ABA Journal Article 2017.08.14
http://www.abajournal.com/news/article/trap_neuter_vaccinate_return_community_cats_aba_delegates

AMERICAN BAR ASSOCIATION

ADOPTED BY THE HOUSE OF DELEGATES

AUGUST 14-15, 2017

RESOLUTION

RESOLVED, That the American Bar Association urges state, local, territorial, and tribal legislative bodies and governmental agencies to interpret existing laws and policies, and adopt laws and policies, to allow the implementation and administration of trap-neuter-vaccinate-return programs for community cats within their jurisdictions so as to promote their effective, efficient, and humane management.

REPORT

Introduction

It is estimated that there are 74-96 million owned cats[1] and 30-40 million free-roaming[2] ("community") cats living in the United States. Jurisdictions have struggled to manage the community cat population for decades using a traditional trap-and-remove technique that typically results in killing the cats.[3] This technique has proven inefficient, ineffective, and inhumane. Trap-neuter-vaccinate-return[4] ("TNVR") is a management technique, introduced in the U.S. in the 1990s, by which community cats are humanely trapped, evaluated, sterilized, by a licensed veterinarian, vaccinated against rabies, ear-tipped to designate they have been sterilized and vaccinated, and returned to their original habitat. Kittens and socialized adults are removed and placed for adoption when possible.[5] In some situations, the returned cats are under the care of a volunteer who feeds, waters, and monitors the cats for illness or injury and for any new arrivals so that they may be trapped, neutered, vaccinated, and returned to their original habitat. TNVR has been recognized as one of the most effective and efficient methods of reducing and controlling the population of community cats, as well as potential disease control.[6] Moreover, there is widespread public support for the use of TNVR to manage community cats.[7] In these times of limited budgets for local animal control shelters, TNVR provides a humane, effective, cost-saving alternative for shelters seeking to limit the intake of community cats into their facilities, protect public health, and reduce the number of free-roaming cats in the neighborhoods they serve.

---

[1] ASPCA, *Pet Statistics,* http://www.aspca.org/animal-homelessness/shelter-intake-and-surrender/pet-statistics (last visited Feb. 19, 2017).

[2] Humane Soc'y of the U.S., *Managing Community Cats: A Guide for Municipal Leaders* 4, https://www.animalsheltering.org/sites/default/files/content/ca_community_cat_guide_updates_6_15_lowres_final.pdf (last visited Feb. 19, 2017). Free-roaming, or community cats, are cats whose home is outdoors. Many are unsocialized to humans, while others may be stray, lost or abandoned. *Id*. at 1.

[3] *Taking a Broader View of Cats in the Community: NACA Feral Cat Policy Moves Toward Management*, ANIMAL SHELTERING, Sept./Oct. 2008 at 8, http://www.aplnj.org/assets/pdf/NACA_Interview.pdf (summarizing interview with Mark Kumpf, National Animal Control Association (NACA) President who referred to the old policy of feral cat "removal" as "capture-and-euthanize").

[4] Some, primarily opponents, use the term "Release" instead of "Return." Most TNVR programs are designed to return the cats to their original location. *What is TNvR?*, SPAYING CAP. REGION UNOWNED FERAL FELINES, http://scruffcats.org/what-is-tnvr/ (last visited Sept. 26, 2016). However, in the event it is impossible to return the cats to their original location, perhaps because of construction or other external threats to the lives of the cats or if the cats pose a serious and actual threat to an endangered species living in the original location, many advocates will opt for "releasing" them to another available location, taking the health of the cats and new environment into account, rather than killing them because they are not able to be "returned." *See id.*

[5] *See, e.g.*, Julie Levy et al., *Evaluation of the effect of a long-term trap-neuter-return and adoption program on a free-roaming cat population*, 222(1) JAVMA 42, 44 (2003) (noting 47% of the 155 cats involved in the TNVR study were adopted over the course of the study), https://www.avma.org/News/Journals/Collections/Documents/javma_222_1_42.pdf.

[6] *See* Sheilah A. Robertson, *A review of feral cat control*, 10(4) J. FELINE MED. & SURGERY 366–75 (2008).

[7] Peter J. Wolf, *New Study Reveals Widespread Support for Trap-Neuter-Return*, faunalytics, https://faunalytics.org/new-survey-reveals-widespread-support-for-trap-neuter-return/ (last visited Sept. 26, 2016).

Nevertheless, legal challenges to TNVR programs have been raised in various areas of the country due to the inconsistent legal treatment of community cats and TNVR programs by state statutes and local ordinances and policies. While some jurisdictions expressly recognize TNVR in their laws, most do not. In fact, aspects of TNVR programs have been found to violate many traditional criminal and civil statutes creating unnecessary obstacles for the implementation and administration of TNVR programs for private individuals and localities that may find their programs in violation of state law.[8] Consistent interpretation and/or adoption of laws throughout the country that allow for TNVR programs would provide much-needed guidance to state, local, territorial, and tribal government entities, as well as for private entities and individuals, as they seek to manage community cat populations effectively and humanely. By urging support for legal recognition of a community cat management technique that saves government resources, protects public health, respects the lives of community cats as supported by a large majority of the public, and protects wildlife by reducing over time the number of free-roaming cats, the ABA promotes just laws that benefit public and private interests.

