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BY ELECTRONIC AND REGULAR MAIL

Submitted via <http://www.nj.gov/dep/rules/comments>

New Jersey Department of Environmental Protection
2015 Game Code Comments
Division of Fish and Wildlife
Mail Code 501-03
P.O. Box 420
Trenton, New Jersey 08625-0420

Re: Proposed rule to amend N.J.A.C. 7:25-5.12(g) to allow for the use of enclosed leghold traps

Dear Sir/Madam:

On behalf of the Animal Welfare Institute (AWI), Animal Protection League of New Jersey (APLNJ), Born Free USA, Sierra Club NJ, and Unexpected Wildlife Refuge, please accept the following comments on the above-referenced proposed rule to amend N.J.A.C. 7:25-5.12(g) to allow for the use of enclosed leghold traps. The organizations listed above and our collective members and supporters who reside in New Jersey urge you not to adopt this rule. This recommendation is based on legal, practical, scientific, and other considerations, as summarized below and discussed in greater detail throughout the remainder of this letter.

The proposed rule would legalize three traps referred to as “enclosed or encapsulated foothold traps,” which are various types of steel-jaw leghold traps that were prohibited in New Jersey in 1984 (N.J. REV. STAT. §§ 23:4-22.1 to 23:4-22.7). The three traps in question are the Egg, Duff, and Lil’ Grizz Get’rz traps. **The general design of these three traps is described as an “enclosed leg-hold trap” with a “steel jaw.”** Specifically, these traps are what the Legislature banned in 1984, merely modified to include housing surrounding the trap.

There are a wide variety of different types of steel-jaw leghold trap with a plethora of modifications to them including jaws of various sizes, those with off-set jaws, double-jaws, laminated jaws, so-called padded jaws, stop-loss (with an auxiliary jaw), single springs, double springs, coil springs, long springs, under spring (or jump style), beeper kits (an extra set of springs), pan tension devices, various lengths and weights of chains, addition of springs to the chains, swivels added to the trap and/or the chain, drags versus stakes, and with or without a housing. However--irrespective of these and other potential modifications on the devices--all are steel-jaw leghold traps (sometimes also called “foothold traps”). These traps are inherently cruel and it is appropriate that New Jersey prohibited their use. The traps close with violent force on the paws or limbs of the animals that trigger them before the animals are able to withdraw their limbs, and then the traps’ clamping force prevents the animals from escaping by pulling out their trapped limbs. In its wisdom, the New Jersey Legislature prohibited all of these.

All three of the proposed traps operate and function as leghold traps inside an enclosure. The raccoons and opossums reach into them and are caught when they activate the triggers. The animals are then held by one or sometimes both front feet (which are hyper-sensitive in raccoons). The powerful clamping force is strong enough to inflict trauma and pain, and restrict blood flow. In addition, field studies document swelling, broken bones, fractured teeth, subluxations, and partially amputated limbs in several of the animals who were trapped in the Egg trap.¹ In fact, states such as Massachusetts have banned the very same enclosed leghold traps that the New Jersey Division of Fish and Wildlife (NJDFW) and New Jersey Fish and Game Council (NJFGC) are now proposing to legalize in New Jersey.²

The New Jersey Legislature was clearly concerned about animal welfare when it enacted the steel-jaw leghold ban in 1984—with no exceptions made for variations of the design such as so-called soft-catch traps.³ Furthermore, it is absurd to suggest that these traps are needed for raccoon and opossum hunting, management, or control because these two species can be easily caught in cage and box traps and with minimal injury.⁴ It is also important to note that the proposed enclosed leghold traps can catch and harm non-target species who are likely to reach into the traps, particularly domestic cats.⁵

In addition, when the ban was enacted in 1984, the Legislature referred to a ban on **leghold traps** very generically,⁶ indicating that these three traps now being proposed for use in New Jersey are intended to be included in the ban (because, among other reasons, as discussed in more detail below, “foothold” and “leghold” are technically interchangeable). According to the Attorney General, the ban included padded jaw leghold traps as well.⁷ Two unsuccessful efforts were made to amend the bill before it became law to exclude cushion-hold (“padded” leghold) traps from the ban, and these failed. According to the Attorney General, “[the bill] was enacted with a legislative understanding that cushion-hold or padded forms of steel-jawed leghold traps would fall within the sweep of the statute’s prohibition.”⁸

Each of the proposed traps operates with a de facto *coacting jaw* mechanism. While one jaw snaps down on the animal’s leg, the trap itself acts as the other jaw, thereby restraining a captured animal as a standard leghold trap would. The operating jaw is simply encapsulated by other (plastic or metal) material. The action of the trap—clamping and gripping an animal’s foot

¹ Hubert, G.F., Jr., L. L. Hungerford, G. Proulx, R. D. Bluett, and L. Bowman. 1996. Evaluation of two restraining traps to capture raccoons. *Wildlife Society Bulletin* 24:699-708.

