sustaining and improving furbearer management are both solid and enduring. It is vital that AFWA leadership view those commitments as foundational to the work of state fish and wildlife agencies. Moreover, there are key opportunities to work collaboratively with our partners within federal agencies, the academic community, and amongst key non-governmental organizations to advance our desire to sustain and improve furbearer management at all levels.

Appendix I – Agreed Minute

AGREED MINUTE

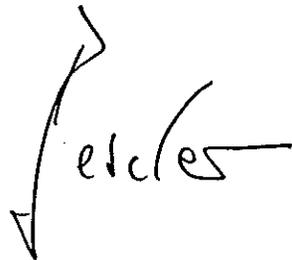
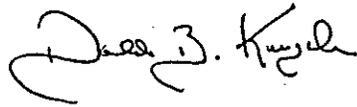
1. In the course of the negotiations of the Agreement described in paragraph 8 below to develop a common framework for describing and evaluating progress towards the use of more humane traps and trapping methods, the Representatives of the United States of America and of the European Community acknowledge that the following Understanding has been reached.
2. The United States of America and the European Community consider that the Standards annexed to this Understanding provide such a common framework and a basis for cooperation on the further development and implementation by their respective competent authorities of the Standards.
3. Underscoring that it does not by its endorsement intend to alter the distribution of authority within the United States for regulation of the use of traps and trapping methods, the United States of America endorses the annexed Standards as providing such a common framework for implementation by its competent authorities, for the humane trapping of specified terrestrial or semi-aquatic mammals.

4. The United States of America and the European Community intend to encourage and support research, development, monitoring and training programs by their respective authorities that promote the use and application of traps and trapping methods for the humane treatment of such mammals. They both recognize the need to re-evaluate and update the Standards annexed to this Understanding as new technical and scientific information and data become available based on such programs.
5. The United States of America and the European Community further intend to encourage their competent authorities to monitor and report on progress towards implementation of the Standards annexed to this Understanding.
6. The United States of America and the European Community recognize that nothing in this Understanding affects their rights and obligations under the Marrakesh Agreement establishing the World Trade Organisation.
7. The United States of America and the European Community state their intention to consult with each other, at the request of either of them, on any matter concerning this Understanding or the annexed Standards with a view to finding a mutually acceptable solution.

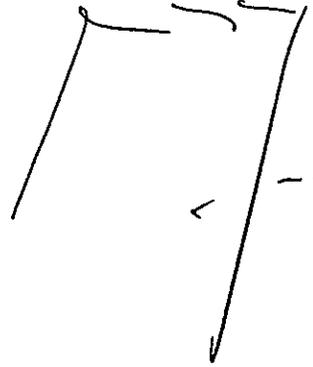
8. Wherever the term "the Agreement" is used in the annexed Standards, it is understood to mean the Agreement on Humane Trapping Standards between Canada, the European Community and the Russian Federation.

Done at Brussels this eighteenth day of December 1997, in duplicate, in the English language.

For the United States of America



For the European Community



Annex: Standards for the Humane Trapping of Specified Terrestrial and Semi-aquatic Mammals

ANNEX

STANDARDS FOR THE HUMANE TRAPPING
OF SPECIFIED TERRESTRIAL AND
SEMI-AQUATIC MAMMALS

PART I: THE STANDARDS

1. AIMS, PRINCIPLES AND GENERAL CONSIDERATIONS OF THE STANDARDS

1.1. AIMS

The aim of the Standards is to ensure a sufficient level of welfare of trapped animals, and to further improve this welfare.

1.2. PRINCIPLES

1.2.1. In the evaluation of whether or not a trapping method is humane, the welfare of a trapped animal must be assessed.

1.2.2. The principle for deciding that a trapping method is humane is that it meets the threshold requirements in sections 2 and 3.

1.2.3. It is assumed in setting the Standards that traps should be selective, efficient and in compliance with the relevant requirements for human safety of each Party.

1.3. GENERAL CONSIDERATIONS

- 1.3.1. Welfare of animals is indicated by measures of the extent of ease or difficulty in their coping with the environment and the extent of failure to cope with their environment. Since animals vary in the methods that they use to try to cope with their environment, a range of measures should be used when assessing their welfare.

Indicators of welfare of trapped animals include those of physiology, injury and behavior. Since some of these indicators have not been studied for a variety of species, further scientific studies will be necessary to set thresholds under these Standards, as appropriate.

Although welfare can vary widely, the term "humane" is used only for those trapping methods where the welfare of the animals concerned is maintained at a sufficient level, although it is acknowledged that in certain situations with killing traps there will be a short period of time during which the level of welfare may be poor.

- 1.3.2. The thresholds established in the Standards for the certification of traps include:

- (a) for restraining traps: the level of indicators beyond which the welfare of trapped animals is considered poor; and
- (b) for killing traps: the time to unconsciousness and insensibility and the maintenance of this state until death of the animal.

