

# Can Citizens Better Use the Ballot Initiative to Protect Wildlife?: The Case of the Mountain Lion in the West

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## I. INTRODUCTION

In January 2012, California Fish & Game Commission President Daniel W. Richards killed a mountain lion<sup>1</sup> on a hunt in Idaho.<sup>2</sup> A photograph of Richards holding the carcass surfaced on the Internet soon after.<sup>3</sup> While he broke no Idaho law, citizens flooded the California Department of Fish & Game (“CDFG”) office with complaints,<sup>4</sup> and some called for his resignation.<sup>5</sup> Richards defiantly refused to resign, and seven months later, the board elected a new president.<sup>6</sup> In Richards’s home state, voters outlawed mountain lion hunting in 1990;<sup>7</sup> thus, Richards’s opponents believed his actions “showed poor judgment” because “the practice is opposed by most Californians.”<sup>8</sup>

In recent years, a number of states have passed initiatives to prohibit the hunting of a particular animal or a certain hunting method.<sup>9</sup> Along with California’s complete ban on hunting mountain lions, two other states, Oregon and Washington, passed ballot initiatives related to mountain lions. In both states, the law prohibits using dogs to hunt mountain lions.<sup>10</sup> All three measures have experienced backlash from state wildlife managers, legislatures, hunters, ranchers, and others. As a result, the role

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1. For the purposes of this note, I will refer to the species *Felis concolor* consistently as “mountain lion,” although the species is known by multiple names, including cougar, puma, and panther.

2. Patrick McGreevy, *Fish and Game Commissioner Who Killed Cougar Loses Presidency*, L.A. TIMES (Aug. 8, 2012), <http://latimesblogs.latimes.com/california-politics/2012/08/california-fish-and-game-commissioner-presidency.html>.

3. Paul Rogers, *California Wildlife Official in Hot Water over Mountain Lion Hunt*, SAN JOSE MERCURY NEWS (Feb. 17, 2012), [http://www.mercurynews.com/science/ci\\_19992359](http://www.mercurynews.com/science/ci_19992359). The photograph was originally posted on the Western Outdoor News website, but has since been removed. See W. OUTDOOR NEWS, <http://www.wonews.com> (last visited Feb. 17, 2014). To view the photograph, see Chad Love, *CA Game Commission Pres. Catches Heat For Idaho Mountain Lion Hunt*, FIELD & STREAM FIELD NOTES (Feb. 23, 2012), <http://www.fieldandstream.com/blogs/field-notes/2012/02/ca-game-commission-president-asked-step-down-after-hunting-mountain-lion-i>.

4. Rogers, *supra* note 3.

5. McGreevy, *supra* note 2.

6. *Id.*

7. See generally CAL. FISH & GAME D. 4, Pt. 3, Ch. 10, § 4800 (West 2012).

8. McGreevy, *supra* note 2.

9. See Wayne Pacelle, *The Animal Protection Movement: A Modern-Day Model Use of the Initiative Process*, in THE BATTLE OVER CITIZEN LAWMAKING: A COLLECTION OF ESSAYS 109, 118–19 (M. Dane Waters ed., 2001); see also *Initiative and Referendum History—Animal Protection Issues*, HUMANE SOC’Y U.S., [http://www.humanesociety.org/assets/pdfs/legislation/ballot\\_initiatives\\_chart.pdf](http://www.humanesociety.org/assets/pdfs/legislation/ballot_initiatives_chart.pdf) (last visited Feb. 17, 2014) (providing an updated chart of animal protection initiatives through the 2010 election year).

10. See OR. REV. STAT. § 498.164 (2013); WASH. REV. CODE § 77.15.245 (2013).

of citizen action in the management of mountain lions remains in question, and some continue to ask whether this system is appropriate. On one hand, it allows citizens to circumvent a legislature or agency unsentimental to its cause.<sup>11</sup> On the other, wresting the decision-making power away from legislatures and administrative agencies can result in mismanagement by either limiting expert discretion or creating a perceived need for reactionary measures.<sup>12</sup>

While the mountain lion plays a role in ecosystem stability, it also serves as a cultural icon for many western states. Yet, others see mountain lions only as a coveted trophy, a burden on their economic livelihood, or a threat to public safety. With such a complex interconnection of stakeholders, can mountain lions be appropriately managed through the ballot initiative? According to wildlife biologist Thomas Beck, ballot initiatives are “capable of producing good and bad policies,” but at the very least “have served to improve the listening abilities of all.”<sup>13</sup>

How, then, should citizens approach the ballot initiative process when dealing with mountain lions, if at all? Only two examples exist at present: complete bans on hunting or bans on hunting methods. A hunting ban is an obvious way to protect mountain lions, but it is politically infeasible in most states. Bans on hunting methods are a worse alternative because they have proven to be counterproductive, leading to increases in mountain lion hunting, declines in mountain lion population, and the continued practice of the banned activity.

This Note argues that although citizen initiatives are a viable option in the movement to protect mountain lions, a new approach should be pursued. Rather than banning hunting or hunting methods, citizens should focus their efforts on (1) funding habitat conservation; (2) financing university and nonprofit studies; (3) raising public awareness about mountain lions through community outreach; and (4) enacting a statutory mechanism for citizens to challenge an agency’s neglect of the first two

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11. See, e.g., Donna L. Minnis, *Wildlife Policy-Making by the Electorate: An Overview of Citizen-Sponsored Ballot Measures on Hunting and Trapping*, 26 WILDLIFE SOC’Y BULL., no. 1, 1998, at 75, 81 (1998) (describing the passage of Amendment 10 to the Colorado Constitution to prohibit hunting bears with dogs or bait during the spring, which passed with an overwhelming majority despite the resistance of both the Game Commission and the Colorado Legislature).