² MA has only legalized the use of cage and box traps. See Massachusetts Hunting and Fishing Regulations, available at <http://www.eregulations.com/massachusetts/huntingandfishing/trapping/> (last accessed April 23, 2015).

³ Legislative history of the ban, available at <http://files.eric.ed.gov/fulltext/ED261766.pdf> (last accessed April 23, 2015).

⁴ Iossa G, Soulsbury CD, Harris S. Mammal trapping: a review of animal welfare standards of killing and restraining traps. *Anim Welf* 2007; 16:335-352, available at http://www.uesc.br/cursos/pos_graduacao/mestrado/animal/textos/producao_nutricao_comportamento_animal/mammal_trapping.pdf (last accessed May 15, 2015).

⁵ *Id.*

⁶ Office of the Governor, News Release, Trenton, N.J. 08625, April 27, 1984.

⁷ Letter from State of New Jersey Department of Law and Public Safety to Anthony DiGiovanni, Jr., Chairman, Fish and Game Council, July 12, 1985.

⁸ *Id.*

or leg—is the same with the “enclosed” trap. The traps all have the same clamping action and impact. The action and impact on the animal—physically and psychologically—is the same. The “cover” doesn't prevent the pain and suffering, but instead, the cover is intended to make it more difficult for the trapped animals to chew off their own limbs to escape from the brutal device (note, the trappers don't want to risk having any trapped animals escape). Like “padded” leghold traps, these three proposed traps fall within the ban, are inhumane, and cannot be legalized in New Jersey without violating existing law.

BEST MANAGEMENT PRACTICES (BMP) TRAP-TESTING PROGRAM

International standards for assessing restraining traps were developed by the International Organization for Standardization (ISO), however, the international humane community resoundingly rejected these standards for their failure to adequately assess the impact of the traps on the welfare of the trapped animals and of the potential for catching non-target species.

The “Best Management Practices (BMP) trap-testing program, overseen by the Association of Fish and Wildlife Agencies, was developed in response to those requirements. These tests are supposed to assess trap performance in meeting trap standards. However, despite the injuries the traps inflict, the program has focused on legitimizing leg-hold traps and ensuring that the United States can continue to trade freely in wild-caught furs with other countries.

AWI—an organization with a long-standing interest in trap designs to reduce animal suffering and a participant in the ISO process—requested, but was denied the opportunity to participate in the BMP program. The program has been manipulated so as to avoid any involvement from the animal protection community. One of the primary stated aims of the federal program is “to instill public confidence in and maintain public support for wildlife management and trapping through distribution of science-based information.”

To date, BMP trap recommendations have been issued for 12 species in the United States.⁹ Unmodified steel-jaw leghold traps—the very device the New Jersey Legislature banned in 1984—are included in the list of traps meeting the BMP criteria for several species. Because the traps are not assessed on their ability to capture the target species only, once a trap is approved for a species and its use is permitted, all species are at risk.

The BMP program has been criticized by independent scientists, wildlife professionals, and animal advocacy organizations as unscientific, self-serving, non-transparent, and rife with political agendas. Protective of their industry and far from objective or unbiased when it comes to their hobby, the idea that fur trappers are conducting this field work brings into question the veracity and accuracy of the data and the scientific rigor of the process.