1.3.3. Notwithstanding that the trapping methods must meet the requirements of sections 2.4 and 3.4, consideration should be given to continuing the improvement of the design and setting of traps, in particular to:

- (a) improving the welfare of animals trapped in restraining traps during the period of restraint;
- (b) producing rapid onset of unconsciousness and insensibility of animals trapped in killing traps; and
- (c) minimizing the capture of non-target animals.

2. REQUIREMENTS FOR RESTRAINING TRAPPING METHODS

2.1. DEFINITION

"Restraining Trapping Methods" means traps designed and set with the intention of not killing the trapped animal, but restraining its movements to such an extent that a human can make direct contact with it.

2.2. PARAMETERS

- 2.2.1. In the evaluation of whether or not a restraining trapping method meets these Standards the welfare of an animal that is trapped must be assessed.
- 2.2.2. The parameters must include indicators of behavior and injury listed in paragraphs 2.3.1 and 2.3.2.
- 2.2.3. The magnitude of responses for each of those parameters must be assessed.

2.3. INDICATORS

- 2.3.1. Behavioral indicators recognized as indicators of poor welfare in trapped wild animals are:
 - (a) self-directed biting leading to severe injury (self-mutilation);
 - (b) excessive immobility and unresponsiveness.

2.3.2. Injuries recognized as indicators of poor welfare in trapped wild animals are:

- (a) fracture;
- (b) joint luxation proximal to the carpus or tarsus;
- (c) severance of a tendon or ligament;
- (d) major periosteal abrasion;
- (e) severe external haemorrhage or haemorrhage into an internal cavity;
- (f) major skeletal muscle degeneration;
- (g) limb ischemia;
- (h) fracture of a permanent tooth exposing pulp cavity;
- (i) ocular damage including corneal laceration;
- (j) spinal cord injury;
- (k) severe internal organ damage;
- (l) myocardial degeneration;
- (m) amputation;
- (n) death.

2.4. THRESHOLDS

A restraining trapping method would meet the Standards if:

- (a) the number of specimens of the same target species from which the data are derived is at least 20; and
- (b) at least 80 per cent of these animals show none of the indicators listed in paragraphs 2.3.1 and 2.3.2.

3. REQUIREMENTS FOR KILLING TRAPPING METHODS

3.1. DEFINITION

"Killing Trapping Methods" means traps designed and set with the intention of killing a trapped animal of the target species.

3.2. PARAMETERS

- 3.2.1. The time of occurrence of unconsciousness and insensibility produced by the killing technique must be determined and the maintenance of this state until death must be checked (i.e., until heart function has ceased irreversibly).
- 3.2.2. Unconsciousness and insensibility must be monitored by checking corneal and palpebral reflexes or any other scientifically proven suitable substitute parameter ⁽¹⁾.

⁽¹⁾ In cases where further tests are necessary to determine if the trapping method meets the standards, additional electro-encephalogram (EEG), visual evoked response (VER), and sound evoked response (SER) measurements may be made.

3.3. INDICATORS AND TIME LIMITS

Time limit to loss of corneal and palpebral reflexes	Species
45 seconds	<i>Mustela erminea</i>
120 seconds	<i>Martes americana</i> <i>Martes zibellina</i> <i>Martes martes</i>
300 seconds ⁽²⁾	all other species set out in paragraph 4.1.

3.4. THRESHOLDS

A killing trapping method would meet the Standards if:

- (a) the number of specimens of the same target species from which the data are derived is at least 12; and
- (b) at least 80 per cent of these animals are unconscious and insensible within the time limit, and remain in this state until death.

⁽²⁾ The Committee will evaluate the time limit at the three-year review referred to in Article 9(b), where data warrant such action, to adapt the time limit requirement on a species-by-species basis, with a view to lowering the 300 second time limit to 180 seconds, and to define a reasonable time-frame for implementation.

PART II: LIST OF SPECIES AND IMPLEMENTATION SCHEDULE

4. LIST OF SPECIES REFERRED TO IN ARTICLE 3 OF THE AGREEMENT AND THE IMPLEMENTATION SCHEDULE

4.1. SPECIES LIST

The Standards apply to the following species:

Common name:	Species
Coyote	<i>Canis latrans</i>
Wolf	<i>Canis lupus</i>
Beaver (North American)	<i>Castor canadensis</i>
Beaver (European)	<i>Castor fiber</i>
Bobcat	<i>Felis rufus</i>
Otter (North American)	<i>Lutra canadensis</i>
Otter (European)	<i>Lutra lutra</i>
Lynx (North American)	<i>Lynx canadensis</i>
Lynx (European)	<i>Lynx lynx</i>
Marten	<i>Martes americana</i>
Fisher	<i>Martes pennanti</i>
Sable	<i>Martes zibellina</i>
Pine Marten	<i>Martes martes</i>
Badger (European)	<i>Meles meles</i>
Ermine	<i>Mustela erminea</i>
Raccoon dog	<i>Nyctereutes procyonoides</i>
Muskrat	<i>Ondatra zibethicus</i>
Raccoon	<i>Procyon lotor</i>
Badger (North American)	<i>Taxidea taxus</i>

Additional species will be included in the future as appropriate.

