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Contact: Maria Cilenti - Director of Legislative Affairs - mcilenti@nycbar.org - (212) 382-6655

REPORT ON LEGISLATION BY THE ANIMAL LAW COMMITTEE

**A.3772
S.3426**

**M. of A. Glick
Sen. Krueger**

An act to amend the Environmental Conservation Law, in relation to the prohibition on canned shoots.

THIS LEGISLATION IS APPROVED WITH RECOMMENDATIONS

SUMMARY OF EXISTING LAW AND THE PROPOSED LEGISLATION

The proposed legislation would expand the provisions of the New York Environmental Conservation Law (N.Y. ENV. CONS. LAW) §11-1904 that restricts in certain respects the operations of “canned hunting” facilities in New York.

Under current law, N.Y. ENV. CONS. LAW §11-1904 bans some of the most egregious cruelties in canned hunting by prohibiting a person who owns or operates a hunting facility to knowingly permit another person, for a fee, to “shoot[] or spear[] [] a non-native big game mammal”¹ that is “tied,” “hobbled,” “staked” or “attached to any object” as well as the killing of a non-native big game mammal “that is confined in a box, pen, cage or similar container of ten or less contiguous acres from which there is no means for such mammal to escape.” N.Y. ENV. CONS. LAW § 11-1904(1)(a)(1-3). Additionally, the law prohibits a person who owns or operates a hunting facility from knowingly permitting “the deliberate release of a non-native big game mammal that is confined in a box, pen, cage or similar container of ten or less contiguous acres in the presence of any person who is, or will be, shooting or spearing” the animal. N.Y. ENV. CONS. LAW § 11-1904(1)(a)(4).

The proposed legislation would further limit “canned hunting” activities by removing the ten-acre limitation, thus prohibiting the killing of any non-native big game mammal in an enclosed space or other area of any size from which there is no means for such animal to escape as well as the

¹ Subsection 29 of N.Y. ENV. CONS. LAW §11-0103 (“Definitions”) provides:

“Non-native big game mammal” means a mammal species presently found in the wild and hunted as big game that is:

- a. Native or an original inhabitant of the continents of Africa, Asia, South America, Australia, or Europe, whether or not captive bred; or
- b. A captive bred North American big game mammal including: cougar, wolf, bear, bison, big horn sheep, mountain goat, antelope, elk, musk ox, mule deer, black tailed deer, caribou, swine, and [white tailed deer propagated by a domestic game animal breeder].”

release of such animal in an enclosed space or other area of any size from which there is no means of escape in the presence of a person who is or will be shooting the animal.

BACKGROUND AND JUSTIFICATION

Canned hunting facilities may generally be defined as facilities which permit members of the public to shoot or spear animals within a confined space. Hunting licenses are generally not required.² The types of animals available for shooting include native species such as deer and bear, as well as exotic species such as gazelles, water buffalo, and African boars. Many of the animals, regardless of species, are captive bred and raised,³ and some include “surplus” animals sold by zoos and circuses.⁴ The animals are often accustomed to being fed by humans at feeding troughs at regular intervals.⁵ As a result, these animals are frequently familiar with human contact and are semi-tame. In some instances, animals are drugged or sedated to slow their speed or alertness.⁶ The level of captivity of the animals killed in such facilities ranges from those who are actually caged, tied or otherwise immobilized when shot or speared to those who are pursued within confined areas

² For example, an advertisement for Old Stone Fence Hunting Adventures in Rensselaer Falls, NY reads: “Tired of traveling, spending money and coming home with Nothing to show for it?!? Call us and book your successful trophy hunt TODAY!! . . . No License required”, available at <http://www.outdoortrips.info/outfitter-profile.php?id=3913> (last visited April 15, 2013). Similarly Cold Brook Hunts in Homer, NY emphasizes that “no license is required ever”, available at <http://www.coldbrookhunts.com/coldbrookhunts-aboutus.html> (last visited April 15, 2013); see also Nicole Berhaupt, NYS canned hunting exposed on Animal Planet Investigates, Examiner.com, June 22, 2011, available at <http://www.examiner.com/article/nys-canned-hunting-exposed-on-animal-planet-investigates> (last visited May 14, 2013).

