



The voice of fish and wildlife agencies

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Testimony of
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Good morning Chairman Huffman, Ranking Member Bentz, and members of the Subcommittee, and thank you for the opportunity to testify on legislation under consideration by this Committee. I am Gordon Batcheller, Certified Wildlife Biologist, Executive Secretary of the Northeast Association of Fish and Wildlife Agencies and current president of The Wildlife Society, and today I am representing the Association of Fish and Wildlife Agencies (the Association), of which all 50 state fish and wildlife agencies (state agencies) are members. Prior to my current position, I was the Chief of Wildlife for the New York Division of Fish and Wildlife. During my tenure with New York, I also served on the Association's Furbearer Technical Working Group, was a member of the CITES Working Group, and a member of the International Relations Committee among others. The Association's mission, which has not changed significantly from its founding in 1902, is to protect state agency authority to conserve and manage the fish and wildlife within their borders. In meeting that goal, we strive to facilitate cooperation between state and federal agencies, conservation NGOs, and private landowners.

My testimony will focus on four bills under consideration that are of particular significance to the management of fish and wildlife: H.R. 4716, H.R. 4057, H.R. 4092, and H.R. 1546.

H.R. 4716, "Refuge From Cruel Trapping Act of 2021"

First and most critically, I will address H.R. 4716, of which the stated purpose of is: "To end the use of body-gripping traps in the National Wildlife Refuge System, and for other purposes."

The mission of the National Wildlife Refuge System (NWRS) is: "To administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats with the United States for the benefit of present and future generations of Americans."

State and federal wildlife agencies, including the Fish and Wildlife Service (USFWS), use trapping as a cost-effective method (compared to hunting or chemical control) to manage wildlife and habitat. Trapping helps protect endangered species and migratory birds, restore species in decline, prevent and reduce

property damage, and control destructive invasive species. We appreciate the attempts made to improve H.R. 4716 since past iterations, namely the conditional exemptions for use of body-gripping traps in rare circumstances by federal agency personnel for the purpose of controlling invasive species, or to protect species either listed under the Endangered Species Act or designated by the Secretary as sensitive species. I'll say more on this exemption language later in my testimony. However, the premise of the bill, that body-gripping traps are bad for wildlife, is fundamentally flawed, and ignores the significant benefits trapping provides, including the efficient and effective management of our refuges, and providing recreational opportunities.

The bill is also inconsistent with recognizing existing state authority and the treaty rights of Native American Tribes many of which have the ability to hunt, trap and gather on refuges on reservations and within ceded territory covered under federal treaty. State agencies exercise primary statutory authority for management of species within their borders across all types of land, including those within the NWRS. Further, this bill would restrict the rights of Tribal members from exercising their rights as established by treaty with the Federal government.

The trapping devices named in this bill could not be used or even possessed by non-federal entities including the state agency personnel who have the lawful responsibility to manage public trust species. Members of the public that are vital to natural resource management including biologists, researchers, and recreationists would be prohibited from possessing or using these traps on the more than 95 million land acres across the NWRS. Furthermore, the bill would impose an expensive and burdensome exemption process for refuge managers to go through before applying a management tool that has already been proven safe and effective and is regularly practiced by licensed trappers across the nation.

Regulated trapping of furbearers is necessary and provides numerous benefits, ranging from damage and population control, protection of endangered species, research, and protection of sensitive habitats. Further, trapping is a unique activity that deepens Americans' connection with nature and understanding of the outdoors and its flora and fauna. In many rural communities, self-sufficiency is core to the public's activities, of which trapping is included with complementary, sustainable uses of natural resources such as angling, hunting, gardening, and other uses. While trappers are a minority who have little voice, they should not be discriminated against.

Trapping and other methods of furbearer management are critical to our national system of conservation, not just for sustaining the populations of furbearers, but for the healthy populations of the flora and fauna in their shared habitat as well. Trapping and our nation's successful model of modern conservation have enabled several key furbearer species to be restored to healthy population levels. As a result of that self-sustaining system of modern furbearer management and regulated trapping, these species are now sustainably harvested. Trappers play a vital role in this management system and are critical to ensuring sustainable use of not just furbearers but various other species that share their habitats and are impacted by these populations, such as waterfowl and many endangered plants and animals (White et al. 2015).