12. See generally Thomas D.I. Beck, *Citizen Ballot Initiatives: A Failure of the Wildlife Management Profession*, 3 HUM. DIMENSION WILDLIFE, no. 2, 1998, at 21; Francine M. Madden, *The Growing Conflict Between Humans and Wildlife: Law and Policy as Contributing and Mitigating Factors*, 11 J. INT’L WILDLIFE L. & POL’Y 189 (2008).

13. Beck, *supra* note 12.

criteria.<sup>14</sup> This approach can be applied to other citizen initiatives focused on species like the mountain lion that are not currently endangered.

First, this Note discusses the ballot initiative process, focusing on wildlife initiatives. The next Part discusses the three specific ballot initiatives in California, Oregon, and Washington, and each state's respective mountain lion management history. For each state, this Note reviews the response to the initiative's passage through counter-initiatives, legislative action, and administrative changes. These Parts also discuss any impacts of these management choices. The final Part addresses new approaches to protect mountain lions through the initiative process.

## II. BALLOT INITIATIVES

To understand how citizens have used initiatives to influence mountain lion management, it is important to first understand what an initiative is and how it has operated in the past. This Part first discusses the evolution of the ballot initiative procedure in American governance and investigates a few of the arguments for and against direct democracy in a republic. Next, this Part shows how citizens have used initiatives for wildlife management purposes and how these initiatives have faced significant backlash from various groups.

### A. *The History of Ballot Initiatives*

Many arguments over direct democracy in the United States stem from the same disagreements fought over at the time of the writing of the U.S. Constitution.<sup>15</sup> For example, John Adams argued that direct democracy should be avoided in favor of a system that held a few wise individuals responsible for lawmaking.<sup>16</sup> In contrast, Thomas Jefferson felt that the American people should be more active in governing themselves.<sup>17</sup> Still, the parties were confident that a Republican form of government would better protect against the abuses associated with a tyrannical majority will.<sup>18</sup> Despite these arguments, Americans moved

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14. See THOMAS D.I. BECK ET AL., COUGAR MANAGEMENT GUIDELINES 9 (2005) (“In light of the diversity of stakeholders and human values, funding for cougar research management, and conservation should not derived solely from hunting-related programs”).

15. Scot J. Williamson, *Origins, History, and Current Use of Ballot Initiatives in Wildlife Management*, 3 HUM. DIMENSION WILDLIFE, no. 2, 1998, at 51, 53.

16. *Id.*

17. *Id.*

18. *Id.*

forward with ballot initiatives to shape the law of their states in all areas, including wildlife management.

During the late nineteenth century, Progressives and Populists forwarded the ballot initiative procedure as a means to circumvent state legislatures too heavily influenced by wealthy corporations.<sup>19</sup> South Dakota was the first state to adopt a form of direct democracy in 1898, followed soon after by Utah (1900), Oregon (1901), and Nevada (1901).<sup>20</sup> Today, twenty-four states allow citizens to place initiatives on the ballot.<sup>21</sup>

While no two states have exactly the same process, each requires the initiative's proponents to collect a certain number of signatures before being placed on the ballot.<sup>22</sup> In most states, legislatures can amend initiatives, but only after several years.<sup>23</sup> Only in California is another ballot measure required to repeal or amend an initiative.<sup>24</sup>

### *B. Ballot Initiatives and Wildlife Management*

From the very early days of the initiative, citizens have used the ballot initiative process to protect wildlife by prohibiting hunting of certain animals or prohibiting methods of hunting that are seen as dangerous or severely inhumane. For example, Oregon passed an initiative in 1910 to ban all fishing methods except angling on the Rogue River.<sup>25</sup> Yet, most initiatives to protect animal welfare during the twentieth century failed. Between 1940 and 1990, only one animal protection measure passed the

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19. John Gildersleeve, *Editing Direct Democracy: Does Limiting the Subject Matter of Ballot Initiatives Offend the First Amendment*, 107 COLUM. L. REV. 1437, 1441 (2007).

20. Williamson, *supra* note 15, at 54.

21. *Id.* at 52.

22. *Id.* The initiative process for the three states discussed here (California, Oregon, and Washington) are as follows. In California, voters must obtain a number of signatures equivalent to eight percent of votes cast for Governor in the previous election for a constitutional amendment and five percent for a statute. M. DANE WATERS, INITIATIVE AND REFERENDUM ALMANAC 143 (2003). Oregon has a similar process, but requires six percent for statutes. *Id.* at 387. Washington residents can propose two types of initiatives: initiatives to the people and initiatives to the legislature. Both require eight percent of votes cast for Governor in the last election. *Id.* at 440–41.

23. John G. Matsusaka, *Direct Democracy and Fiscal Gridlock: Have Voter Initiatives Paralyzed the California Budget?*, 5 ST. POL. & POL'Y Q. 248, 249 (2005).

24. *Id.*; *see, e.g.*, WASH. CONST. art. II, § 1(c) (providing that the legislature may not amend or repeal an initiative passed by the majority of voters for two years unless the legislature acquires a supermajority vote during the first two years); *see also* WATERS, *supra* note 22, at 387 (stating that the Oregon Legislature can repeal and amend statutes enacted by direct democratic action by a simple majority).

25. Williamson, *supra* note 15, at 56 (stating that the 1910 initiative was in response to two 1908 initiatives; one to allow fish wheels and another to allow gill nets).

initiative process.<sup>26</sup> In the 1990s, attitudes began to change with the approval of Proposition 117 in California. During that decade, Colorado voted to prohibit spring sport hunting of bears with bait or dogs; Arizona voted to prohibit the use of leg holds and snare traps on public lands; Alaska voted to ban same-day airborne hunting of wolves, foxes, lynx, and wolverines; and Oregon and Washington voted to prohibit the use of dogs to hunt bears and cougars.<sup>27</sup>

Overall, the response to ballot initiatives affecting wildlife management is mixed. Some argue that because “wildlife management issues frequently hinge on complicated or technical arguments,” regular citizens may not be equipped to fully understand the issues, especially when “wildlife management agencies are frequently prohibited . . . from influencing voters.”<sup>28</sup> Individuals on this side of the argument often point to two interconnected complaints about the tyranny of majority will: (1) the underrepresentation of a minority group, such as hunters, and (2) the fickleness of the majority, especially in a case where the majority is so easily persuaded by emotional arguments.<sup>29</sup> In contrast, some note the bias of wildlife managers towards hunters, the influence these managers have over legislatures, and the power and money of the pro-hunting lobbyists to sway both.<sup>30</sup> In the context of these disagreements, opponents of citizen-initiated wildlife management have turned the tables by using their own brand of direct democracy to prevent future proposals to prohibit hunting activities.