TNVR programs are not without opposition. Some avid birders, conservationists, and others oppose TNVR as a management tool for community cats.[9] These stakeholders claim that free-roaming cats have an adverse impact on birds and other wildlife and pose a threat to public health, and that TNVR programs are ineffective.[10] However, the studies upon which they rely generally are flawed.[11] In fact, there is considerable empirical evidence showing that TNVR is more effective, efficient, and humane than trap-and-remove programs for the management of community cats.[12]

Effectiveness of TNVR Programs

While there is no official count of the number of cats removed from neighborhoods each year, the American Society for the Prevention of Cruelty to Animals ("ASPCA") estimates that 3.4 million cats enter shelters annually and, of those, 1.4 million are killed.[13] Given the massive numbers of community cats brought into shelters, the method of trapping and killing community cats should be reviewed. Studies have estimated that at least 50% of all community cats must be

---

[8] *See e.g.* Va. Att'y Gen., Opinion Letter on TNR (July 12, 2013), http://ag.virginia.gov/files/Opinions/2013/12-100_Napier.pdf, clarified May 4, 2015, http://4fi8v2446i0sw2rpq2a3fg51.wpengine.netdna-cdn.com/wp-content/uploads/2015/05/Ltr-Norfolk-SPCA-Blizard.pdf) [hereinafter VA Opinion Letter].

[9] *See, e.g.*, Am. Bird Conservancy, *Trap, Neuter, Release*, https://abcbirds.org/program/cats-indoors/trap-neuter-release/ (last visited Feb. 19, 2017).

[10] *See, e.g.*, PETER P. MARRA & CHRIS SANTELLA, CAT WARS: THE DEVASTATING CONSEQUENCES OF A CUDDLY KILLER (2016); Paul Barrows, *Professional, ethical, and legal dilemmas of trap-neuter-release*, 225(9) JAVMA 1365-69 (2004), https://www.avma.org/News/Journals/Collections/Documents/javma_225_9_1365.pdf.

[11] *See, e.g.*, Laurie D. Goldstein, *All Dollars and No Sense: Critique of Dr. Pimentel's Estimated Economic Impact of Domestic Cat Predation*, 2 MID-ATLANTIC J. ON L. & PUB. POL'Y 153, 158-63 (2013); Written testimony of Peter J. Wolf, Cat Initiatives Analyst, Best Friends Animal Soc'y, to D.C. Councilmember Mary M. Cheh, Chair of Comm. on Transp. & Env't (Sept. 18, 2015) (discussing the Draft 2015 DDOE WILDLIFE ACTION PLAN) (on file with author).

[12] *See, e.g.*, F.B. Nutter, *Evaluation of a Trap-Neuter-Return Management Program for Feral Cat Colonies: Population Dynamics, Home Ranges, and Potentially Zoonotic Diseases* (2005) (unpublished Ph.D. dissertation, N.C. State University); J.K. Levy et al., *Effect of high-impact targeted trap-neuter-return and adoption of community cats on cat intake to a shelter*, 201(3) VETERINARY J. 269-74 (2014), http://www.sciencedirect.com/science/article/pii/S1090023314001841.

[13] ASPCA, *supra* note 1.

killed to have any impact on the population and potential subsequent intake into shelters.[14] Since it has been proven to be impossible to catch all community cats in a population, the cats that are not caught and killed continue to reproduce and other cats enter the area vacated by those removed. The trapping and killing of community cats therefore must be sustained on an ongoing basis to simply prevent the population from growing. The more effective, efficient, and humane solution to manage community cats is TNVR.

TNVR has been shown to reduce the number of community cats in areas targeted by these programs.[15] A study conducted in Randolph County, North Carolina, showed a 36% average decrease in population of six community cat colonies due to targeted TNVR efforts.[16] By contrast, three unsterilized colonies involved in the study experienced an average 47% increase over the same period. Once spayed and neutered, the community cats in these targeted colonies no longer reproduce, which effectively curtails the number of community cats in the population.

Additionally, TNVR has been shown to significantly decrease the intake of community cats into local animal shelters and can save the jurisdiction significant expense. For example, one study in Alachua County, Florida documented a 66% decrease in animal shelter intake of community cats from a TNVR program in a targeted ZIP code compared to a 12% decrease elsewhere in the county.[17] Another study, in Orange County, Florida, showed the average cost of impounding and killing a cat was $139; while the average cost of surgery was $56.[18] The study also noted that the program in Orange County was a long-term program that spayed and neutered 7,903 community cats over a 6-year period, saving the county an estimated $656,000. Further, because TNVR, through the sterilization of cats, reduces certain nuisance behaviors by cats, such as roaming for mates, fighting, and urine-spraying, TNVR case studies have documented a significant reduction in nuisance complaint calls to animal control.[19] Thus, TNVR is more efficient, effective, and humane than lethal methods of control.