Additionally, wildlife managers collect valuable biological information through trapping that helps them monitor many species. Most furbearers are incredibly difficult to monitor; many are secretive and elusive. Therefore, without an ability to track population status, some species could experience declines due to habitat loss, disease, toxins, climate change, etc. that would be difficult to identify without the benefit of data derived from carcasses and harvests as well as anecdotal information from trappers and hunters. Although agencies routinely employ many non-lethal monitoring techniques such as remote cameras, citizen sightings, radio collar studies, and track surveys, the data derived from trappers is the most cost effective and informative. Agencies use trapper-sourced carcasses to monitor for diseases, parasites and toxicity as well as for the overall health of the populations. They strive to get the most information possible from trapping activities.

Trapping also continues to be an important tool used to protect vital infrastructure, including impoundment dikes and water control structures. An overabundance of populations such as beavers in problematic areas can lead to structures being blocked by debris, requiring costly emergency repairs to avoid failure, flooding, and sediment release. Flooding can also be caused by furbearers regardless of whether hard infrastructure is present, as dams or other obstructions in critical streams and waterways can result in floods, streambank alteration, or other alterations to habitat that detrimentally affect other fauna and flora.

Unfortunately, there are case studies that exist that exhibit what will transpire if these important management tools are prohibited. Massachusetts banned the same devices listed in this bill in 1996. In the years that followed, populations of many species including beaver skyrocketed. The public began to see them as a pest and nuisance complaints skyrocketed, resulting in as many beavers being trapped after the ban as before the ban (Jonker et al. 2010). The beavers were ultimately trapped under “emergency conditions” meaning that the trappers could use the devices that were previously banned under fur trapping regulations. They have been unable to bring beaver populations down to pre-ban levels despite considerable effort, and what was previously a free service through regulated trapping now costs towns and landowners up to tens of thousands of dollars. Furthermore, trapping an animal as a “nuisance” usually results in the animal being discarded and the pelt being wasted, rather than the animal being fully utilized.

Now, I’d like to specifically speak to how trapping is currently managed on the NWRS and Waterfowl Production Areas (WPAs). Trapping is already carefully co-managed by the states and USFWS on NWRS lands, ensuring that only the most safe and effective methods and practices are used in accordance with scientific best principles. Each refuge that allows trapping has a Furbearer Management Plan. These plans are drafted and vetted by wildlife professionals. Management decisions permitting trapping are specifically tailored to the unique geographies, habitats, and needs of species and residents. These plans carefully and thoughtfully address the needs of the refuge and the ability to allow trapping. All WPAs are open to trapping under state law, and if trapping using these tools were prohibited, it would not only conflict with state law and authority, but it would also significantly impact habitat and wildlife management. Managed trapping enables healthy, sustainable, and abundant populations. Under this co-management structure, trapping regulations on NWRS lands usually reflect those made by the state agency with management authority over the relevant species, meaning any lawful trapper on refuge lands must adhere to applicable state regulations and permit stipulations, as well as possess the applicable licenses.

The issues with this bill are further compounded as its prohibitions conflict with existing permits and authorities, such as the Alaska National Interest Lands Conservation Act, which provides for necessary subsistence trapping. Across other refuges, recreational trapping can require special use permits that are subject to regulations that are even more strict than those required by the state.

Recreational trapping, is fully aligned with the mission of the NWRS. It is viewed by the USFWS as a legitimate activity, as is trapping for economic reasons so long as harvest occurs where populations are abundant and sustainable. Both recreational and commercial trapping would be prohibited under this bill. Examples of effective use of trapping for these purposes are the Horicon National Wildlife Refuge¹ in Wisconsin, and the 240,000-acre Upper Mississippi River Wildlife Refuge.

By prohibiting the use of traps essential for recreational trapping H.R. 4716 undermines the goal of the NWRS to prioritize wildlife-dependent recreational activities on refuges. An important part of why the NWRS was established is to ensure the American public has ample opportunity to participate in wildlife-

¹ <https://dnr.wi.gov/topic/lands/documents/horicon/NWRTrapMapInfo.pdf>

dependent recreational activities. Carefully managed and regulated recreational trapping of furbearers is important both to the public's ability to participate in the outdoors and to ensuring sustainable furbearer populations. Trapping in this manner is compatible and consistent with long-term conservation goals of wild species, providing critical population management and monitoring.