The current proposal to legalize the Egg, Duff, and Lil Grizz Get'rz traps claims that all three of these traps meet the pathetic BMP criteria for taking raccoons. However, BMPs were established with a low threshold to ensure that steel jaw leghold traps can meet the standard. In fact, in field

⁹ In E.U. Regulation 3254/91, 12 North American and one Russian furbearer species were listed. Under the AIHTS, six European species were added for a total of 19 species. Original 13: badger, beaver, bobcat, coyote, ermine, fisher, lynx, marten, muskrat, otter, raccoon, wolf; Russian: sable; European species added: badger, beaver, lynx, otter, pine marten, and raccoon dog.

studies, several raccoons caught in the Egg trap experienced swelling, fractures, subluxations and amputated limbs. **The Duff trap failed to meet even the weak BMP standards for opossums—and there is no data on the effects of the Lil’ Grizz Get’rz trap** on opossums. Neither the Duff Trap nor the Lil’ Grizz Get’rz have been certified under this program for use on opossums. Opossums and domestic cats are both likely to be taken in these three devices which are frequently set using fish-based lures and baits.

FAILURE OF CURRENT EVALUATION SCHEMES TO ASSESS THE WELFARE OF ANIMALS IN RESTRAINING TRAPS

Unfortunately, testing of restraint traps to assess the welfare of animals is subject to myriad variables that can affect the outcome. For example, traps that compromise the flow of blood to a limb can lead to gangrene, but this is rarely identified as it takes time for the gangrene to set in—and doesn’t happen if the animal is killed for necropsy or if the animal looks okay and is released in the wild without follow-up. In addition, the limb can also be subject to freezing in especially cold temperatures, or alternatively, heat stress can be a factor in especially warm climates.

Testing traps in a controlled environment will ensure that no non-target animals are caught – a very different result than in the wild and there may well be different behavior by the animals in enclosures than those in the wild. Alternatively, when animals are trapped in the wild, a record of the behaviors of the animals while trapped is not typically obtained—though this data would be extremely beneficial in assessing welfare. It should be noted that this data is not typically considered in any of the current trap assessment schemes.

The evaluations of trapped animals are typically skewed because they assess survivability which may not equate to the degree of pain caused (both intensity *and* duration) and there may not be consideration given to the likelihood of non-target captures. Older studies in particular tended to focus on the part of the body that was restrained, rather than the entire animal such that a wide range of injuries weren’t identified, joint luxations and broken teeth are but a few examples.

The most commonly used injury score system makes the comparison of trap standards and the replication of the studies difficult.¹⁰ The ISO trauma standards were an attempt to improve the injury scales by integrating a larger number of categories, incorporating an examination of all body areas not previously covered by injury scores, and advocating for an examination of injuries by veterinary pathologists. However, few studies have used the ISO trauma system.¹¹ Nonetheless, some procedures in the ISO standards to test restraining traps are not ideal because the testing is done in an artificial setting versus in the field.¹² Because it is difficult to recreate individual animal behavior in a laboratory, this leads to traps being approved that otherwise fail in the field and do not provide for animal welfare.¹³

Currently, the injury scales tend to assess the “importance of injuries” and the survivability of the animals with the trauma versus the pain caused (both the intensity and length of time) to animals.

¹⁰ Iossa G, *supra* n. 4.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

The Egg, the Duff, and the Lil Grizz Get'rz traps are designed to catch raccoons or opossums specifically by the foot or leg. In order to trigger the trap, the animals must reach through a small opening,²¹ where they encounter an “enclosed trigger trap.” Once a furbearer is trapped in any of these three traps, they are physically restrained by the paw until a trapper returns—as with any other steel-jaw leghold trap. Although trap studies are lacking, those that have been published provide sufficient evidence of the trauma caused by these devices.

The New Jersey Legislature was concerned about leghold traps when it enacted the ban in 1984 in large part because they are intrinsically inhumane.²² The three proposed traps function as legholds by restraining limbs, and limb restraint has been shown to cause more stress than cage and box traps.²³ In addition, unlike cage and box traps, animals caught in steel jaw leghold traps, including enclosed devices, are vulnerable to predation by other animals; they can be attacked and killed or may sustain additional injury in their desperate effort to avoid predation while trapped.

In addition, as discussed in more detail below, although often advertised as being able to more accurately target a specific furbearer without harm to non-target species, the traps require bait and/or lure, which is oftentimes fish and fish oil. This has led to the unintentional trapping of domestic cats. Freeing cats alive from these enclosed trap devices is difficult²⁴ and can result in injuries to the cat or the people who try to take apart the trap and free the trapped animal (who is also in pain and distress).