### *C. Challenges to Wildlife Initiatives*

Recently, legislative interference has presented a significant threat to ballot initiatives. For example, in 1998, the Utah legislature referred Proposition 5 (“Prop 5”) to the Utah ballot to amend the Utah constitution.<sup>31</sup> The measure required any initiative proposing to prohibit hunting or hunting methods to garner a two-thirds supermajority vote.<sup>32</sup> Many who opposed the measure questioned why wildlife issues should be

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26. Pacelle, *supra* note 9, at 111 (discussing the 1972 measure in South Dakota that banned dove hunting, which voters repealed with another initiative in 1990).

27. *Id.* at 118.

28. Williamson, *supra* note 15, at 58.

29. *Id.* at 55, 57.

30. Beck, *supra* note 12, at 24–26.

31. Lauren Armstrong, Note, *Supermajority Requirement Imposes Obstacles for Wildlife Protection Groups to Take Initiative in Initiative and Referendum Institute v. Walker*, 22 J. NAT. RESOURCES & ENVTL. L. 69, 70 (2008).

32. *Id.*

singled out for a supermajority vote.<sup>33</sup> Ironically, the measure passed with only a simple majority.<sup>34</sup> Since Prop 5's passage, no wildlife initiatives have reached the ballot in Utah.<sup>35</sup>

In 2000, opponents of Prop 5 filed suit in *Initiative and Referendum Institute v. Walker*, alleging that the supermajority requirement imposed “a ‘chilling effect’ on the exercise of their First Amendment rights, and does so in a manner that is both impermissibly content-discriminatory and overbroad.”<sup>36</sup> The district court dismissed the First Amendment claim, and the Court of Appeals affirmed. The appellate court noted that the supermajority requirement did “not implicate the freedom of speech”<sup>37</sup> and that it did not foreclose citizens from passing wildlife ballot initiatives, but simply made it more difficult.<sup>38</sup> While the Supreme Court denied certiorari,<sup>39</sup> the circuits remain split over whether states can impose supermajority requirement for initiatives by subject matter.<sup>40</sup>

In the Tenth Circuit Court of Appeals, Judge Lucero dissented on the merits and noted the possible consequences for wildlife-related ballot initiatives as a result of *Initiative and Referendum Institute*.<sup>41</sup> First, after the district court upheld Prop 5, the Utah Division of Wildlife Resources issued a report dismissing the possibility of outlawing the hunting of black bears due to the supermajority requirement.<sup>42</sup> This report seemed to confirm fears that the state would never again negotiate with wildlife protection advocates.<sup>43</sup> Judge Lucero's dissent “hints that the supermajority requirement for wildlife initiatives could be set at any

33. Pacelle, *supra* note 9, at 116.

34. *Id.* at 119.

35. See *Initiative Results (1960–2008)*, UTAH LIEUTENANT GOVERNOR'S OFFICE: ELECTIONS, <http://elections.utah.gov/election-resources/initiative-results> (last visited Feb. 22, 2013). See also *2010 Utah Ballot Measures*, PROJECT VOTE SMART, <http://votesmart.org/elections/ballot-measures/2010/UT#.USgIZo6hDzI> (last visited Feb. 17, 2014); *2012 Utah Ballot Measures*, PROJECT VOTE SMART, <http://votesmart.org/elections/ballot-measures/2012/UT#.USgIno6hDzI> (last visited Feb. 22, 2013).

36. *Initiative & Referendum Inst. v. Walker*, 450 F.3d 1082, 1085 (10th Cir. 2006).

37. *Id.*

38. *Id.* at 1086–87 (citing *Initiative & Referendum Inst.*, 161 F. Supp. 2d 1307, 1313 (D. Utah 2001)).

39. *Initiative & Referendum Inst. v. Herbert*, 127 S.Ct. 1254 (2007).

40. See Gildersleeve, *supra* note 19, at 1439–40.

41. *Initiative & Referendum Inst. v. Walker*, 450 F.3d at 1110–14 (J. Lucero, concurring in part, dissenting in part).

42. Armstrong, *supra* note 31, at 77.

43. *Id.*

percentage, . . . even as high as ninety-nine percent, and still avoid judicial review.”<sup>44</sup>

Since the passage of Prop 5, two other states have unsuccessfully attempted to limit wildlife initiatives. In 2000, Arizonans placed a measure identical to Prop 5 on the ballot, but lost overwhelmingly.<sup>45</sup> That same year, Alaskans voted against an initiative that would have completely barred any wildlife protection initiatives.<sup>46</sup> Finally, in 2010, Arizonans voted against an initiative that would have given exclusive authority over all matters related to hunting and fishing to the legislature.<sup>47</sup>

The wildlife ballot initiative has also been challenged under the public trust doctrine.<sup>48</sup> In *Citizens for Responsible Wildlife v. State*, a hunting group filed suit against the state of Washington over an initiative that created a ban on hunting with dogs.<sup>49</sup> The plaintiffs argued that allowing citizen-driven wildlife management violated the state’s public trust duty to control and manage wildlife for the public benefit of all.<sup>50</sup> Ultimately, the court ruled that the state did not cede control over wildlife management, and in contrast, seemed to assume greater control.<sup>51</sup>

Not surprisingly, many supporters of the wildlife initiatives claim that the will of the people should be upheld under the public trust doctrine.<sup>52</sup> The holding of *Citizens for Responsible Wildlife Management* shows that a court will consider the doctrine as a means of enforcing a wildlife agency’s duty. However, the judgment also highlights the difficulties that potential litigants face.<sup>53</sup>

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44. *Id.* at 78.