³ See Justification memos for S.03426/ A.03772 (noting that “Canned hunting brutalizes defenseless animals raised in captivity whose trust in humans makes them hapless victims of this practice.” See also James E. Miller, “How Deer Breeding Could Put Public Trust Wildlife at Risk,” The Wildlife Society, The Wildlife Professional, Winter 2012, available at <http://www.fws.gov/whhcc/doc/Background%20Document%20-%20A%20Growing%20Threat.pdf> (noting that “thousands of for-profit deer-breeding and canned-shooting operations have proliferated across the nation,” including in New York State)(last visited May 22, 2013).

⁴ As noted in the justification memo for the proposed legislation, “[a]s recently as the fall of 2006, the closing of the Catskill Game Farm [in Catskill, NY] and the selling off of the animals raised concerns by groups that advocate for the humane treatment of animals that the herd animals like gazelles and the trophy animals like rhinoceros would be bought by a canned hunting farm.” See also Anahad O’Connor, *Farm’s Fate is Certain, but the Future of Its Animals Is Not*, New York Times, Oct. 6, 2006, available at <http://www.nytimes.com/2006/10/06/nyregion/06catskill.html?pagewanted=all> (last visited April 15, 2013) (noting that “[a]llegations that the Catskill Game Farm has sold animals to hunting ranches have dogged the operation for several years now. At least two major zoos have refused to send animals to the game farm for that reason . . . The farm also came under fire from the San Francisco Zoo and the Toronto Zoo, which stopped doing business with the game farm because, officials at those zoos said, they had discovered that it was selling animals to canned hunt operations in Texas.”).

⁵ The Fund for Animals, *Canned Hunts: Unfair at Any Price*, at <http://fund.org/library/documentViewer.asp?ID=338&table=documents>; also available at Michigan State University College of Law, Animal Legal & Historical Center at <http://animallaw.info/articles/arusfund22002.htm> (last visited April 21, 2013).

⁶ Berhaupt, *supra* note 2.

of acreage. In addition to selling the experience of shooting animals of the hunter's selection,⁷ many facilities offer customers a "guaranteed kill."⁸

Because such activity does not meet the statutory definition of "hunting" under the N.Y.ENV.CON.S.LAW, i.e., "pursuing, shooting, killing or capturing ... wildlife" where "wildlife" is defined as "wild game and all other animal life existing *in a wild state* ..." (N.Y. ENV.CON.S.LAW §§ 11-0103(6) and (10) (emphasis supplied)), the practice of canned hunting has long been illegal under New York State law, though it has rarely, if ever, been prosecuted.⁹

Indeed many hunters and hunting organizations oppose canned hunting. In 2002, *Field and Stream Magazine* did a survey of hunters concerning their attitude about canned hunting and found that 65% of respondents opposed the practice, 12% favored it, and 23% expressed no opinion.¹⁰ The Boone and Crockett Club, a prominent hunting organization founded in 1887 by Theodore Roosevelt, has long opposed canned hunting and will not enter in its records any trophy animal killed in a canned hunting facility. In their view, canned hunting violates the principle of "fair chase," a central tenet of traditional hunting practices.¹¹

⁷ For example, Cold Brook Hunts in Homer, NY emphasizes the "trophy potential" that its facility offers: "With over 12 years making hunters' wildest dreams come true, bagging the most exotic of prey animals such as Fallow Deer, Wild Boar, Elk, Big Horn Sheep, Bison and more . . . Here at Cold Brook Hunts, whatever exotic animal it is that you want to hunt, the hunting is never out of season!," available at <http://www.coldbrookhunts.com/coldbrookhunts-aboutus.html> (last visited April 15, 2013). The charge for animals killed at game hunting facilities varies depending on the facility and the type of animal. For example, at certain game hunting facilities, a pheasant is \$25 (Hull-O Farms Pheasant Preserve Web site at <http://www.hunthull-o.com/pheasanthunting.php>), a whitetail doe is \$400 (Battenkill Hunting Preserve Web site at <http://www.battenkillhunt.com/game.php>), a fallow doe is \$650 (Wild West Elk Ranch Web site at <http://wildwesttrophyhunts.com/id1.html>), a bull elk is \$2,500 (Basswood Lodge and Hunting Preserve Web site at <http://www.basswoodhunting.com/biggame.php>), and a Rocky Mountain elk buffalo starts at \$2,900 (Battenkill Hunting Preserve Web site at <http://www.battenkillhunt.com/reservations.php>). (All references last visited April 28, 2013).