4.2. IMPLEMENTATION SCHEDULE ⁽³⁾

4.2.1. Trapping methods are tested to demonstrate their conformity with these Standards by the competent authorities within:

- (a) for restraining trapping methods, 3 to 5 years after the entry into force of the Agreement, depending on the testing priorities and availability of testing facilities; and
- (b) for killing trapping methods, 5 years after the entry into force of the Agreement.

4.2.2. Within three years after the end of the periods referred to in 4.2.1, the use of traps that are not in accordance with these Standards are phased out by the respective competent authorities.

4.2.3. Notwithstanding the provisions of paragraph 4.2.2, where a competent authority determines that the results of trap testing do not support the conformity of traps with the Standards for specific species or under specific environmental conditions, a competent authority may continue to permit the use of traps on an interim basis while research continues to identify replacement traps. In such cases, prior notification should be given between the United States and the European Community of the traps to be authorized for interim use and the status of the research program. In cases in which this paragraph applies with respect to trapping in the United States, the competent authorities in the United States should transmit such information to the Government of the United States for transmission to the European Community.

⁽³⁾ Authority to regulate traps and trapping methods for the taking in the United States of the specified terrestrial or semi-aquatic mammals resides primarily in the state and tribal authorities.

4.2.4. In addition to paragraph 4.2.3, and notwithstanding the provisions of paragraph 4.2.2, derogations may be granted by a competent authority on a case-by-case basis consistent with the objectives of the Standards, for any of the following purposes:

- (a) the interests of public health or safety,
- (b) protection of public or private property,
- (c) purposes of research, education and protection of the environment, including repopulation, reintroduction, breeding or for the protection of flora and fauna,
- (d) using traditional wooden traps essential for preserving cultural heritage of indigenous communities.

Where implementing this paragraph, prior written notification of such derogations, along with their reasons and conditions, should be given by the United States or the European Community. In the case of the United States, the competent authorities should give such written notification to the Government of the United States for transmission to the European Community, along with their reason and conditions.

4.2.5. Consultations on the subjects referred to in paragraphs 4.2.3 and 4.2.4 should be held pursuant to paragraph 7 of the Agreed Minute at the request of either the United States of America or the European Community.

PART III: GUIDELINES

5. GUIDELINES FOR THE TESTING OF TRAPS AND RESEARCH ON THE ONGOING DEVELOPMENT OF TRAPPING METHODS

To ensure accuracy and reliability, and to demonstrate that trapping methods fulfil the requirements set out in the Standards, studies for testing those trapping methods should follow the general principles of good experimental practices.

In the event that testing procedures are established under the framework of ISO, the International Organization for Standardization, and that such procedures are relevant for the assessment of the conformity of trapping methods with some or all the requirements of the Standards, the ISO procedures shall be used as appropriate.

5.1. GENERAL GUIDELINES

5.1.1. Tests should be performed according to comprehensive study protocols.

5.1.2. The functioning of the trap mechanism should be tested.

- 5.1.3. Testing of traps in the field should be carried out in particular for the assessment of selectivity. This test can also be used to collect data on capture efficiency and user safety.
- 5.1.4. Restraining traps should be tested in a compound, in particular to evaluate behavioral and physiological parameters. Killing traps should be tested in a compound, in particular to identify unconsciousness.
- 5.1.5. In the field tests, traps should be checked daily.
- 5.1.6. The effectiveness of the killing traps to render the target animal unconscious and kill it should be tested on conscious, mobile animals, by laboratory or compound and field measurements. The ability of the trap to strike the target animal at vital locations should be evaluated.
- 5.1.7. The order of testing procedures may be varied to ensure the most effective evaluation of the traps to be tested.
- 5.1.8. Traps should not expose the operator to undue hazard under normal use.
- 5.1.9. If appropriate, a broader range of measures should be checked when testing traps. Field testing should include studies of the effects of trapping on both target and non-target species.

5.2. STUDY SITUATION

- 5.2.1. The trap should be set and used according to the best advice from manufacturers or others on how to do so.
- 5.2.2. For compound testing, a compound should be used that provides a suitable environment for the animals of the target species to move freely, hide and show most normal behavior. It should be possible to set traps and monitor trapped animals. The trap should be set so that video and sound recording can be made of the whole trapping episode.
- 5.2.3. For field testing, sites should be selected that are representative of those that will be used in practice. Since the selectivity of the trap and any possible adverse effects of the trap on non-target species are important reasons for field testing, sites for field testing may need to be chosen in different habitats where different non-target species are likely to be encountered. Pictures of each trap and its set and of the general environment should be taken. The trap identification number should be made a part of the photographic record before and after a strike.