45. Pacelle, *supra* note 9, at 116 (showing that the measure was defeated 63–37).

46. *Id.* (showing that the measure was defeated 64–36).

47. *Proposition 109*, ARIZ. SEC’Y STATE, available at <http://www.azsos.gov/election/2010/Info/PubPamphlet/english/Prop109.htm> (last visited Feb. 17, 2014).

48. See *Citizens for Responsible Wildlife Mgmt. v. State*, 103 P.3d 203 (Wash. Ct. App. 2004).

49. *Id.* at 204.

50. *Id.*

51. *Id.* at 207–08.

52. See John Organ & Shane Mahoney, *The Future of the Public Trust: The Legal Status of the Public Trust Doctrine*, 1 WILDLIFE PROF. 18, 21–22 (2007), available at <http://joomla.wildlife.org/documents/future-of-public-trust.pdf>.

53. A lawsuit would have to establish that (1) the state owns wildlife in trust for the people of the state, (2) an initiative passed with a majority of the vote establishes the beneficiary’s intent, (3) the agency’s regulations violate the responsibility owed to the beneficiary, and (4) the agency’s actions amounted to waste. If litigants could establish these criteria before a court, it is theoretically possible that a state may have a duty to uphold the spirit of the trust relationship.

### III. CITIZEN INITIATIVES TO INFLUENCE MOUNTAIN LION MANAGEMENT

During the 1990s, three western states, California, Oregon, and Washington, passed ballot initiatives to either prohibit mountain lion hunting or prohibit hunting mountain lions with dogs. California's ban stands alone as the only example of a complete mountain lion hunting prohibition in the West. In Oregon and Washington, citizens chose a more modest approach by only prohibiting a specific hunting method. To some surprise, Oregon and Washington's programs have faced significant backlash, while California's prohibition has faced only a single noteworthy challenge in the form of an unsuccessful 1996 counter-initiative. The following outlines the three laws that make up the current breadth of citizen's initiatives affecting mountain lions and how each has succeeded or failed to meet the proponent's goals.

#### A. Complete Ban: California

California operated under a bounty system until the 1960s.<sup>54</sup> Between 1907 and 1963, bounty hunters in California killed more mountain lions than in any other state, approximately 12,500.<sup>55</sup> In 1963, California repealed its bounty, reclassified mountain lions as a "non-protected mammal" until 1969, and then reclassified them again in 1969 as "game mammals."<sup>56</sup> During the winter of 1971–1972, the state held its only regulated hunt, resulting in 118 mountain lion kills.<sup>57</sup>

The following year, the California legislature passed a moratorium on all mountain lion hunting, beginning a period of hunting prohibition that has continued, for the most part, to the present.<sup>58</sup> However, those opposed to the hunt still faced challenges in the years leading up to passage

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54. Sharon Negri & Howard Quigley, *Cougar Conservation: The Growing Role of Citizens and Government*, in *COUGAR: ECOLOGY AND CONSERVATION* 221, 226 (Maurice Hornocker & Sharon Negri eds., 2009).

55. *Id.*

56. *Mountain Lions in the State of California*, MOUNTAIN LION FOUND., <http://www.mountainlion.org/us/ca/-ca-portal.asp> (last visited Mar. 8, 2012) [hereinafter *California*]. For definitions of California's current classifications system (i.e. big game, small game, fur-bearing mammals, or nongame animals), see generally CAL. CODE REGS. tit. 14, §§ 250–485 (2012).

57. *California*, *supra* note 56.

58. Negri & Quigley, *supra* note 54, at 226; see also Liza Gross, *The Man Who Made California Safe for Mountain Lions*, *QUEST* (May 30, 2012), <http://science.kqed.org/quest/2012/05/30/the-man-who-made-california-safe-for-mountain-lions/> (discussing the impetus for the moratorium and the unlikely support of deer hunters).

of Proposition 117. For example, in 1986, the governor vetoed a bill that would have continued the moratorium.<sup>59</sup> When the CDFG proposed regulations in 1987 to initiate the first mountain lion hunt in over fifteen years,<sup>60</sup> interest groups filed suit under the California Environmental Quality Act (“CEQA”).<sup>61</sup> The California Superior Court suspended the hunt until CDFG could prepare “an analysis of cumulative impacts, in accordance with CEQA, and circulate and receive public input.”<sup>62</sup>

In 1988, CDFG promulgated new regulations, this time based on an environmental impact assessment.<sup>63</sup> Interest groups moved to amend the preemptory writ of mandate, claiming that the new regulations were “virtually identical to the one proposed but suspended by the superior court in 1987.”<sup>64</sup> The court ruled that it had continuing jurisdiction and found the environmental assessment inadequate.<sup>65</sup> CDFG appealed, but the appellate court affirmed the lower court’s decision and prevented the hunt until the Commission could present a more adequate assessment.<sup>66</sup>

CDFG did not have an opportunity to pursue further hunting regulations because the legal victory in *Mountain Lion Coalition* prompted its proponents to launch a statewide initiative to protect the mountain lion. With a top rate media firm in tow, the California Wildlife Protection Committee placed Proposition 117 (“Prop 117”) on the June 1990 primary election ballot.<sup>67</sup> Prop 117 passed with fifty-two percent of the vote, bolstered by large margins in highly populated counties such as Los Angeles, San Francisco, and San Diego.<sup>68</sup>

Prop 117 was codified as the California Wildlife Act of 1990.<sup>69</sup> The Act designated the mountain lion as a “specially protected mammal” and made it illegal to “take, injure, possess, transport, import, or sell any

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59. Negri & Quigley, *supra* note 54, at 226.