Finally, TNVR has been increasing in popularity nationwide[20] and worldwide.[21] Further, most all national animal welfare organizations endorse the use of TNVR programs to reduce the

---

[14] Kate Hurley, *For Community Cats, a Change is Gonna Come*, ANIMAL SHELTERING MAG., Sept.-Oct. 2013, at 27, 27.
[15] *See generally* Nutter, *supra* note 12; Levy et al., *supra* note 12.
[16] *See generally* Nutter, *supra* note 12.
[17] *See generally* Levy et al., *supra* note 12.
[18] Kathy L. Hughes et al., *The Effects of Implementing a Feral Cat Spay/Neuter Program in a Florida County Animal Control Service*, 5(4) J. APPLIED ANIMAL WELFARE SCI. 285-98 (2002).
[19] *See* Best Friends Animal Soc'y, *How TNR Reduces Nuisance Complaints: What the Research Tells Us*, http://bestfriends.org/resources/how-tnr-reduces-nuisance-complaints-what-research-tells-us (last visited Feb. 19, 2017).
[20] Elizabeth Holtz, *Trap-Neuter-Return Ordinances and Policies in the United States: The Future of Animal Control,* ALLEY CAT ALLIES L. AND POL'Y BRIEF 3 (2014), https://www.alleycat.org/resources/trap-neuter-return-ordinances-and-policies-in-the-united-states-the-future-of-animal-control/ (more than 330 local U.S. governments incorporate TNVR as of 2014).
[21] *See* Eugenia Natoli et al., *Management of Feral Domestic Cats in the Urban Environment of Rome (Italy)*, 77 PREVENTATIVE VETERINARY MED. 180, 181 (2006); *Trap-Neuter-Return in Seoul*, ANIMAL RESCUE KOREA (Mar. 11, 2013), http://www.animalrescuekorea.org/articles/trap-neuter-return-in-seoul; *History of TNR in Hong Kong*, Soc'y for Prevention Cruelty to Animals, http://www.spca. org.hk/en/animal-birth-control/tnr-trap-neuter-return/history-tnr-hong-kong, (last visited Feb. 19, 2017); *The Trap, Neuter, Return Program and the Feral Cat Coalition*, Toronto,

populations of community cats. These organizations include the ASPCA,[22] The American Humane Association, [23] Best Friends Animal Society,[24] and the Humane Society of the United States.[25] Also in support are the Association of Shelter Veterinarians[26] and the Tufts Center for Animals and Public Policy.[27]

Community Cats, TNVR and Traditional Animal Control Laws

Domestic cats exist on a wide spectrum of socialization to humans from feral cats, those cats born outdoors with no socialization to humans,[28] to stray cats who once lived in a home but find themselves lost or abandoned by their owner and who are well-socialized, friendly cats. Accurately determining if a free-roaming cat is "feral" or a lost or abandoned pet, however, is full of uncertainty.[29] There is currently no universal method available to accurately categorize any cat as feral or tame.[30] Based upon these uncertainties, this report refers to all free-roaming cats living outdoors as community cats.[31]

Regardless of differing categories of socialization and ownership status, all cats are defined in the Code of Federal Regulations as domestic cats of the species Felis domesticus.[32] This domesticated status provides certain legal protection to cats through many state and local animal cruelty provisions.[33]

---

http://www1.toronto.ca/wps/portal/contentonly?vgnextoid=6626f1f960745410VgnVCM10000071d60f89RCRD&vgnextchannel=a5bb39220b2c1410VgnVCM10000071d60f89RCRD (last visited Feb. 19, 2017).

[22] ASPCA, *Position Statement on Community Cats and Community Cat Programs*, http://www.aspca.org/about-us/aspca-policy-and-position-statements/position-statement-community-cats-and-community-cat (last visited Feb. 19, 2017).

[23] AM HUMANE, *Position Statement, Cat Colonies* (Aug. 26, 2016), https://www.americanhumane.org/position-statement/cat-colonies/.

[24] BEST FRIENDS ANIMAL SOC'Y, *Helping Stray Cats: TNR is the Key*, http://bestfriends.org/our-work/best-friends-advocacy/protecting-community-cats (last visited Feb. 19, 2017).

[25] HUMANE SOC'Y OF THE U.S., *The HSUS's Position on Cats,* http://www.humanesociety.org/animals/cats/facts/cat_statement.html (last visited Feb. 19, 2017).

[26] ASS'N OF SHELTER VETERINARIANS, *Trap-Neuter-Return of Free-roaming and Community Cats* (April 2015), http://www.sheltervet.org/assets/docs/position-statements/trapneuterreturn.pdf.

[27] Genevieve Rajewski, *Feline Fixers,* TUFTS NOW (June 1, 2011), http://now.tufts.edu/articles/feline-fixers.

[28] Alley Cat Allies, *Feral and Stray Cats – An Important Difference*, http://www.alleycat.org/resources/feral-and-stray-cats-an-important-difference/ (last visited Feb. 19, 2017).

[29] Margaret R. Slater et al., *A Survey of the Methods Used in Shelter and Rescue Programs to Identify Feral and Frightened Pet Cats,* 12(8) J. OF FELINE MED. AND SURGERY 592, 593 (2010).

[30] *Id*.

[31] Some cats who live indoors with their owners are allowed outdoors to free-roam. It is often difficult to distinguish these cats from "community cats" whose home is on the street. These cats are not included in the definition of "community cat."

[32] 50 C.F.R. §14.4 (2012) ("Domesticated animals includes…*Felis domesticus*…"). Title 50 of the Code of Federal Regulations is entitled "Wildlife and Fisheries" and this provision is defining terms for the laws governing the exportation, importation and transportation of wildlife.