The Egg Trap

The Egg trap is generally comprised of white nylon and steel (or plastic) casing with an enclosed trigger. The casing is intended to encapsulate the captured foot.²⁵ The pull trigger mechanism within the plastic housing releases a 5.7-cm-long striking bar (diameter: 0.38 cm), moving laterally across the opening to pin down the animal's paw and restrain the animal until the trapper is ready to check on the trap.²⁶ The patent of the Egg trap describes the trap's “coacting

²¹ Wisconsin Trapper Education Manual, Department of Natural Resources, available at <http://dnr.wi.gov/education/outdoorskills/documents/unit2.pdf> (page 72 including the Egg, Duff, and Lil Grizz as enclosed trigger traps under the foothold trap category under the live-restraining trap section) (last accessed May 15, 2015).

²² Legislative history, available at <http://files.eric.ed.gov/fulltext/ED261766.pdf>.

²³ Iossa G, *supra* n. 4; *see also* White P, Kreeger T Seal U et al Pathological responses of red foxes to capture in box traps. *J Wild Manage* 1991;55:75-80; Cross M, Swale E, Young G, et al. Effect of field capture on the measurement of cellular immune responses in wild ferrets (*Mustela furo*), vectors of bovine tuberculosis in New Zealand. *Vet Res* 1999; 30:401-410.

²⁴ Sterling Grizz Instructions, available at http://www.wildlifecontrolsupplies.com/pdf/Sterling_Grizz_Instructions.pdf (last accessed May 15, 2015).

²⁵ The Egg Trap Company website, available at <http://www.theeggtrapcompany.com/> (last accessed May 15, 2015).

²⁶ Proulx, Gilbert, et. al., Injuries and Behaviors of Raccoons (*Procyon Lotor*) Captured in the Soft Catch and the Egg Traps in Simulated Natural Environments, *Journal of Wildlife Diseases*, 29(3), 1993, pp. 447-452.

jaws to grasp the paw or leg of said animal.”²⁷ This leg-hold trap—as do all leghold traps-- “restrains the leg or foot of an animal” using a striking bar.²⁸

In fact, the Egg trap has varying definitions—all of which indicate that it operates in a manner equivalent to the standard leghold trap. The Egg trap is often referred to as a leghold, foothold, or live-restraint trap.²⁹ Specifically, a generally accepted definition for the Egg trap describes it as “a **leg-hold trap** encased in an egg-shaped plastic cover.”³⁰ As demonstrated, the literature describing the trap does not shy away from using the term “leg-hold.” The patent for the trap itself describes it as “a trap assembly for capturing small animals formed from a housing that encloses a **jaw assembly** for grasping the paw or leg of the animals.”³¹ The jaw assembly is formed from a trap plate having an aperture and a resiliently biased arm that is movable from an open position to a closed position where it coacts with side edges of the plate aperture to **form a pair of jaws** for grasping the animal.”³² **The Egg Trap is a steel-jaw leghold trap.**

Specifically, as noted by expert, Tom Garrett, in Appendix 3:

“There is no better illustration of the ideological character of the dispute over trapping than the fact that U.S. trapping groups and state wildlife managers have continued to insist that steel jaw leghold traps are indispensable for trapping raccoons. Some have shamelessly touted **the so-called EGG trap, a modified steel trap** with holding surfaces encased in an egg-shaped plastic shield to prevent animals from chewing their feet off (something for which raccoons are well known), as the “humane” replacement to conventional steel traps.”³³

A study by Austin et al. (2004) published on the Egg trap company website, entitled *An Evaluation of Egg and Wire Cage Traps for Capturing Raccoons*,³⁴ reveals that the Egg trap *does* trap non-target animals (namely opossums, as the traps were designed to be raccoon-specific). The study also indicates that removing non-target captures from the Egg trap is more involved than when these captures occur in cage traps, given that the animals must be physically restrained in some manner in order to remove them.³⁵ However, it must be noted that this study appears to have conducted an incomplete assessment of the welfare impacts on furbearers, as no animals were identified with tooth injuries; it is presumed this critical injury wasn’t included in

²⁷ Patent, available at <http://patft.uspto.gov/netacgi/nph-Parser?Sect1=PTO1&Sect2=HITOFF&d=PALL&p=1&u=%2Fnethtml%2FPTO%2Fsrchnum.htm&r=1&f=G&l=50&s1=4,633,610.PN.&OS=PN/4,633,610&RS=PN/4,633,610> (last accessed May 15, 2015).