60. See *Mountain Lion Coal. v. Calif. Fish & Game Comm’n.*, 263 Cal. Rptr. 104, 105 n.3 (Cal. Ct. App. 1989) (discussing the more than 85,000 letters or signatures to a petition in opposition to the proposed hunt and the scientific community’s questioning of CDFG’s population estimates of 5,100 mountain lions).

61. *Id.* at 105. CEQA is California’s equivalent to the National Environmental Policy Act (“NEPA”).

62. *Id.*

63. *Id.* at 107.

64. *Id.*

65. *Id.*

66. *Id.* at 107–10.

67. Negri & Quigley, *supra* note 54, at 227.

68. MARCH FONG EU, CAL. SEC’Y OF STATE, STATEMENT OF THE VOTE 52 (1990), available at <http://mountainlion.org/publications/CA%20-%201990-%20June%205%20Primary%20-%20Statement%20of%20Vote.pdf>.

69. CAL. FISH & GAME CODE § 2780 (West 2012).

mountain lion.”<sup>70</sup> Violation of the Act is a misdemeanor punishable by imprisonment of up to one year, or a fine of up to \$10,000, or a combination of imprisonment and a fine.<sup>71</sup> Meanwhile, the Act created only two exceptions: one for an agency taking of a mountain lion deemed an “imminent threat to public health or safety”<sup>72</sup> and another for citizens to acquire a permit to take a mountain lion that has “injured, damaged, or destroyed” livestock or other property.<sup>73</sup> Furthermore, the Act explicitly prohibited CDFG from adopting any regulations that would “conflict[] or supersede[] any provision of [the] chapter.”<sup>74</sup> Finally, the state legislature can only amend the act with a four-fifths vote of the membership of both houses “and then only if consistent with, and in furtherance of, the purposes of the Act.”<sup>75</sup>

In addition to banning mountain lion hunts, the Act also required the legislature to spend \$30 million per year on wildlife habitat protection and focus on habitat for mountain lions and their prey.<sup>76</sup> Funding for this new Habitat Conservation Fund came from existing sources of revenue.<sup>77</sup> During the campaign, Prop 117’s proponents had emphasized habitat protection as a tool for species conservation in a state of fast-growing populations.<sup>78</sup> Meanwhile, the initiative’s opponents characterized the measure as an unnecessary diversion of funding away from more important causes.<sup>79</sup> Furthermore, the initiative’s opponents attempted to highlight the fact that mountain lions were not endangered and how the

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70. *Id.* § 4800(a)–(b).

71. *Id.* § 4800(c).

72. *Id.* § 4801.

73. *Id.* § 4802. The state only recently passed another exception to allow for the activities of scientific studies. The bill was introduced at AB 1784 and has been codified as CAL. FISH & GAME CODE § 4810 (West 2012).

74. *Id.* § 4800(d).

75. 1990 Cal. Legis. Serv. Prop. 117 § 8 (West); Opening Brief for Appellant at 4–5, 26–27, *Outfitter Prop. v. Wildlife Conservation Bd.*, 143 Cal. Rptr. 3d 312 (Cal. Ct. App. 2012) (No. C065100) (arguing that the elements of enacted by Prop 117 could not be amended without a four-fifths vote of both houses of the legislature); Opposition Brief of Respondents at 29, *Outfitter Prop. v. Wildlife Conservation Bd.*, 143 Cal. Rptr. 3d 312 (Cal. Ct. App. 2012) (No. C065100) (conceding Appellants’ point about amending Prop 117).

76. CAL. FISH & GAME CODE § 2796.

77. George H. Meral, *A Citizen’s Guide to the Implementation of Proposition 117*, MOUNTAIN LION FOUND. (Oct. 1990), [http://www.mountainlion.org/117\\_guide.asp](http://www.mountainlion.org/117_guide.asp) (stating that the funds come from a variety of sources including an unallocated portion of the Tobacco Tax Fund).

78. CAL. SEC’Y OF STATE, CALIFORNIA BALLOT PAMPHLET 40–43 (1990), available at [http://librarysource.uchastings.edu/ballot\\_pdf/1990p.pdf](http://librarysource.uchastings.edu/ballot_pdf/1990p.pdf).

79. *Id.* at 42–43.

new policies would favor mountain lions and deer over species in need of more protection.<sup>80</sup>

Despite being the most restrictive prohibition in the context of hunting mountain lions, Prop 117 has experienced the least opposition. The only real challenge to the initiative came in 1996, when its opponents successfully placed Proposition 197 (“Prop 197”) on the ballot.<sup>81</sup> While Prop 197 did not explicitly open up hunting of mountain lions, it included language to repeal Prop 117.<sup>82</sup> Both sides seemed to agree that if voters overturned Prop 117, a hunting season would soon follow.<sup>83</sup> Supporters of Prop 197 argued that mountain lions had outgrown their habitat and were indiscriminately killing livestock, pets, and people.<sup>84</sup> In contrast, opponents argued that Prop 197 had nothing to do with public safety, and was an attempt by the gun lobby and pro-hunting advocates to “manipulate . . . voters into legalizing the trophy hunting of animals.”<sup>85</sup> In the end, Californians voted against the initiative 58–42.<sup>86</sup>

In the wake of the ban, evidence suggests that the mountain lion population is not skyrocketing out of control like some have predicted and remains stable at around 4,000 to 6,000 mountain lions.<sup>87</sup> Because CDFG cannot measure the mountain lion population through the traditional harvest method, CDFG “relies on the annual number of depredation

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80. *Id.* at 42.