5.3. STUDY PERSONNEL

5.3.1. Test personnel should be appropriately qualified and trained.

5.3.2. Among the test personnel there should be at least one person experienced in the use of the traps, and capable of trapping the animals used in the test and at least one person experienced in each of the methods of welfare assessment for restraining traps and in methods of assessing unconsciousness for killing traps. For example, the assessment of behavioral responses to trapping and of aversiveness should be done in particular by a trained person who is familiar with the interpretation of such data.

5.4. ANIMALS TO BE USED IN TRAP TESTING

5.4.1. Compound test animals should be in good health and representative of those that are likely to be caught in the wild. The animals used should not have prior trapping experience of the trap being tested.

5.4.2. Prior to the testing of traps, animals should be housed in appropriate conditions and provided with adequate food and water. Animals should not be housed in a manner that might in itself result in poor welfare.

5.4.3. Animals should be acclimatized to the testing compound prior to the start of the test.

5.5. OBSERVATIONS

5.5.1. Behavior

5.5.1.1. Behavioral observations should be made by a trained person, particularly in reference to the knowledge of the ethology of the species.

5.5.1.2. Aversiveness can be assessed by trapping the animal in a readily recognized situation, then re-exposing the animal to the trap in the appropriate situation and evaluating its behavior.

5.5.1.3. Care should be taken to distinguish responses to additional stimuli from responses to the trap or the situation.

5.5.2. Physiology

5.5.2.1. Some animals should be fitted with telemetric recorders (e.g., to record heart rate, respiratory rate) before testing. Such fitting should occur long enough before trapping for the animal to recover from any disturbance caused by having been fitted with such recorders.

5.5.2.2. All precautions should be taken to limit inadequate or biased observations and parameters, especially those due to human interference when sampling.

- 5.5.2.3. When biological sampling (e.g., of blood, urine, saliva) is performed, it should be done at times relevant to the trapping event and the time-dependent considerations of the parameter being evaluated. Control data from animals kept elsewhere in good conditions and for different activities, baseline data before the trapping event occurs, and some reference data after extreme stimulations (e.g., a challenge test with adrenocorticotrophic hormone) should also be collected.
- 5.5.2.4. All biological samples should be taken and stored according to the best knowledge to ensure conservation before analysis.
- 5.5.2.5. Analytical methods used should be validated.
- 5.5.2.6. For killing traps, when neurological examinations using reflexes (such as pain or eyes) are performed in combination with the measurement of an EEG and/or VERs or SERs, they should be done by an expert, to provide relevant information concerning the consciousness of the animal or the effectiveness of the killing technique.
- 5.5.2.7. When the animals are not unconscious and insensible within the time described in the test protocol, they should be killed in a humane way.

5.5.3. Injuries and pathology

5.5.3.1. Each test animal should be carefully examined so as to assess any injury. Radiographic examination should be conducted to confirm possible fractures.

5.5.3.2. Further detailed pathological examination of dead animals should be carried out. Post-mortem examination should be performed in accordance with accepted veterinary examination practices by an experienced veterinarian.

5.5.3.3. The affected organs or/and regions should be examined macroscopically, and histologically if appropriate.

5.6. REPORT

5.6.1. The study report should contain all relevant information about the experimental design, materials and methods, and results, in particular:

- (a) the technical description of the trap design including construction material;
- (b) manufacturers' instructions for use;
- (c) the description of the test situation;
- (d) weather conditions, in particular temperature and snow depth;

- (e) the test personnel;
 - (f) the number of animals and traps tested;
 - (g) the total number of captured target and non-target animals of each species, and their relative abundance expressed as rare, common or abundant in that area;
 - (h) selectivity;
 - (i) details of any evidence that the trap was activated and injured an animal that was not caught;
 - (j) behavioral observations;
 - (k) values of each physiological parameter measured and methodologies;
 - (l) description of injuries and post-mortem examinations;
 - (m) time to loss of consciousness and sensibility; and
 - (n) statistical analyses.
-

Appendix II – Agreed Minute Side Letter



UNITED STATES MISSION
TO THE
EUROPEAN UNION

Brussels, December 18, 1997

Dear Sirs:

As you know, representatives of the United States of America and the European Community today signed an Agreed Minute related to humane trapping standards. With respect to that Agreed Minute, I am pleased to inform you of the following:

As reflected in the Agreed Minute, authority to regulate traps and trapping methods for the taking in the United States of terrestrial or semi-aquatic mammals resides primarily in the State and tribal authorities. As a result of our discussions on these issues, representatives of the competent authorities in the United States have advised that they have intensified their efforts to identify more humane traps and already a fifty state initiative, in cooperation with several Federal agencies, has begun to develop Best Management Practices (BMPs) for traps and trapping methods.

Best Management Practices involve a practice or combination of practices that are identified to be the most effective and practicable (technically, economically and socially) means to reduce or prevent problems associated with an activity. Representatives of the competent authorities in the United States have advised that BMP's for traps and trapping methods will be based upon the latest technical and scientific information and data.