²⁸ Fox, Camilla, Papouchis, Christopher. *Cull of the Wild: A Contemporary Analysis of Wildlife Trapping in the United States*. Animal Protection Institute (2004).

²⁹ Wisconsin Trapper Education Manual, *supra* n. 21.

³⁰ Fox, Camilla, Papouchis, Christopher, *supra* n. 28.

³¹ Patent, available at <https://www.google.com/patents/US4633610> (last accessed May 15, 2015).

³² Patent, available at <http://patft.uspto.gov/netacgi/nph-Parser?Sect1=PTO1&Sect2=HITOFF&d=PALL&p=1&u=%2Fnethtml%2FPTO%2Fsrchnum.htm&r=1&f=G&l=50&s1=4,633,610.PN.&OS=PN/4,633,610&RS=PN/4,633,610> (last accessed May 15, 2015).

³³ Garrett, Tom. *Alternative Traps: The Role of Cage and Box Traps in Modern Trapping, the Role of Legsnare in Modern Trapping, and the Role of Spring Powered Killing Traps in Modern Trapping*. Pg. 11 (1999).

³⁴ *An Evaluation of EGG™ and Wire Cage Traps for Capturing Raccoons* James Austin, Michael J. Chamberlain, Bruce D. Leopold and L. Wes Burger, Jr. *Wildlife Society Bulletin* Vol. 32, No. 2 (Summer, 2004), pp. 351-356

³⁵ *Id.*

the assessment. Thus, its purported conclusion that the Egg trap is a humane alternative to leghold traps is not substantiated with any data and, therefore, should be approached with skepticism.

In fact, the Egg trap is not humane. Animals that are trapped almost always attempt to free themselves. They struggle violently against the trap—sometimes for hours—before fatigue and shock set in. Studies have shown that raccoons captured in Egg traps for 12 hours fought against the trap and/or against the trap’s surroundings for approximately seven hours.³⁶ Researchers have noted that raccoons caught in the Egg Trap fought the trap itself more than their surroundings.³⁷ At the 24-hour mark, all nine raccoons captured in the Egg traps had evidence of injury, including four tendon macerations.³⁸

It is also worth noting that it appears that the authors did not assess the condition of the entire animals so that injuries such as permanent tooth fracture exposing pulp cavity would not have been identified and included in the welfare assessment. In addition, the animals in this study were trapped in a controlled environment (“simulated natural environment”), and therefore there is no ability to collect data on non-target captures. Also, it is recognized that the behavior of the trapped animals in this environment might differ from those in the wild where, for example, trapped animals might be preyed on so that actual injuries could be more severe.

The egg-shaped plastic cover that encases the trap is supposed to prevent self-mutilation by small furbearing species. However, substantial injury among trapped animals continues to be a major issue. Although it was found to reduce injuries to raccoons in a *laboratory* setting, the trap has had unacceptably high injury scores in *field trials*. For example, during a field study on opossums, the researchers concluded that **the Egg trap caused excessive swelling, lacerations, and fractures.**³⁹ According to Hubert, et al., of the injuries experienced by raccoons in the Egg trap, 36% were major injuries.⁴⁰ Though it is supposed to be a live restraint device, 10% of the raccoons caught in Egg traps were dead.⁴¹

Existing studies overwhelmingly indicate that the Egg trap causes serious injuries in the animals it traps. For example, data presented by Hubert et al⁴² indicates that out of a sample size of 62 raccoons, not only did 36% experience major injuries, but four of the raccoons had broken bones above the carpus or tarsus and two raccoons had amputated limbs (it was noted that these amputations were “not complete.”)⁴³

³⁶ Proulx, Gilbert, et. al, *supra* n. 26.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Fox, Camilla, Papouchis, Christopher, *supra* n. 28 at 33.

⁴⁰ Iossa G, *supra* n. 4.

⁴¹ Proulx, G., Hubert, G.F., Hungerford, L.L. Evaluation of Two Footholding Devices to Capture Raccoons in Non-Drowning Sets, available at <http://www.theeggtrapcompany.com/evaluation%20of%20two%20footholding%20devices.htm> (last accessed May 15, 2015).

⁴² Hubert, G.F., *supra* n. 1.

⁴³ Iossa G, *supra* n. 4.