81. See CAL. SEC’Y OF STATE, CALIFORNIA BALLOT PAMPHLET 59–61 (1996) [hereinafter CAL. BALLOT 1996], available at [http://librarysource.uchastings.edu/ballot\\_pdf/1996p.pdf](http://librarysource.uchastings.edu/ballot_pdf/1996p.pdf) (referencing the language of Prop 197 in its entirety).

82. *Id.*

83. See, e.g., MOUNTAIN LION FOUND., PROPOSITION 197 ON MARCH 26TH BALLOT 1–2 (1996), available at <http://mountainlion.org/publications/1996%20Spring%20Summer.pdf>.

84. CAL. BALLOT 1996, *supra* note 81, at 30–31.

85. *Id.* at 30. A woman was recently killed by a mountain lion in Cuyamaca State Park, and Prop 197 proponents suggested that this death was a result of the hunting ban. For human attack statistics in California, see *Verified Mountain Lion Attacks on Humans in California (1890–2007)*, CAL. DEP’T FISH & GAME, <http://www.dfg.ca.gov/news/issues/lion/attacks.html> (last visited Nov. 10, 2012) (displaying statistics that show 16 mountain lion attacks during the period, five of which resulted in death. Two of the deaths were a result of rabies).

86. CAL. SEC’Y OF STATE, CALIFORNIA STATEMENT OF THE VOTE xxiv (1996), available at <http://mountainlion.org/publications/CA%20-%201996-March%2026%20Primary%20-%20Statement%20of%20Vote.pdf>.

87. Doug Updike, *California Mountain Lion Status Report*, 9 MOUNTAIN LION WORKSHOP 29 (2008), available at [http://www.carnivoreconservation.org/files/meetings/mtn\\_lion\\_2008\\_idaho.pdf](http://www.carnivoreconservation.org/files/meetings/mtn_lion_2008_idaho.pdf); see also Carrie Wilson, *Fish and Game Q&A: Might it be Time to Consider a Mountain Lion Hunting Season?*, L.A. TIMES (Apr. 8, 2011, 11:13 AM), <http://latimesblogs.latimes.com/outposts/2011/04/fish-and-game-q-and-a.html>.

permits as an index to the statewide population size.”<sup>88</sup> Based on the decrease in number of incidents, permits issued, and mountain lions killed under the permit program,<sup>89</sup> it can be assumed that the mountain lion population may also be decreasing.<sup>90</sup> Furthermore, the lack of any significant challenge to the initiative since Prop 197, not to mention the outrage over the Richards affair, shows that the prohibition remains at least modestly popular.

### *B. Single Issue Bans: Prohibiting Hounding*

Oregon and Washington have successfully passed measures that limit the hunting of mountain lions with the aid of dogs, a practice often referred to as hounding. In most cases, hunters fit dogs with radio and GPS collars.<sup>91</sup> Typically, a lead dog will signal the presence of a mountain lion, and then a group of ten or more dogs will be released to chase after the animal.<sup>92</sup> On most occasions, a mountain lion flees until it tires and climbs a tree to escape the dogs.<sup>93</sup> At this point, the hunter will arrive and shoot the mountain lion out of the tree.<sup>94</sup> While pro-hunting advocates often characterize hounding bans as “an assault on hunting,” those in favor of bans considered it an issue of “sportsmanship.”<sup>95</sup>

#### *1. Oregon*

In 1843, Oregon first instituted a formal bounty program.<sup>96</sup> By the 1930s, the state paid upwards of \$50 for a mountain lion kill, and at its

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88. Wilson, *supra* note 87; *but see* BECK ET AL., *supra* note 14, at 49 (“Cougar sightings, depredations events, and harvest letters are not reliable ways to index cougar populations”).

89. *Mountain Lions in California*, CAL. DEP’T FISH & GAME, <http://www.dfg.ca.gov/news/issues/lion/> (last visited Nov. 10, 2012).

90. Wilson, *supra* note 87 (stating the opinion of CDFG employee Mark Kenyon that the mountain lion population has decreased over the last ten years).

91. *Hounding Fact Sheet*, HUMANE SOC’Y U.S. (Mar. 22, 2012), [http://www.humanesociety.org/issues/hound\\_hunting/facts/hounding\\_fact\\_sheet.html](http://www.humanesociety.org/issues/hound_hunting/facts/hounding_fact_sheet.html).

92. Nancy Perry, *The Oregon Bear and Cougar Initiative: A Look at the Initiative Process*, 2 ANIMAL L. 203, 204 (1996).

93. *Id.*

94. *Id.*

95. David J. Mattson & Susan G. Clark, *People, Politics, and Cougar Management*, in COUGAR: ECOLOGY AND CONSERVATION 206, 216 (Maurice Hornocker & Sharon Negri eds., 2009); *see also* BECK ET AL., *supra* note 14, at 78 (noting that at least some of the opposition to hounding has come from the “commercial nature of hound hunting,” where a select few benefit from the practice).

96. OR. FISH & WILDLIFE, OREGON COUGAR MANAGEMENT PLAN 36 (2006) [hereinafter OR. PLAN], *available at* <http://www.dfw.state.or.us/wildlife/cougar/>

peak, the bounty program reached 300 kills per year.<sup>97</sup> When the population began to noticeably decrease, the state discontinued the bounty program in 1961.<sup>98</sup> Estimates show that only around 200 mountain lions remained in the state when the bounty program finally ended.<sup>99</sup> Despite the bounty period's end, mountain lions remained an unprotected species until 1967, when the state reclassified them as game animals.<sup>100</sup> For the next several years, the state did not authorize a mountain lion hunt.<sup>101</sup> Today, many believe that without the changes in policy in the 1960s, mountain lions would have likely been extirpated from the state by the early 1970s.<sup>102</sup>

The first open hunting season occurred in 1970.<sup>103</sup> Under the new regime, most hunts occurred with the use of dogs, but the Oregon Department of Fish and Wildlife ("ODFW") limited the hunting area, the number of tags, and the length of the seasons.<sup>104</sup> By the late 1980s, state wildlife managers estimated that the population had recovered to nearly 2,000 mountain lions.<sup>105</sup> At the time of the enactment of Measure 18 in 1994, ODFW estimated about 3,000 mountain lions in the state.