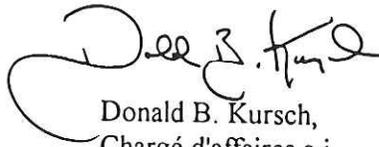
Representatives of the competent authorities in the United States have advised that Best Management Practices for traps and trapping methods in the United States will be developed based upon the Standards annexed to the Agreed Minute. I am particularly pleased to inform you that the program that is being undertaken by the U.S. competent authorities is not limited to the nineteen species listed in the Standards annexed to the Agreed Minute, but is being applied to the additional ten fur-bearing species commercially trapped in the United States. These species are the mink, red fox, gray fox, arctic fox, swift fox, nutria, opossum, skunk, bassarisk and wolverine. This constitutes an important further step undertaken by the competent authorities in the United States designed to improve animal welfare, a step which we believe has not been matched by any other country or in any international agreement.

Additionally, representatives of the competent authorities in the United States have indicated that, pursuant to the Standards annexed to the Agreed Minute, with respect to the *Mustela ermina* and the *Ondatra zibethicus*, the use of all jaw-type leghold restraining traps is being phased out within four years of the entry into force of the Agreement on Humane Trapping Standards between Canada, the European Community and the Russian Federation. These two species encompass over 2.2 million animals trapped every year in the United States and represent typically 50% of all animals listed in the Standards trapped annually in this country.

With respect to the trapping of other species described in the Standards, the above-referenced authorities have advised that, pursuant to the Standards annexed to the Agreed Minute, the use of conventional steel-jawed leghold restraining traps is being phased out within six years of the entry into force of the Agreement on Humane Trapping Standards between Canada, the European Community and the Russian Federation.

I trust that the foregoing provides sufficient clarification with respect to the situation in the United States. The competent authorities in the United States anticipate and welcome continued cooperation in this area with the European Community and other interested parties.

Sincerely,



Donald B. Kursch,
Chargé d'affaires a.i.

Jean-Jacques Kasel
Ambassador,
Permanent Representative of Luxembourg,
Chairman
of the Permanent Representatives Committee

Johannes Friedrich Beseler
Director-General
of the Directorate-General
for External Economic Relations
of the Commission of the European
Communities

Appendix III – Paul Lenzini Memo

May 11, 1998

RECEIVED

AUG 24 1998

DIRECTOR'S OFFICE

Memorandum

To: IAFWA Government Members

From: Paul A. Lenzini, IAFWA Legal Counsel

Re: Details of the US-EC Understanding on
Trade in Certain Wild Furs

Background

Thanks to a resolution achieved by the United States and the European Community on December 18, 1997, the threatened prohibition on import into the EC of certain furs of US origin, scheduled to be implemented in December 1997, will not be applied. The threat derives from the 1991 European regulation on leghold traps. The regulation declares that the country of origin of products exported to the EC of certain species involved in trade in wild furs must comply with one of two conditions: that use of the leghold trap be prohibited or that trapping methods used for the species listed meet internationally agreed humane trapping standards. Council Regulation (EEC) No. 3254/91. (Copy attached at Tab A.)

Dealing with the threat of an embargo on wild fur of US origin has been made complex by the fact that the several States are the competent parties with respect to regulation of trap use but, as a matter of constitutional law, are generally not competent to enter into arrangements with foreign nations. And, while an embargo on the movement of US furs into the fifteen member EC could have significant indirect effects on wildlife management in this country, an EC embargo on imports from the US would directly implicate federal authority and interests relating to foreign trade.

Even prior to its final approval in 1991, Regulation 3254/91 was identified by the United States Trade Representative (USTR) in the annual "National Trade Estimate Reports on Foreign Trade Barriers" as constituting a significant barrier to United States exports. As such, the USTR is authorized to take action to eliminate such foreign trade barriers including negotiations or consultations with foreign

governments. If these efforts fail, USTR is authorized to file a formal complaint before the World Trade Organization in Geneva.

Following two USTR-led delegations to Brussels, in 1990 and 1991, and numerous subsequent consultations by USTR that failed to resolve the threat of an embargo, the IAFWA Executive Committee in March 1996, on the recommendation of the Fur Resources Committee, urged USTR to enter into negotiation of a framework agreement with the EC and principal supplier nations to the EC to establish internationally agreed guidelines for humane trapping. This long-running, contentious issue was resolved through separate EU settlements with the Canadians and Russians, on the one hand, and the United States on the other, described below.

I. The Canada, EC, Russia Agreement. In July 1997, representatives of these nations initialed the "Agreement on Humane Trapping Standards Between Canada, the European Community and the Russian Federation" ("the Agreement"), an arrangement containing several indicia of a binding international agreement. Annex 1 to the Agreement is a set of objective Standards (behavioral indicators and physical injuries) to be used in evaluating welfare of trapped animals for killing traps and restraining traps. The Agreement establishes a list of nineteen species to which the Standards apply, twelve of which are native to North America. An Implementation Schedule is established for trap testing and for phase out of traps that do not meet the Standards. The Agreement was signed by Canada and the EC on December 16, 1997, and was signed by the Russian Federation on April 24, 1998.