The attempted amputation of limbs in an Egg trap warrants special attention as this is perhaps one of the most horrifying of injuries caused by this device. This trauma is significantly worse than an amputation that occurs in a leghold trap without an enclosure. In leghold traps without an enclosure the amputation occurs below the jaws of the trap, where circulation has already been restricted and the nerves are less reactive. An enclosed leghold trap is specially designed to prevent the trapped animal from chewing off his or her foot in this way. **Therefore, when a trapped animal is amputating his or her own foot in an enclosed trap, the amputation is happening above the jaws of the trap and closer to the body such that the pain is far more intense and the loss of blood far greater.** It is therefore not surprising that the raccoons hadn't been able to completely amputate their own limbs.

By the scientists own admission, raccoon injuries associated with the Egg trap may be far greater in the wild than those found when the traps were tested in a controlled environment. Investigators have correctly noted that the controlled and protected conditions in the simulated environment of a laboratory may underestimate the injuries sustained by raccoons captured in field trap lines because of behavioral differences between animals in the lab and animals in the wild and as a consequence of the vulnerability to predation by other animals while in the trap.⁴⁴

In addition, injuries to opossums captured in Egg traps, as documented by Austin et al (2004), were significant.⁴⁵ Specifically, they reported:

- Edematous swelling or hemorrhage: 100%
- Cutaneous laceration: 45%
- Permanent tooth fracture exposing the pulp cavity: 27.5%
- Subcutaneous muscle laceration or maceration: 10%
- Simple fracture above the carpus: 10%
- Subluxation at the carpus: 7.5%
- Cutaneous laceration (2cm long): 5%
- Compound fracture above the carpus: 5%
- Damage to the periosteum: 2.5%
- Luxated elbow joint: 2.5%.⁴⁶

Data suggest that younger and smaller opossums appear to suffer greater trauma from the traps, but there is no means to selectively exclude them so there is no prospect for alleviating their suffering.⁴⁷ Specifically, Hubert et al. (1996)⁴⁸ documented that opossums were frequently captured in Egg traps set for raccoons, indicating that the Egg trap is not as selective as described.⁴⁹

⁴⁴ Fox, Camilla, Papouchis, Christopher, *supra* n. 28

⁴⁵ Hubert, G.F., Wollenberg, G.K., Hungerford, L.L., Bluett R.D. Evaluation of Injuries to Virginia Opossums Captured in the EGG™ Trap. *Wildlife Society Bulletin*, Vol. 27, No. 2 (summer, 1999), pp. 301-305.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Hubert, G.F., *supra* n. 1.

⁴⁹ James Austin et al, An Evaluation of EGG™ and Wire Cage Traps for Capturing Raccoons (Summer 2004), *Wildlife Society Bulletin*, <http://www.jstor.org/stable/3784975> (discussing how non-target

Although the Egg trap has been studied for longer than some other enclosed leghold traps, there is insufficient data available on this trap.⁵⁰ Indeed, Austin et. al. (2004) emphasize that there has not been enough research done regarding potential injuries to opossums associated with the Egg trap. Specifically, they “encourage additional studies to examine the performance of the Egg trap for trapping opossums in other geographical areas.”⁵¹ In addition, they found that “no research projects on raccoons have exclusively used Egg traps”⁵² and Egg traps have not been reported as used in any *current* studies on raccoons.⁵³

This is an obvious indicator that there is not enough information surrounding the welfare impacts of Egg traps. However, it must also be noted that these comments are not recommending more trapping tests be done overall on these traps because, due to their structure and operation, they are of an inhumane design and technically illegal under New Jersey’s leghold ban, and therefore improper for use in New Jersey anyway.

The durability of the Egg trap is another factor that may impact animal welfare. Austin et al. (2004) noted that, although none of the traps used in their study had to be discarded, it was apparent that “some would have to be replaced prior to a fourth trapping session.”⁵⁴

Austin et al. (2004) also concluded that removing non-target animals from Egg traps is more “involved” than cage traps because animals must be physically restrained to get them out of Egg traps.⁵⁵ However, they do not go into detail on the kinds of restraints that are practiced or should be for this particular issue.⁵⁶ What are those who need to release a domestic cat going to do to relieve their animal’s suffering?

The Duff [or “The Duffer”]

Like other steel-jaw leghold traps, the Duff trap is an all metal trap with double swivels, but it also includes a drowning lock which would hold the trapped and struggling raccoon or opossum under water until the animal drowns.⁵⁷ This is a very long and inhumane process. The spring-operated trap snaps shut on the foot or leg of an animal, retraining them for prolonged periods of time.