[33] *See, e.g.*, Thurston v. Carter, 92 A. 295, 295-96 (Me. 1914).

Moreover, under common and statutory law, pets—including cats—are considered personal property.[34] Local animal control laws define ownership of cats and impose obligations on all owners. Issues arise when governmental agencies attempt to define cats as "feral" for management or control purposes while disregarding ownership status, anti-cruelty provisions, and public opinion. State laws often authorize local governments to enact laws relative to community cats. This approach has led to drastically disparate treatment of community cats under the law even within the same state.

Traditional ordinances for local animal control departments vary widely in jurisdictions across the country and create problems for community cats. Community cats, as free-roaming cats, frequently are considered "stray" or "at-large" and subject to impoundment by animal control. Many jurisdictions require that an impounded animal be held for a specified period of time—the "stray hold" period—to allow the owner to reclaim the animal. Since the national average of owners reclaiming their cats at the animal control facility is approximately 2%[35], and most community cats are not, in fact, owned, these cats are very rarely claimed. After the stray hold has expired, unclaimed community cats often are killed by the shelter. Not only does the impoundment of community cats harm the cats, but it is expensive for the jurisdiction to trap, hold and kill the cats, and then dispose of the bodies.

Traditional animal control laws also create serious obstacles for TNVR participants as they may find themselves unwittingly in violation of a number of laws. Specifically, if the TNVR participant is deemed the legal "owner" of the cat, they could be subject to several obligations which may include licensing, pet limits, and at-large or leash laws, making it virtually impossible to perform TNVR activities. Even if not deemed an owner, feeding bans, nuisance laws, and laws prohibiting abandonment, may subject them to civil and/or criminal prosecution. In addition, they may be held liable to third parties if community cats cause such parties harm. Legal recognition of TNVR is needed to protect participants in TNVR programs. These protections should extend to both government and private entities and individuals participating in these programs.

Ownership and Legal Obligations that Attach

Animal ownership is legally defined in many ways, but a common definition involves keeping or harboring an animal which typically means feeding the animal over a period of time.[36] Such a definition has the mostly unintended consequences of targeting community cat caregivers, as they regularly monitor and feed community cats. The ownership issue becomes even more complex when one considers the number of owned cats who are allowed to roam outdoors and

[34] *See, e.g.*, Van Patten v. City of Binghamton, 137 F.Supp.2d 98, 104 (N.D.N.Y. 2001); Kaufman v. Langhofer, 222 P.3d 272, 274 (Ariz. Ct. App. 2009).
[35] AM. HUMANE, *Animal Shelter Euthanasia*, http://www.americanhumane.org/fact-sheet/animal-shelter-euthanasia-2/ (last visited Feb. 19, 2017).
[36] *See e.g.* "Owner— A person . . . who keeps or harbors a dog or cat or knowingly permits a dog or cat to remain on or about any premises occupied by that person." Am. Veterinary Med. Ass'n, *AVMA Model Dog and Cat Control Ordinance*, https://www.avma.org/KB/Policies/Documents/avma-model-dog-and-cat-control-ordinance.pdf (last visited Feb. 19, 2017). Jurisdictions typically define "keeps or harbors" to mean "the act of, or the permitting or sufferance by, an owner or occupant of real property either of feeding or sheltering any domesticated animal on the premises of the occupant or owner thereof." PRINCE GEORGE'S COUNTY., MD., CODE OF ORDINANCES § 3-101(50)

receive handouts from generous neighbors.[37] Under some statutory interpretations, the same cat could be legally owned by several individuals, many of them most likely unaware of their legal ownership status.

Community cat caregivers, who often care for several cats residing together in colonies, if deemed owners, could be criminally and/or civilly liable for violations of a number of laws. For example, some jurisdictions require owners to license their cats[38] and/or limit the number of cats one may own.[39] The community cat caregiver would be seriously burdened to have to license each cat annually, and/or might find herself in violation of a pet limit law. Additionally, some jurisdictions prohibit owners from allowing their cats to run at-large.[40] Because community cats are, by definition, at-large, the community cat caregiver is in violation of this law as well. While these laws may serve useful purposes for true cat owners, they unnecessarily burden community cat caregivers and prohibit the implementation of TNVR programs. Because of these concerns laws defining owner should exempt community cat caregivers, and at-large laws, stray-hold periods, and licensing requirements should exempt ear-tipped community cats.

Abandonment and Feeding Bans

Even if TNVR participants are not deemed owners, traditional laws still may prohibit TNVR programs. State statutes and often local ordinances contain criminal provisions for "abandonment" of an animal. These provisions create myriad legal issues for administrators of TNVR programs; specifically when jurisdictions interpret the "return" aspect of TNVR to be abandonment.[41] The anti-cruelty laws proscribe conduct, including abandonment, "under circumstances reasonably likely to result in the infliction of unjustifiable pain, or suffering, or cruelty upon [the animal]."[42] A typical definition of "abandon" is "to desert, forsake, or absolutely give up an animal without having secured another owner or custodian for the animal or by failing to provide the elements of basic care . . . ."[43] TNVR programs that return cats to their original location should not be deemed "abandonment." TNVR programs are deliberately designed to improve the cat's overall health and well-being thus there is no intent to harm the cats. First, only cats determined to be healthy are returned to where they were found. Further, if the cats were healthy at the time they were trapped there is no reason to believe that returning them to where they were originally found would subject them to pain, suffering, or cruelty. Moreover, the cats' health and well-being is enhanced after sterilization and vaccination for rabies. Thus, these laws should not be interpreted by government agencies to prevent the "return" portion of TNVR.[44] In fact, for clarity, the abandonment law should expressly exempt TNVR "return" of ear-tipped community cats. The potential of criminal penalties due to varying