USTR officials and representatives of state wildlife agencies participated in negotiation of the Standards, but the US declined to become a party to the Agreement because it appears to be a binding international agreement and because primary authority for the subject matter in the US resides in the several States and in Indian tribes.

II. The US-EC Agreed Minute. In lieu of becoming a party to the Agreement on Humane Trapping Standards, the US and the EC arrived at a political understanding signed in Brussels on December 18, 1997. The understanding is set forth in the form of an Agreed Minute. (Tab B) The Agreed Minute acknowledges that an understanding was reached on the following matters:¹

A. The US and the EC consider that the Standards annexed to the Agreed Minute (identical to the Standards developed during

¹ While an accurate description of the contents of the Agreed Minute, the description below is not a verbatim recitation of it.

negotiation of the Canada, EC, Russia Agreement except for differences in the Implementation Schedule) provide a common framework for describing and evaluating progress toward the use of more humane traps and trapping methods and provide a basis for cooperation on the further development and implementation of the Standards by their respective competent authorities (in the United States, state wildlife agencies and tribal agencies). (A copy of the annexed Standards is at Tab C.)

B. The US endorses the Standards annexed to the Agreed Minute as providing such a common framework for implementation by its competent authorities for the humane trapping of specified terrestrial or semi-aquatic mammals, twelve species native to the United States listed in the Standards.²

C. The US and the EC intend to encourage and support research, development, monitoring and training programs by their competent authorities that promote the use and application of traps and trapping for the humane treatment of such (twelve species of) mammals, and they recognize the need to reevaluate and update the annexed Standards as new technical and scientific information and data become available based on such programs.

D. The US and the EC further intend to encourage their competent authorities to monitor and report on progress towards implementation of the annexed Standards.

E. The US and the EC recognize that nothing in their understanding affects their rights and obligations under the (Marrakesh) Agreement establishing the World Trade Organization.

F. The US and the EC intend to consult with each other on any matter concerning this understanding or the annexed Standards with a view to finding a mutually acceptable solution.

² Coyote, wolf, beaver, bobcat, otter, lynx, marten, fisher, ermine, muskrat, raccoon and badger. *Martes martes*, listed in the Standards under the common name "pine marten," is not native to North America.

G. Whenever the term "the Agreement" is used in the annexed Standards, it is understood to mean the Agreement on Humane Trapping Standards between Canada, the European Community and the Russian Federation.

III. Side Letters Accompanying the Agreed Minute. Three side letters accompany the Agreed Minute and should be considered in conjunction with it. (Tab D) The first two side letters are US letters to EC representatives, both dated December 18, 1997, and signed by the chargé d'affaires of the U.S. Mission to the European Union in Brussels. The third side letter, also dated December 18, 1997, is signed by the EC representatives named in the US side letters and is addressed to the chargé d'affaires of the U.S. Mission. The first US side letter transmits the advice of representatives of the competent authorities in the United States (IAFWA through the Fur Resources Committee) that they have intensified their efforts to identify more humane traps through a fifty-state initiative, in cooperation with federal agencies, to develop Best Management Practices for traps and trapping methods in the United States (BMPs), and that representatives of the competent authorities in the United States advise that the BMPs will be developed based on the Standards annexed to the Agreed Minute.

The first US side letter transmits the further advice of representatives of the competent authorities in the United States that the BMPs will apply not only to the twelve species listed in the Standards that are native to North America, but also to an additional ten furbearing species ("the ten unlisted species") trapped commercially in the United States.³

The first US side letter also informs the EC that U.S. competent authorities have indicated that, pursuant to the Standards annexed to the Agreed Minute, with respect to Mustela erminea and Ondatra zibethicus, the use of all jaw-type leghold restraining traps is being phased out within four years of entry into force of the Canada, EC, Russia Agreement and, also pursuant to the Standards annexed to the Agreed Minute, with respect to the ten other native species listed in the Standards, the use of conventional steel-jawed leghold restraining traps is being phased out within six years of entry into force of the Canada, EC, Russia Agreement.

The second US side letter memorializes an understanding reached by both parties in the course of negotiating the Agreed Minute having to do with the language of paragraph six of the Agreed Minute. That paragraph notes that both the US and the EC recognize that the Agreed Minute and the attached Standards

³ Mink, red fox, gray fox, arctic fox, swift fox, nutria, opossum, skunk, bassarisk and wolverine.

do not collectively affect the rights and obligations of the two sides under the WTO agreement. This side letter is meant to clarify that the US, in dropping its demand for certain additional language in this paragraph during the negotiations, was in no way implying through its actions that it was waiving its rights under the WTO agreement. The second US side letter goes on to request that the EC confirm its acceptance of the understanding through a letter of reply. The EC's side letter (the third side letter) confirms its acceptance of the understanding described in the second US side letter.