Unfortunately, other than this basic framework, no one knows much more about the Duff trap because there are essentially **no published studies** that have been done on the trap and its effects. What information is available on the Duff trap indicates that it operates as a leghold trap and **does not even meet BMP standards for the animals that it frequently captures—**

species, specifically opossums, were captured frequently in both cage and Egg traps on page 354). (last visited May 14, 2015)

⁵⁰ *Id.*

⁵¹ Austin et al, *supra* n. 34.

⁵² Austin et al, *supra* n. 49.

⁵³ *Id.*

⁵⁴ Austin et al, *supra* n. 34.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ PCS Outdoors, Duffer’s Dog Proof Raccoon Trap, available at <http://www.pcsoutdoors.com/duffersraccoontrap.aspx> (last accessed May 15, 2015).

opossums. In this sense, by legalizing the Duff trap, the state of New Jersey would specifically be encouraging its citizens to capture animals using methods that do not even comport with minimal BMP standards. And in addition to the failure to meet BMP standards for opossums, **there is no published, scientific documentation regarding trauma caused by the Duff trap.** Further, it clearly causes injury. According to the BMP, out of a sample size of 35 opossum, the trap had a cumulative injury score of 62.6 (above the 55 limit).⁵⁸ The BMP report also indicates that the Duff trap has to be completely disassembled in order to remove an animal, similarly to the Egg trap, which is impractical and potentially dangerous to a person.⁵⁹

By specifically failing to meet BMP criteria for trapping opossums and having unacceptable injury scores for the animals it targets,⁶⁰ the Duff trap cannot be described as a humane trap for opossums. Specifically, **the Duff trap has failed to meet animal welfare performance criteria**, similar to unmodified steel-jaw leghold traps.⁶¹ This fact alone is enough to warrant prohibition of its use in New Jersey, given the Legislature's concern for animal welfare when it enacted the ban on leghold traps.

The Lil Grizz Get'rz

Like the Egg trap, the Lil Grizz Get'rz operates in the same manner as the steel-jaw leghold trap. The trap is a leg-restraining trap designed to snag the hyper-sensitive front foot of the raccoon as it is inserted into the trap in an effort to obtain bait.⁶² The raccoon cannot touch the bait without also activating the trap.⁶³ Like a leghold trap, the Lil Grizz Get'rz is essentially a restraining trap that targets the leg or foot of an animal.⁶⁴ Specifically, the patent describes how "the movement of the restraint bar against the raccoon's inserted paw and up against an internal fixed grip bar in the housing acts to hold or restrain the raccoon."⁶⁵ **These two "bars" are jaws.** Notice also that "the restraint bar initially engages the raccoon on the lower part of its inserted front leg."⁶⁶ **In other words, this is a leghold trap.**

Although the Lil Grizz Get'rz trap, like the Duff trap, is referred to as a "humane raccoon restraint,"⁶⁷ it operates as a leghold trap, and **there are no published studies assessing the trap's impact on the welfare of the animals that it is designed to catch**, such as opossums. **In addition, manufacturers of the Lil Grizz Get'rz have admitted that domestic pets (such as cats) can get caught in these traps if meat is used as bait.**⁶⁸ **One of the chief concerns when**

⁵⁸ New Jersey Enclosed Foothold Traps: A Report to the New Jersey Fish and Game Council on the performance of new trapping systems as an alternative to steel-jaw leghold traps (Page 7) (2014).

⁵⁹ Best management Practices: Trapping Raccoons in the United States, Association of Fish and Wildlife Agencies, page. 9

⁶⁰ Enclosed Foothold Traps, *supra* n. 58.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Fox, Camilla, Papouchis, Christopher, *supra* n. 28

⁶⁵ Patent, available at <http://patft.uspto.gov/netacgi/nph-Parser?Sect1=PTO1&Sect2=HITOFF&d=PALL&p=1&u=%2Fnethtml%2FPTO%2Fsrchnum.htm&r=1&f=G&l=50&s1=6.658.787.PN.&OS=PN/6.658.787&RS=PN/6.658.787> (last accessed May 15, 2015).

⁶⁶ *Id.*

⁶⁷ Patent, available at <https://www.google.com/patents/US20110289821> (last accessed May 15, 2015).