[37] *See* Shawn Gorman & Julie Levy, *A Public Policy Toward the Management of Feral Cats,* 2 PIERCE L. REV. 157, 157 (2004) (estimating between 9-12% of households feed strays).
[38] *See* VA. CODE ANN. §3.2-6524(B), §3.2-6587(A)(2).
[39] *See, e.g.*, PRINCE GEORGE'S COUNTY, MD. CODE § 3-148.01 ("No person may keep or harbor five (5) or more animals larger than a guinea pig or over the age of four months, without first obtaining an animal hobby permit.").
[40] *See, e.g.*, PRINCE GEORGE'S COUNTY, MD. CODE § 3-135 ("It shall be unlawful for the owner . . . of any animal . . . to permit the animal to run at large.").
[41] Va. Opinion Letter, *supra* note 8.
[42] People v. Untiedt, 42 Cal. App. 3d 550, 554 (Ct. App. 1974).
[43] VA. CODE § 3.2-6500.
[44] Note that many TNVR programs provide care to the cats after they are returned. Clearly, under these programs, the cats have not been abandoned.

interpretations of statutory schemes serve as a significant factor deterring potential caregivers from becoming involved in TNVR programs, thereby worsening a community's "feral cat problem."

Additionally, ordinances are commonly enacted which provide sanctions for the feeding of community cats.[45] Feeding bans cause a real dilemma legally for caregivers. By feeding the community cats they care for, caregivers could be violating such an ordinance, but by adhering to the ordinance they could conceivably find themselves in violation of a cruelty provision, by failing to provide care to those same animals. Further, for those cats who have become dependent on food provided by a caregiver, a feeding ban is inhumane, usually forcing cats to subsist on insufficient resources and/or create a nuisance by rummaging through dumpsters for food. To rectify this, feeding ban laws should be interpreted to exempt ear-tipped community cats.

Liability to Third-parties

Liability to third-parties also is a concern for most governmental entities, private organizations, and individuals involved in administering and participating in TNVR programs. Under common law, cat owners have no legal duty to keep their cat confined. Thus, if a cat caused harm to another, an owner was held responsible only if they knew the cat was dangerous and was likely to cause harm or damage to another.[46] However, some courts have held a person (whether an owner or not) liable for damages if they did something that caused the cats to be attracted to an area owned by another and the cats did damage to and/or caused a private nuisance that affected the landowner's enjoyment of their property.[47] Moreover, some jurisdictions override the common law and hold owners strictly liable if their cat is "at-large" and causes any damage to a third-party.[48] Potential liability to any TNVR participant may hinge on how active a role they play in the TNVR process and interpretation of applicable statutes and ordinances and may affect their willingness to participate.[49] However, if a TNVR participant is not considered an owner, most third-party claims will fail. Moreover, even in a jurisdiction that may hold a non-owner liable if they find the TNVR participant caused the cats to be present, the TNVR participant may use the jurisdiction's allowance of TNVR as a defense to third-party liability.[50] For third-party

[45] ANAHEIM MUNICIPAL CODE §6.44.1301 (stating that "It shall be unlawful for any person to intentionally provide food, water, or other forms of sustenance to a feral cat or feral cat colony within the boundaries of the City. It is not a violation of this section for any person to feed or shelter feral cats while working with an animal control agency under contract with the City of Anaheim.").

[46] McElroy v. Carter, 2006 WL 2805141 at *5 (Tenn. Ct. App. 2006) (holding that there is no common law legal duty to confine cat generally regarded as domestic animals unlikely to do harm if left to themselves and incapable of constant control).

[47] Kyles v. Great Oaks Interests, 2007 WL 495897 (Cal. Ct. App. 2007) (finding that an apartment manager may be liable to landowner for overflowing garbage bins that attracted cats).

[48] *See, e.g.*, PRINCE GEORGE'S COUNTY, MD CODE § 3-135.

[49] In conducting TNVR an "owned" free-roaming cat may be trapped "accidentally." TNVR participants initially check for a microchip delineating the owner of the cat when brought to the clinic so as to sterilizing an "owned" cat without the owner's permission. However, if the cat is not microchipped the cat will likely be vaccinated, sterilized and returned. In this instance TNVR participants should not be held liable to the owner for sterilizing the cat.

[50] *See* Judgment at 4, Baker v. Kuchler, No. 29D05-0605-SC-1055 (Ind. Super. Ct., Mar. 2, 2007) (the existence of a Community Cat Ordinance may be used as a "defense" against claims of nuisance or negligence for the damage to property caused by community cats).

claims against municipalities that conduct TNVR, the municipality may demonstrate that the TNVR program was adopted for the stated purpose of stabilizing and reducing community cat populations, protecting public health through vaccination efforts, and/or resolving nuisance behaviors and corresponding complaints. As such the municipality may argue that the TNVR program is promoting a legitimate government purpose and thus it should not be held liable to third-parties.