IV. Political Nature of the Agreed Minute and Accompanying Documents. The Agreed Minute and the accompanying documents (the Standards annexed to the Agreed Minute, the Implementation Schedule therein, and the side letters) constitute a political understanding of the US and the EC concerning the desirability of achieving progress toward the identification and use of more humane traps and trapping methods. The Agreed Minute reflects that in the United States authority to regulate use of traps and trapping methods for terrestrial or semi-aquatic mammals resides primarily in state and tribal authorities.⁴ The language in the Agreed Minute and accompanying documents avoids expressions that could create legal obligations on the US government under international law.⁵

Also not legally binding on the US or on the several States is the advice of representatives of state wildlife agencies, transmitted to EC representatives in the first US side letter, that the state agencies have intensified their efforts to identify more humane traps through the BMP initiative and that the use of all jaw-type leghold restraining traps for two species and the use of conventional steel-jawed leghold restraining traps for the ten other native species (listed in the Standards) is being phased out within certain time periods related to entry into force of the Canada, EC, Russia Agreement. Nor does the transmission of such advice to the EC give rise to an obligation enforceable in state or federal court.

Neither do any of the assertions of the Agreed Minute or the accompanying documents constitute a "best efforts" legal obligation of conduct or of results on the part of the several States to take particular actions with respect to traps or trapping methods if such actions could be taken. The existence of such a "best efforts" obligation would imply a relinquishment of state authority to exercise normal sovereign powers within its own borders without reference to the Agreed

⁴ Agreed Minute, par. 3; Implementation Schedule, par. 4.2 note 3; first US side letter, par. 2.

⁵ Neither a copy of the Agreed Minute nor of the accompanying documents will be transmitted to Congress pursuant to the Case-Zablocki Act, 1 U.S.C. § 112b, which requires transmission to Congress of international agreements entered into by the United States.

Minute and the accompanying documents. No relinquishment of state authority results from the signing of the Agreed Minute.

V. Future Actions Described in the Agreed Minute. Despite the absence of legal obligation, the Agreed Minute and accompanying documents engage the good faith of the United States and the several States such that the undertakings reflected therein should be pursued and fulfilled. The EC has taken on faith that the statements of future actions, made by representatives of U.S. competent authorities, and more fully described below, are accurate. The EC could be expected to be deeply concerned should such future actions not be reasonably forthcoming.

(A) By the United States:

1. The US should encourage and support research, development, monitoring and training programs by its competent authorities that promote the use and application of traps and trapping methods for the humane treatment of the twelve terrestrial or semi-aquatic mammals listed in the Standards annexed to the Agreed Minute.

[The US is fulfilling this item through a three-year program of trap testing being conducted by APHIS in cooperation with IAFWA through the Fur Resources Committee (APHIS Cooperative Agreement #98-74-05-0333). (Tab E) The FY 1998 appropriation contains initial year funding to APHIS for trap testing, to be conducted in cooperation with state wildlife agencies, in an amount of \$350,000. This item is also being fulfilled by the US through a FWS grant of Pittman-Robertson administrative funds to IAFWA through the Fur Resources Committee to conduct outreach concerning the need to develop more humane traps and trapping methods. (Tab F)]

2. The US should encourage its competent authorities to monitor and report on progress towards implementation of the Standards annexed to the Agreed Minute.

[The US is fulfilling this item through the APHIS-IAFWA Cooperative Agreement and through the grant of Pittman-Robertson administrative funds.]

3. The US intends to consult with the EC at its request on any matter concerning the Agreed Minute or the annexed Standards.

[An APHIS-IAFWA Memorandum of Understanding notes that, for purposes of the competent authorities in the U.S. through IAFWA, APHIS shall be the primary US government agency for discussions with the EC of issues

connected with the Agreed Minute and accompanying documents. A copy of the APHIS-IAFWA MoU is at Tab G.]

(B) By State Wildlife Agencies:

1. Trapping methods for the twelve native species listed in the annexed Standards should be tested to demonstrate conformity with the Standards according to such priorities as may be established in the BMP initiative, but in overall conformity with the Implementation Schedule set forth at Par. 4.2 of the annexed Standards. For restraining trapping methods,⁶ testing should be carried out within three to five years from entry into force of the Canada, EC, Russia Agreement. For killing trapping methods,⁷ testing should be carried out within five years from entry into force of the Canada, EC, Russia Agreement. Article 17 of the latter agreement provides for entry into force sixty days following the date of deposit with the Secretariat of the Council of the European Union of the last instrument of ratification or adoption according to the rules applicable for each party. The Russian Federation signed the Canada, EC, Russia Agreement on April 24, 1998. Whether the Agreement must be ratified by the Russian Duma is not clear.