⁶⁸ Sterling Grizz Instructions, *supra* n. 24.

the 1984 ban was passed in New Jersey was the ability for “the leghold trap” to [snap] shut on the legs of dogs, cats, and other domesticated pets; maiming and seriously injuring them.”⁶⁹ This is evidence enough that the Lil Grizz Get’rz does not comply with existing law in New Jersey.

ALTERNATIVE OPTIONS FOR NEW JERSEY

Animals captured in box and cage traps undergo significantly less trauma than those captured in leghold traps.⁷⁰ Specifically, if checked regularly and used correctly, mortality rates approach zero.⁷¹ The traps are also simple to use.

Box traps can capture a range of species, but unlike other trap methods (including the Egg trap, Duffer, and Lil’ Grizz Getrz), non-target species are typically released virtually unharmed, the only distress experienced generally being that of confinement.⁷² In addition, unlike the animals caught in contained leghold traps, those caught in box traps are spared attack and death by predators.

CONCLUSION: THE PLAIN LANGUAGE OF NEW JERSEY’S LEGISLATIVE BAN

The New Jersey legislature was clearly concerned about animal welfare and public safety when it enacted a ban on steel-jaw leghold traps in 1984—with **no** exceptions made for variations in trap design, such as soft-catch traps.⁷³ Indeed, the Legislature’s ban on leghold traps was very comprehensive,⁷⁴ making a sole exception for “mouse or rat traps designed for use in or under buildings,” and explicitly banning the legalization of modified traps, such as “padded” leghold traps.

All three of the proposed traps operate and function precisely the same as leghold traps that are already banned. In fact, the general design of these three traps is sometimes described as an “enclosed leg-hold trap” with a “steel jaw.” Therefore, the effect of the proposal is to legalize what is currently prohibited.

The enclosed leghold traps also fail to meet even the weak so-called BMP standards for **both** raccoons **and** opossums – their target species. In field studies, the Egg Trap had an unacceptable injury score, as raccoons caught in the traps had swelling, fractures, subluxations, and amputated limbs.⁷⁵ Similarly, the Duff trap did not meet the minimal BMP standards for opossums and the Lil Grizz Get’rz trap was never even tested on opossums.

It is well established that **“regulations cannot alter the terms of a statute or frustrate the legislative policy.”**⁷⁶ Where there exists reasonable doubt as to whether a particular power is

⁶⁹ Office of the Governor, *supra* n. 6.

⁷⁰ (Powell & Proulx 2003) cited in Iossa, G., *supra* n. 4.

⁷¹ *Id.*

⁷² (Short *et al* 2002; Powell & Proulx) cited in Iossa, G., *supra* n. 4.

⁷³ Legislative history, available at <http://files.eric.ed.gov/fulltext/ED261766.pdf>.

⁷⁴ Office of the Governor, *supra* n. 6.

⁷⁵ Hubert, G.F., *supra* n. 1.

⁷⁶ The standards for reviewing the regulation of a New Jersey agency are set forth in *In re: N.J.A.C. 7:1B-1.1*, 67 A.3d 621 (NJ Superior Ct. 2013).

vested in the administrative body, the power is denied. And when an administrative agency's rule or regulation contravenes the statute which created it, the rule will be set aside.

The NJDFW and NJFGC will blatantly undermine N.J. REV. STAT. §§ 23:4-22.1 to 23:4-22.7 if they approve the proposed rule. The amendment would legalize three types of enclosed leghold traps which fall within the ban on steel-jaw leghold traps passed in 1984. The proposal creates new categories of overbroad exemptions that were not authorized by the Legislature and contravene the public policy underlying the statute. In effect, should the proposed rule be adopted, the NJDFW and NJFGC will unilaterally create new law in violation of the Separation-of-Powers Doctrine embedded in the New Jersey Constitution.

Consequently, we ask that the New Jersey Department of Environmental Protection terminate this decision-making process by refusing to adopt this proposed rule.

Sincerely,



Cathy Liss
President
Animal Welfare Institute



Tara Zuardo
Wildlife Attorney
Animal Welfare Institute

And on behalf of:

Sue Russell
Wildlife Policy Director
Animal Protection League of New Jersey

Jeff Tittel
Chapter Director
Sierra Club New Jersey

Adam Roberts
Chief Executive Officer
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