I'd now like to address a term inappropriately used in the bill's title, "cruel." Scientific study has demonstrated that modern traps can capture animals selectively and humanely. Tribal, State and Federal fish and wildlife agencies and the public, including those who use traps, are concerned about animal welfare and discriminate capture. An effort to improve and modernize trapping practices has been ongoing in the U.S. for over two decades. (White et al 2021, AFWA 2006). Through a program called "Furbearer Management and Best Management Practices for Trapping"², the largest scientific study of trapping ever conducted, is being led by the Association of Fish and Wildlife Agencies in conjunction with State, Federal, and Tribal fish and wildlife agencies. Trained veterinary pathologists examined thousands of wild animals that had been captured in traps for signs of injury. The standards for evaluating animal welfare were developed by the International Organization for Standardization (ISO). These standards have worldwide application. Through this program, trap research efforts have been conducted in 42 U.S. States since 1996 and over 600 trap types have been tested on 23 species of wild furbearers. Over 12 million dollars in federal support and in-kind funding by state fish and wildlife agencies has gone into this program which is designed primarily to ensure that wildlife are captured humanely, regardless of the method or reason for capture.

Traps meeting the welfare standard must also meet criteria established for safety, selectivity, efficiency and practicality. All tested trapping devices and methods were rated based on these parameters. Trapper education, offered in all states, recommends that trappers use those trapping devices and methods that when tested, caused minimal injury or distress and enabled discriminate capture. Wildlife biologists, including The Wildlife Society, American Association of Wildlife Veterinarians, and American Veterinary Medical Association believe that traps should be used in wildlife management.

The traps named in this bill are not a threat to wildlife. In fact, they are necessarily used in the wildlife management activities of Tribal, State and Federal fish and wildlife agencies. The goal of these efforts is to release animals unharmed. The devices used were specifically selected because scientists believe they are the most efficient and stand the best chance of doing very little harm to the animal.

The importance of trapping, and the use of body-gripping traps in particular, has been conveyed by both state and federal agencies during consideration of this bill in many different forms over the years. For example, then-Director of the U.S. Fish and Wildlife Service, Dan Ashe, testified to the Senate Committee on Environment and Public Works in 2015:

"Restricting trapping methods will result in expenditure of additional Service resources, staff time, and taxpayer money. The Service values its close relationship with State fish and wildlife agencies, and relies on their authority, expertise, and assistance for help in meeting wildlife population objectives. We seek, where appropriate, to complement state regulations in regards to hunting, trapping, and fishing and this bill appears to restrict the Service's ability to complement state trapping program regulations."³

² <https://www.fishwildlife.org/afwa-inspires/furbearer-management>

³ https://www.epw.senate.gov/public/_cache/files/e/c/ec9e2166-d873-440b-aa4a-f77566a9fb06/01AFD79733D77F24A71FEF9DAFCCB056.ombclearedepwstatementonbudgetesa562016.pdf

While those remarks were in regard to the version of the bill considered by the Senate in 2015, they still accurately reflect state agencies' perspective on the current version of this legislation, regardless of the recently added exemptions. That same testimony went on to state, "Trapping is also viewed by the Service as a legitimate recreational and economic activity when there are harvestable surpluses of furbearing mammals."

Since the bill only prohibits the use or possession of these traps on NWRS lands, the exemptions for federal personnel may appear to address concerns with limiting trapping as a management tool, but these concerns remain because federal agencies are not responsible for the management of species that Congress has not acted to place under federal jurisdiction. State agencies exercise primary statutory authority for management of species within their borders across all types of land, including those within the NWRS. While a complete review of well-established state authority is unnecessary, a long line of case law that began in the nineteenth century, and provided the jurisdictional backdrop for federal legislation from the Lacey Act to the Migratory Bird Treaty Act and beyond, has repeatedly held that, absent a clear exercise and/or delegation of congressional power through the Supremacy, Property, or Commerce Clauses of the U.S. Constitution, states retain control over wildlife to manage in trust for the benefit of the people of the states.