[The BMP initiative being carried out by IAFWA through the Fur Resources Committee is intended to fulfill this item. Testing of restraining and killing traps will be carried out in cooperation with the Canadian testing program, with the effort here deploying resources principally toward restraining traps and the effort in Canada deploying resources principally toward killing traps. The States through the Fur Resources Committee intend to report testing results at regular intervals.]

2. BMPs for traps and trapping methods should be based on the latest technical and scientific information and data.

[The BMP initiative and the Canadian testing program will be based on such information and data.]

3. BMPs for traps and trapping methods should be based on the Standards annexed to the Agreed Minute.

⁶ "Restraining trapping methods" are defined in the annexed Standards to mean "traps designed and set with the intention of not killing the trapped animal, but restraining its movements to such an extent that a human can make direct contact with it." Par. 2.1.

⁷ "Killing trapping methods" are defined in the annexed Standards to mean "traps designed and set with the intention of killing a trapped animal of the target species." Par. 3.1.

[The BMP initiative and the Canadian testing program will orient testing in line with the Standards, including the guidelines therein.]

4. Within three years after the end of a period of three to five years after entry into force of the Canada, EC, Russia Agreement, i.e., within not to exceed eight years following entry into force of the Agreement (entry into force occurs sixty days after deposit of the last instrument of ratification), restraining traps that do not meet the Standards are phased out by the competent authorities. Shorter periods of time to phase out apply to the use of jaw-type leghold restraining traps for ermine and muskrat and to the use of conventional steel jawed leghold restraining traps for the ten other native species listed in the Standards. See items V(B)(8) and (9), below.

[This item should be fulfilled by individual States subject to the interim use option and the case-by-case derogation procedure described below in 6 and 7.]

5. Within three years after the end of a period of five years after entry into force of the Canada, EC, Russia Agreement, i.e., within not to exceed eight years following entry into force of the Agreement (entry into force occurs sixty days after deposit of the last instrument of ratification), killing traps that do not meet the Standards are phased out by the competent authorities.

[This item should be fulfilled by individual States subject to the interim use option and the case-by-case derogation described below in 6 and 7.]

6. If a competent authority determines that the results of trap testing do not support the conformity of traps of a particular type with the Standards for a specific species (among the twelve native species listed in the annexed Standards) or under specific environmental conditions, the competent authority during the phase out period or later may continue to permit the use of such traps on an interim basis while research continues to identify a replacement trap. In such a case, prior written notification, for transmission to the EC, should be given of the traps to be authorized and the status of the research program.

[The APHIS-IAFWA Memorandum of Understanding provides for the giving of interim use notices to APHIS for transmission to the EC. At an appropriate time, after testing in connection with the BMP initiative and during the phase out period, individual States should consider establishing a written policy relating to exercise of the interim use option and the giving of notice to APHIS.]

7. With respect to the twelve native species listed in the annexed Standards, as an alternative to the interim use option procedure described in 6 above, during

the phase out period or later a competent authority may approve, on a case-by-case basis for any of the following purposes, use of traps of a particular type that have not been demonstrated by testing to conform to the Standards:

- (a) the interests of public health or safety;
- (b) protection of public or private property;
- (c) purposes of research, education and protection of the environment, including repopulation, reintroduction, breeding or for the protection of flora and fauna; and
- (d) using traditional wooden traps essential for preserving cultural heritage of indigenous communities.

If case-by-case approvals are employed, prior written notification for transmission to the EC should be given of such approvals along with their reasons and conditions.

[The APHIS-IAFWA Memorandum of Understanding provides for giving notice of case-by-case approvals to APHIS for transmission to the EC. At an appropriate time during the phase out period, individual States should consider establishing a written policy relating to exercise of case-by-case approvals and the giving of notice to APHIS.]

8. With respect to ermine and muskrat, the use of all jaw-type leghold restraining traps should be phased out within four years of entry into force of the Canada, EC, Russia Agreement, subject to the interim use option and the case-by-case derogation procedure.

[This phase out should be fulfilled by individual States subject to the interim use option and the case-by-case derogation procedure.]

9. With respect to the ten native species listed in the Standards (other than ermine and muskrat), the use of conventional steel jawed leghold restraining traps should be phased out within six years of entry into force of the Canada, EC, Russia Agreement, subject to the interim use option and the case-by-case derogation procedure.

[This phase out should be fulfilled by individual States subject to the interim use option and the case-by-case derogation procedure.]

10. Norms established in the BMP initiative should also be applied to the ten unlisted species, commercially trapped in the United States, described in footnote 3 above. The Implementation Schedule is not applicable to these species nor is the interim use option or the case-by-case approvals.

[BMPs should be made applicable to the ten unlisted species.]

Attachments:

- A Council Regulation (EEC) No. 3254/91
- B Agreed Minute Dated December 18, 1997
- C Annexed Standards
- D Side Letters Accompanying Agreed Minute