In sum, properly implemented TNVR programs serve multiple purposes, including stabilizing and reducing community cat populations, protecting public health through vaccination efforts, and/or resolving nuisance behaviors and corresponding complaints. These are all goals worthy of government involvement, and the governmental agency should make these interests and intents clear and remove any unintended legal obstacles that result from a misapplication of traditional animal control laws. Promoting the consistent interpretation and/or drafting of laws related to aspects of TNVR programs will serve to further these interests.

Opposition to TNVR

TNVR is not without opposition.[51] Certain wildlife and bird advocacy organizations primarily (or solely) concerned with the sustainability of native species and the ecosystem and a small minority of animal welfare organizations[52] oppose the use of TNVR. The conservation groups have attacked its use citing a lack of scientific proof that it works and insisting that lethal methods be used to protect wildlife and public health.[53] Some have argued that feral cats are exotic or invasive species and do not fill an existing niche in the environment and that even well-fed cats significantly impact wildlife.[54] These opponents of TNVR vilify community cats for killing native birds, some of whom are threatened or endangered, citing predation estimates and economic impacts that are derived from flawed science.[55] For example, one widely publicized paper estimates that "cats in the contiguous United States annually kill between 1.3 and 4.0 billion birds."[56] However, the total number of land birds in the U.S. (not including Hawaii) is estimated at just 3.2 billion,[57] less than the authors' high-end estimate. The estimates are exaggerated as a result of inaccurate assumptions used in the model from which the estimates are

---

[51] In September 2016, a book entitled *Cat Wars: The Devastating Consequences of a Cuddly Killer* was released by Dr. Peter Marra and Chris Santella. MARRA & SANTELLA, *supra* note 10. In this book, the authors call for the removal of community cats from the outdoors "by any means necessary." The book has caused a considerable amount of controversy and has received criticism for its failure to recognize the flaws in the reasoning and methods for control of the community cat population. *See* Katie Lisnik, *Cat Wars? Let's call a ceasefire*, Animal Sheltering (Sept. 13, 2016), https://www.animalsheltering.org/blog/cat-wars-lets-call-ceasefire.

[52] *See* PETA, *What is PETA's stance on programs that advocate trapping, spaying, and neutering, and releasing feral cats?*, http://www.peta.org/about-peta/faq/what-is-petas-stance-on-programs-that-advocate-trapping-spaying-and-neutering-and-releasing-feral-cats/ (last visited Feb. 19, 2017). *But see* NO KILL ADVOCACY CTR., *The Wild Life of Feral Cats*, 6 No Kill Advoc. 1, 2 (2008), http://www.friends4life.org/pdf/Feral_Fact_sheet.pdf.

[53] *See, e.g.*, Barrows, *supra* note 10, at 1367-8.

[54] *See generally* Travis Longcore et al., *Critical Assessment of Claims Regarding Management of Feral Cats by Trap-Neuter-Return*, 23(4) CONSERVATION BIOLOGY 887-94 (2009), http://drupal.wildlife.org/documents/policy/Critical.Assessment.Feral.Cats.Longcore.pdf.

[55] Vox Felina, *TNR Fact Sheet No. 2: Predation* (Aug. 2012), http://voxfelina.com/voxfelina/Vox_Felina_Fact_Sheet_Predation_v_1.1.pdf.

[56] Scott R. Loss et al., *The impact of free-ranging domestic cats on wildlife of the United States*, 4 Nature Comm. No. 1396 at 2 (2013), http://www.nature.com/articles/ncomms2380.

[57] Partners in Flight Population Estimates Database (2013), http://rmbo.org/pifpopestimates/Database.aspx.

generated.[58] In fact, The Royal Society for the Protection of Birds in the United Kingdom has stated there is no scientific evidence that cat predation has any impact on bird populations in the U.K.[59] They explain that many millions of birds die naturally every year, mainly through starvation, disease, or other forms of predation. There is evidence that cats tend to take weak or sickly birds[60] who would have died in any event thus causing little additional predation. Further, research has shown that declines in bird populations are most commonly caused by habitat change or loss, particularly on farmland.[61]

Although it is true that some cats kill birds and other small mammals, TNVR is designed to *reduce* the number of community cats and thus protect birds and other wildlife. Traditional trap-and-remove techniques have failed to effectively manage the population of community cats. In fact, the only cases where lethal methods of control of community cats have successfully eradicated the population of free-roaming cats are those on small oceanic islands using cruel and hazardous methods. For example, on Marion Island, 115 square miles, it "took 19 years to exterminate approximately 2200 cats—using feline distemper, poisoning, hunting and trapping, and dogs. . . . On Ascension Island, roughly one-third the size of Marion Island, it cost approximately $1732 per cat to eradicate an estimated 635 cats over 27 months."[62] However, as noted above, studies of targeted TNVR programs have shown success in reducing the numbers of free-roaming cats, humanely, and at a savings to local jurisdictions.