According to a Measure 18 supporter, "[t]he impetus for the campaign was a 1993 reexamination of the state's bear management plan," where several citizens asked the ODFW to reconsider its policies related to bear baiting and using dogs to hunt bears and mountain lions.<sup>106</sup> In the eyes of these citizens, ODFW took the position that it was not their job to "make moral judgments" but simply to "regulate the practice."<sup>107</sup> These citizens collected about 90,000 signatures to place Measure 18 on the July

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cougarPLAN-Final.pdf (stating that the bounty hunting program began prior to statehood and was the longest running in the nation).

97. *Id.*

98. *Id.*

99. *Id.*

100. George P. Kleister, Jr. & Walter A. Van Dyke, *A Predictive Population Model for Cougars in Oregon*, 76 NW. SCI. 15, 15 (2002).

101. OR. PLAN, *supra* note 96, at 36.

102. *Id.* at 2.

103. *Id.* at 36.

104. *Id.* at 37–38 (stating that ODFW authorized 160 tags in 1980 and 588 by 1994, by which time hunting was authorized for about two and a half to four months in about 50% of the state).

105. *See* Kleister & Van Dyke, *supra* note 100, at 21 fig.5.

106. Perry, *supra* note 92, at 203.

107. *Id.*

1994 ballot.<sup>108</sup> Despite lacking significant campaign funds, the initiative passed with fifty-two percent of the vote.<sup>109</sup>

The new law prohibited hunters from pursuing or killing a mountain lion with the aid of one or more dogs.<sup>110</sup> The statute defined a violation as a Class A misdemeanor,<sup>111</sup> which carries a penalty of up to one-year imprisonment<sup>112</sup> or a fine not to exceed \$6,250.<sup>113</sup> In addition, any violator would lose his or her “privilege to apply for any hunting license . . . for . . . five years for a first offense and permanently suspended for any subsequent offense.”<sup>114</sup> As enacted, the new law created an exception for the use of dogs “by employees . . . of county, state, or federal agencies while acting in their official capacities.”<sup>115</sup> Furthermore, the legislature amended the Act in 2007 to allow ODFW “to appoint persons to act as agents for the department,” but “[a]n agent may not engage in any other hunting or pursuit while acting on the department’s behalf.”<sup>116</sup>

Following enactment, both ODFW and the voters attempted to reverse the impacts of Measure 18. First, ODFW proposed lengthening the season—previously two and a half to four months—to seven months as a means to compensate for a decline in mountain lions taken.<sup>117</sup> In 1996, citizens placed Measure 34 on the ballot in an attempt to repeal Measure 18, but the initiative ultimately failed.<sup>118</sup> Following the defeat, the state legislature dropped the price for a mountain lion tag to \$10 which resulted in a single-year increase in sales from 937 to 11,761.<sup>119</sup> Finally, in 1998, ODFW extended the hunting season in certain areas to year-round and for the entire state to ten months in 2001.<sup>120</sup>

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108. *Id.* at 204.

109. *Id.* at 205.

110. OR. REV. STAT. § 498.164(1) (2013)

111. *Id.* § 498.164(5).

112. *Id.* § 161.615(1).

113. *Id.* § 161.635(1)(a).

114. *Id.* § 498.164(5).

115. *Id.* § 498.164(2).

116. *Id.* § 498.164(3)(a).

117. OR. PLAN, *supra* note 96, at 100–01. In 1995, the year following the ban, the number of tags issued dropped from 588 to 385, the harvest number dropped from 144 to 34, and the success percentage dropped from 40% to 7%. *See id.* at 19 tbl.6.

118. *Id.* at 101. Measure 34 lost 57.2% to 42.8%, a significantly larger majority than the vote over Measure 18. *See Official Results, State Measure 34, 11/5/96 General Election*, OR. SEC’Y STATE, <http://oregonvotes.org/pages/history/archive/nov596/results/m34.html> (last visited Mar. 9, 2013).

119. OR. PLAN, *supra* note 96, at 101.

120. *Id.*

In recent years, two programs have nullified much of Measure 18. First, the 2007 amendment allows ODFW to increase the annual number of mountain lions killed by “deputizing” hound-hunters.<sup>121</sup> Alongside this, ODFW has employed the U.S. Department of Agriculture’s Wildlife Service to aid in culling some of the state’s mountain lion population based on Oregon’s management goal to decrease mountain lion populations in areas near human populations.<sup>122</sup> Some interest groups filed suit to stop the federal hunting program, but the case was dismissed because the court ruled that the plaintiffs lacked standing to sue.<sup>123</sup>

The impetus for the reduction in population is depredation on livestock, pets, and game animals, and it is part of Oregon’s 2006 Cougar Management Plan.<sup>124</sup> The Plan sets a minimum population at a 1994 base level of 3,000 mountain lions.<sup>125</sup> In the Plan, ODFW estimated the mountain lion population at 5,101 animals.<sup>126</sup> While ODFW estimates that the population continues to grow, the number of reported conflicts with humans has steadily decreased.<sup>127</sup> Many mountain lion conservation advocates are decrying the Oregon policy and point to some of the research coming out of nearby Washington as a basis for rethinking the strategy.<sup>128</sup> Unfortunately, there is little independent research focusing on Oregon in recent years to substantiate these claims one way or the other.

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121. OR. REV. STAT. § 498.164(3)(a) (2012)

122. *Goat Ranchers of Or. v. Williams*, No. 08-97-ST, 2009 WL 883581 at \*1 (D. Or. Mar. 30, 2009).