⁸ For example, an advertisement for Old Stone Fence Hunting Adventures in Rensselaer Falls, NY reads: "Tired of traveling, spending money and coming home with Nothing to show for it!?! Call us and book your successful trophy hunt TODAY!! . . . no harvest - no charge, reservations a must!," available at <http://www.outdoortrips.info/outfitter-profile.php?id=3913> (last visited April 15, 2013).

⁹ As such, canned hunting practices are ostensibly within the prohibition of New York's anti-cruelty statute, which prohibits the unjustifiable injuring or killing of "any animal, whether wild or tame." N.Y. Agriculture and Markets Law § 353. We note, however, that the law specifically recognizes and permits the canned hunting of certain species: "domestic game birds" (N.Y. ENV. CONS. LAW § 11-1903) and white tail deer (N.Y. CONS. ENV. LAW §§ 11-0103[4](b); 11-1905(4)).

¹⁰ Wayne Pacelle *Stacking the Hunt*, New York Times, December 9, 2003 at <http://www.nytimes.com/2003/12/09/opinion/stacking-the-hunt.html> (last visited April 21, 2013).

¹¹ "Fair chase, as defined by the Boone and Crockett Club, is the ethical, sportsmanlike and lawful pursuit and taking of any free-ranging wild, native North American big game animal in a manner that does not give the hunter an improper advantage over such animals" at Boone and Crockett Club Web site, Canned Shoot Statement, Hunting Ethics at http://www.boone-crockett.org/huntingEthics_cannedshoot.asp?area (last visited April 23, 2013).

THE COMMITTEE SUPPORTS THE PROPOSED LEGISLATION

The justification memorandum that accompanies the proposed legislation states that “[b]y prohibiting canned hunting this bill recognizes that New York State should draw a line between sport and the cruel savagery of a canned hunt.” In light of the ongoing proliferation of canned hunting facilities throughout New York State and the lack of enforcement of the anti-cruelty provisions of the Agriculture and Markets Law with respect to such activities, the proposed legislation is necessary to ensure that some of the most egregious canned hunting practices are prohibited. Specifically, removing the acreage limitation contained in the current law to prohibit the killing of any non-native big game mammal in an enclosed space or other area of any size from which there is no means for such mammal to escape or the release of such animals for such purpose is necessary particularly in light of the type of large animals often killed at canned hunts. “When enclosed, 10 acres, 50 acres or even 100 acres would provide no meaningful opportunity to such animals to escape and would render a hunt therein not even arguably sporting, but rather a certain slaughter.”¹²

RECOMMENDATIONS

We note that the proposed legislation would not end the practice of canned hunting in New York State. First, existing law and the proposed legislation only addresses the treatment of non-native big game mammals. Thus, many other animals commonly released and killed in enclosed hunting preserves, both native species as well as small exotic animals, are not protected. Indeed, existing law already legalizes the canned hunting of certain native species. Therefore, we recommend that the proposed legislation be amended to apply to all animals, regardless of species.

Additionally, although the memorandum accompanying the text of the proposed legislation states that “[i]n addition to prohibiting canned hunts, the proposed legislation would also serve to restrict the supply of animals from zoos and game farms to canned hunting facilities,” we note that nothing in the text of the proposed legislation prohibits the acquisition of such animals by hunting facilities or the shooting of tame or hand-reared animals which do not have survival instincts or fear of humans. Therefore we recommend that the proposed legislation be amended to address the acquisition of such animals by hunting facilities as well as the shooting of such animals at hunting facilities.

CONCLUSION

For the foregoing reasons, the Committee supports the proposed legislation with recommendations.

May 2013

¹² Debra West, *Ranch Hunting: One Person’s Sport, Another’s Slaughter; Business Grows; So Does Opposition*, New York Times, May 11, 1999, available at <http://www.nytimes.com/1999/05/11/nyregion/ranch-hunting-one-person-s-sport-another-s-slaughter-business-grows-so-does-opposition.html?pagewanted=all&src=pm> (last visited April 15, 2013).