Opponents also claim that the presence of free-roaming cats creates a public health hazard given the potential for cats to transmit rabies and other diseases.[63] However, these claims too are exaggerated. "Since 1960 only two cases of human rabies have been attributed to cats."[64] In 2014, 272 cases of rabid cats were reported to the CDC, representing 4.51% of all reported cases, with the number of rabid cats remaining largely unchanged over the past 25 years despite the

---

[58] For example, identifying just a few of the problems, the model (1) inflates the estimate of unowned cats in the U.S. by using the frequently cited values which are not grounded in empirical data; (2) inflates the predation rate of unowned cats by relying on decades-old studies that did not use random-sampling of free-roaming cats but instead focused on hunting cats; (3) uses unproven methods for converting stomach contents of cats to annual predation rates, and (4) assumes that 80–100% of unowned cats successfully hunt birds, again inflated because of a heavy reliance on studies of rural cats, when in fact most unowned cats live in urban areas where they are less reliant on prey. *See* Written testimony of Peter J. Wolf, *supra* note 11.

[59] Royal Soc'y for Protection of Birds, *Are cats causing bird declines?*, http://www.rspb.org.uk/get-involved/community-and-advice/garden-advice/unwantedvisitors/cats/birddeclines.aspx (last visited Feb. 19, 2017).

[60] *Id.*

[61] *Id.*

[62] Vox Felina, *Fact Sheet No. 1: Trap-Neuter-Return* (Aug. 2012) http://voxfelina.com/voxfelina/Vox_Felina_Fact_Sheet_TNR_v_1.1.pdf.

[63] *See, e.g.*, A.D. Roebling et al., *Rabies Prevention and Management of Cats in the Context of Trap-Neuter-Vaccinate-Release Programmes,* ZOONOSES & PUB. HEALTH 1, 4 (2013), http://abcbirds.org/wp-content/uploads/2015/05/Roebling-et-al.-2013-Rabies-prevention-and-management-of-cats-in-TNVR-programs.pdf. Cats have also been linked to taxoplasmosis, certain intestinal parasites and flea-borne typhus, yet studies have shown they no not create any serious risk of transmission to humans. *See* Alley Cat Allies, *Feral Cats and the Public—A Healthy Relationship*, http://www.alleycat.org/resources/feral-cats-and-the-public-a-healthy-relationship/ (last visited Feb. 19, 2017) [hereinafter *Feral Cats and the Public*].

[64] Vox Felina, *TNR Fact Sheet No. 3: Rabies* (Aug. 2013), http://voxfelina.com/voxfelina/Vox_Felina_Fact_Sheet_Rabies_v_1.1.pdf (citing CDC, *Recovery of a Patient from Clinical Rabies—California, 2011*, 61 MORBIDITY & MORTALITY WKLY. REP. 61-64 (2012)).

increasing popularity of TNVR.[65] In fact, TNVR programs evaluate cats and return only healthy cats after vaccinating them for rabies, thereby reducing, for years, the risk of rabies in the returned cats.[66] Finally, community cats, many unsocialized to humans, rarely have contact with humans, making disease transmission highly unlikely.[67]

Opponents of TNVR have recently resorted to legal avenues to discredit TNVR. In early 2016, the American Bird Conservancy ("ABC") filed a lawsuit against the New York Commissioner of Parks, Recreation and Historic Preservation ("Parks") for violations of the Federal Endangered Species Act ("ESA").[68] In a case of first impression, ABC claims that Parks is responsible for facilitating and maintaining of community cat colonies on Jones Beach State Park by allowing volunteers to perform TNVR and that these colonies are in close proximity to the nesting areas of piping plovers, which results in the "take" of the piping plovers. Piping plovers are listed as "threatened" under the ESA. Although the amended complaint filed by ABC fails to allege directly that any of the community cats at Jones Beach have harmed any piping plovers in the area, they claim that the mere presence of the cats is a threat to the nesting birds. This lawsuit is currently pending in the Eastern District of New York after the court denied Parks' motion to dismiss.[69]

Conclusion

The Tort Trial and Insurance Practice Section urges the adoption of this resolution seeking support for the legal recognition of TNVR as a population management tool for community cats which are humanely trapped, evaluated, sterilized by a licensed veterinarian, vaccinated against rabies, ear-tipped, and returned to their original location and urging state, territorial, and local municipal legislative bodies and governmental agencies to adopt and/or interpret existing laws and policies that allow the implementation and administration of such programs for community cats within their jurisdictions. TNVR programs use humane methods to decrease community cat populations and increase public health through increased vaccination at a savings to local jurisdictions.

Respectfully submitted,
Sam H. Poteet, Jr., Chair
Tort Trial and Insurance Practice Section
August 2017

---

[65] Benjamin P. Moore et al., *Rabies Surveillance in the United States during 2014*, 248 JAVMA 777, 784 (Apr. 1, 2016), http://avmajournals.avma.org/doi/pdfplus/10.2460/javma.248.7.777.
[66] Vox Felina, *Rabies*, *supra* note 64 (citing veterinarian and community cat expert Dr. Julie Levy).
[67] *Feral Cats and the Public*, *supra* note 63, at 1 (citing Jeffrey Kravetx and Daniel G. Federman, *Cat Associated Zoonoses*, 162 ARCH. INTERN. MED. 1945-52 (2002)).
[68] American Bird Conservancy v. Harvey, Case 2:16-cv-01582 (E.D.N.Y. Mar. 31, 2016).
[69] American Bird Conservancy v. Harvey, Memorandum of Decision & Order, Case 2:16-cv-01582-ADS-AKT (E.D.N.Y. Feb. 6, 2017) (the decision does not address the legality or effectiveness of TNVR).