States are thus responsible for regulating trapping, regardless of whether or not it occurs on WPAs and NWRS lands. State control further allows for the practical and efficient use of resources to manage the broad diversity of species and habitats across the country, many of which require state, habitat, or species-specific solutions that could not be fulfilled by a one-size fits all approach. While we respect the USFWS's responsibilities to manage refuges in coordination with the states, we strongly disagree with the approach of this bill and the problems it will create for the individual state-USFWS partnerships within the refuge system as well as research and management of wildlife and habitat on refuges as a whole.

Finally, regarding the exemptions granted in the bill for the use of body-gripping traps for endangered species recovery and invasive species management by federal agents are only employable provided certain conditions are met. These costly, inefficient and burdensome steps are unnecessary and only place additional burden on understaffed and underfunded refuges. Quite simply, the professionally regulated and scientifically supported trapping that occurs currently on the NWRS works. It is an inexpensive and effective way to avoid damage to infrastructure, manage habitats and species, and provide opportunity, all of which are compatible with the mission of the NWRS.

H.R. 1546, "Combating Online Wildlife Trafficking Act of 2021"

The Association supports the intent of the bill and encourages the Task Force to coordinate with a broad range of experts when developing recommendations, with particular consideration for the expertise of state agency natural resource managers, especially when developing recommendations for identifying correlations between wildlife trafficking and zoonotic diseases. State agencies are the front line of defense against poaching and illegal wildlife trafficking, and their biologists and researchers are integral to any efforts addressing zoonotic diseases in wildlife.

H.R. 4057, "Albatross and Petrel Conservation Act"

The Association supports the conservation of migratory birds across their annual life cycle and therefore supports international cooperation for the conservation of albatross and petrels.

H.R. 4092, “*Coastal Habitat Conservation Act of 2021*”

The Association would like to draw attention to Section 4, paragraph (E) of the bill under the definition of “Federal Trust Species”. The bill includes, “*any other species of concern, as determined by the Secretary.*” The currently codified definition of “federal trust species” at 16 U.S.C. 3772(1)⁴ for the Partners program: “*migratory birds, threatened species, endangered species, interjurisdictional fish, marine mammals, and other species of concern.*”

If this bill is adopted, we would encourage the Secretary to make any determinations of covered species outside the categories in (A)-(D) only after consulting directly with affected States and with their direct input.

I’d like to thank the Chairman, Ranking Member and distinguished members of the subcommittee for the opportunity to testify before you today, and I would be happy to answer any questions.

Other Literature Cited

Association of Fish and Wildlife Agencies (AFWA), Best Management Practices for Trapping in the United States, Introduction, 2006. 13 pages.

Jonker, S. A., J. F. Organ, R. M. Muth, R. R. Zwick, W. F. Siemer. 2010. Stakeholder Norms Toward Beaver Management in Massachusetts. *Journal of Wildlife Management*. 73:7. 1158-1165.

Ray, Justina C. Mesocarnivores of Northeastern North America: Status and Conservation Issues. WCS Working Papers No. 15, June 2000. <http://www.wcs.org/science/>

Sterner, R. T and G.C. Smith. 2006. Modelling wildlife rabies: Transmission, economics, and conservation. *Biological Conservation*. 131: 163-179

White, H. B., Batcheller, G., Boggess, E., Brown, C., Butfiloski, J., Decker, T., Erb J., Hiller, T., Fall, M., Hamilton, D., Hubert, G., Olson, J., Roberts, N. 2021. Best Management Practices for Trapping Furbearers in the United States. *Wildlife Monographs*. 207:1.

White, H. B., Decker, T., O'Brien, M. J., Organ, J. F., & Roberts, N. M. 2015. Trapping and furbearer management in North American wildlife conservation. *The International journal of environmental studies*, 72(5), 756–769. <https://doi.org/10.1080/00207233.2015.1019297>

⁴<https://www.law.cornell.edu/uscode/text/16/3772#:~:text=The%20term%20%E2%80%9CFederal%20trust%20species,and%20other%20species%20of%20concern.>