GENERAL INFORMATION FORM

Submitting Entity: Tort Trial and Insurance Practice Section

Submitted By: Sam Poteet, Chair, Tort Trial and Insurance Practice Section

1. Summary of Recommendation.

This recommendation urges state, local, territorial and tribal legislative bodies and governmental agencies to interpret existing laws and/or adopt laws and policies that allow the implementation and administration of trap-neuter-vaccinate-return (TNVR) programs for free-roaming ("community") cats within their jurisdictions. TNVR is a population management technique for reducing the population of free-roaming community cats by which such cats are humanely trapped, evaluated, sterilized by a licensed veterinarian, vaccinated against rabies, ear-tipped, and returned to their original location from which they were found. The legality of TNVR programs have been challenged in areas of the country due to the inconsistent legal treatment of community cats and TNVR by state statutes and local ordinances and policies. Consistent legal treatment that allows TNVR programs promotes the effective, efficient, and humane management of community cats, promotes conservation efforts, and protects public health.

2. Approval by Submitting Entity.

Approved by the Tort Trial and Insurance Practice Section on April 29, 2017.

3. Has This or a Similar Recommendation Been Submitted to the House or Board Previously?

No.

4. What Existing Association Polices Are Relevant to This Recommendation and How Would They Be Affected by Its Adoption?

Not applicable.

5. What Urgency Exists Which Requires Action at This Meeting of the House?

Not applicable.

6. Status of Legislation. (If applicable.)

Not applicable.

7. Cost to the Association. (Both Direct and Indirect Costs)

None.

8. Disclosure of Interest. (If applicable.)

Not applicable.

9. Referral.

This Report and Resolution is referred to the Chairs and Staff Directors of all ABA Sections and Divisions.

10. Contact Persons. (Prior to the Meeting)

Joan Schaffner
Associate Professor of Law
The George Washington University Law School
2000 H Street, NW
Washington, DC 20052
202-494-0354
jschaf@law.gwu.edu

Richard Angelo, Jr.
Legislative Attorney
Best Friends Animal Society
10271 Irish Road
Goodrich, MI 484338
(248) 202-3152
richarda@bestfriends.org

11. Contact Person. (Who Will Present the Report to the House.)

Robert S. Peck
Delegate, TIPS
202/944-2874
E-mail: Robert.peck@cclfirm.com

Timothy W. Bouch
Delegate, TIPS
843/513-1072
E-Mail: tbouch@leathbouchlaw.com

Michael W. Drumke
Delegate, TIPS
312/222-8523
E-mail: mdrumke@smbtrials.com

EXECUTIVE SUMMARY

1. Summary of the Recommendation

This recommendation urges state, local, territorial and tribal legislative bodies and governmental agencies to interpret existing laws and/or adopt laws and policies that allow the implementation and administration of trap-neuter-vaccinate-return (TNVR) programs for free-roaming ("community") cats within their jurisdictions. TNVR is a population management technique for reducing the population of free-roaming community cats by which such cats are humanely trapped, evaluated, sterilized by a licensed veterinarian, vaccinated against rabies, ear-tipped, and returned to their original location from which they were found. The legality of TNVR programs have been challenged in areas of the country due to the inconsistent legal treatment of community cats by state statutes and local ordinances and policies. Consistent legal treatment that allows TNVR promotes the effective, efficient, and humane management of community cats, promotes conservation efforts, and protects public health.

2. Summary of the Issue that the Recommendation Addresses

It is estimated that there are 30-40 million community cats living in the United States. Jurisdictions have struggled to manage the community cat population for many years using a traditional trap-and-remove technique that typically results in killing the cats. This technique has proven ineffective and costly. TNVR is a more effective, efficient, and humane method of control shown to reduce to the populations of community cats, reduce the intake of community cats to shelters, reduce the chances of transmission of disease in the communities through vaccination efforts, and reduce complaints to local police and animal control departments regarding nuisance and property destruction. Traditional criminal and civil statutes create unnecessary obstacles for the implementation and administration of TNVR programs.

3. Please Explain How the Proposed Policy Position Will Address the Issue

If jurisdictions interpret existing laws and policies and/or adopt laws and policies to allow the implementation and administration of TNVR programs, local governments and private entities and individuals will be able to implement such programs without the possible threat of sanction and, in turn, provide a humane, effective, cost-saving alternative for shelters seeking to limit the intake of community cats into their facilities, protect public health, and reduce the number of free-roaming cats in the neighborhoods they serve.

4. Summary of Minority Views or Opposition Which Have Been Identified

Certain wildlife and bird conservation groups and a very small minority of animal welfare organizations have opposed the use of TNVR programs for the control of community cats. These stakeholders claim that free-roaming cats have an adverse impact on birds and other wildlife and pose a threat to public health. Moreover, free-roaming cats are subjected to threats such that their lives outdoors result in their pain and suffering. They argue that TNVR is ineffective and all free-roaming cats must be eradicated through trap and remove, e.g. kill,

programs. However, the studies upon which they rely generally are flawed. In fact, there is considerable empirical evidence showing that TNVR is more effective, efficient, and humane than trap-and-remove programs for the management of community cats.