123. *Goat Ranchers of Or. v. Williams*, 379 F. App’x. 662, 663 (9th Cir. 2010).

124. *See generally* OR. PLAN, *supra* note 96.

125. *Id.* at 42; *see also* Craig Hunter et al., *Sport Hunting, Predator Control and Conservation of Large Carnivores*, 4 PLOS ONE no. 6, June 2009, at 1, 3, *available at* <http://www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0005941> (referring to the minimum population estimate as a mandate to reduce the population by 40%).

126. OR. PLAN, *supra* note 96, at 2.

127. Donald G. Whitaker, *Oregon Mountain Lion Status Report*, 9 MOUNTAIN LION WORKSHOP 23, 27–28 (2008), *available at* [http://www.carnivoreconservation.org/files/meetings/mtn\\_lion\\_2008\\_idaho.pdf](http://www.carnivoreconservation.org/files/meetings/mtn_lion_2008_idaho.pdf).

128. *See, e.g., Cougar*, OR. WILD, [http://www.oregonwild.org/fish\\_wildlife/wildlife-pages/cougar](http://www.oregonwild.org/fish_wildlife/wildlife-pages/cougar) (last visited Feb. 4, 2014) (stating that “Oregonians may again need to intervene and determine if the course of management in Oregon should be to support cougar population growth or suppress it.”); *see also Mountain Lions in the State of Oregon*, MOUNTAIN LION FOUND., <http://www.mountainlion.org/us/or/-or-portal.asp> (last visited Feb. 4, 2014) (stating that “it is possible that this disturbing trend of ever-increasing cougar population estimates has more to do with justifying policy decisions to kill more cougars than reliable scientific data.”).

## 2. Washington

In 1933, the state of Washington classified mountain lions as predators and, two years later, issued a bounty.<sup>129</sup> Prior to 1933, when the state created the Washington Game Department to administer the program, individual counties led their own bounty programs.<sup>130</sup> While there are no figures from the county bounty period, the statewide bounty period from 1935 to 1960 resulted in over 3,000 mountain lion deaths.<sup>131</sup> The state ended the bounty in 1960, but it continued to classify the mountain lion as a predator and did not regulate hunting.<sup>132</sup> In 1966, the state reclassified mountain lions as game animals and a period of regulated hunting continued until the passage of Initiative 655 (“I-655”) in 1996.<sup>133</sup>

I-655 garnered overwhelming support in 1996, passing with sixty-three percent of the vote.<sup>134</sup> The vote turned on the urban/rural divide in Washington. For example, opposition to I-655 came largely from rural communities, specifically from four counties in northeastern Washington.<sup>135</sup> The opponents believed that mountain lion populations would grow exponentially without hounding.<sup>136</sup> These groups argued that a mountain lion population increase would soon be followed by mountain lions becoming accustomed to humans; thus, opposition to the initiative took the form of public safety concerns.<sup>137</sup>

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129. *Mountain Lions in the State of Washington*, MOUNTAIN LION FOUND., <http://www.mountainlion.org/us/wa/-wa-portal.asp> (last visited Feb. 4, 2014) [hereinafter *Washington*].

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.* For definitions of Washington’s current classifications for wildlife (i.e. game animals, small game, furbearing animals, protected wildlife and endangered species), see generally WASH. ADMIN. CODE § 232-12 (2013).

134. Brian N. Kertson, *Political and Socio-Economic Influences on Cougar Management Legislation in Washington State: Post Initiative 655*, 8 MOUNTAIN LION WORKSHOP 92, 93 (2005), available at <http://mountainlion.org/publications/8th%20Mountain%20Lion%20Workshop%202005.pdf>. Not surprisingly, 1996 appeared to be the year of the animal protection initiative as ballot initiatives either prohibiting or restricting hunting techniques passed in four states (CO, MA, WA, AK), while voters rejected the two measures attempting to overturn prior bans (OR, CA). See Pacelle, *supra* note 9. While animal advocates failed to pass bear hunting restriction in two states (ID, MI), 1996 remains an overwhelmingly good year for animal advocates under the initiative system. *Id.*

135. Kertson, *supra* note 134, at 93.

136. *Id.*

137. *Id.*; but see BECKET AL., *supra* note 14, at 80 (stating that “there is no scientific evidence that sport hunting” reduces the risk of mountain lion attacks on humans).

I-655, as codified, is nearly identical to Oregon's Measure 18.<sup>138</sup> I-655 prohibits hunting and pursuing mountain lions with the aid of one or more dogs.<sup>139</sup> The law provides an exception for agents of the state or those holding permits to take a lion in the name of public safety.<sup>140</sup> Additionally, the Washington Department of Fish & Wildlife ("WDFW") director can permit a public agency, educational organization, or scientific institute engaged in a scientific study to use dogs for the purpose of pursuit, capture, relocation, or taking.<sup>141</sup> A violation of the Act is a gross misdemeanor, and the Department can revoke the violator's hunting license for up to five years.<sup>142</sup>

Like ODFW, WDFW predicted that the passage of I-655 would result in a sharp decline in mountain lion harvest.<sup>143</sup> Therefore, WDFW reacted with significant changes in its hunting regulations, including lengthening the hunting season from eighty-six days during the hounding period to 227 days following the passage of I-655.<sup>144</sup> Furthermore, WDFW increased the bag limit from one to two lions and reduced the tag price from \$24 to \$10.<sup>145</sup> As a result, the number of mountain lion hunting tags sold expanded from only 1,000 in 1996 to over 50,000 in recent years.<sup>146</sup>

Attempts to overturn I-655 completely or in part began almost immediately in the Washington legislature.<sup>147</sup> One of the toughest hits to I-655 occurred in 2004 when legislators introduced Substitute Senate Bill 6118 ("SSB 6118").<sup>148</sup> As enacted, SSB 6118 established an initial three-year hunting program with the use of dogs to address public safety concerns.<sup>149</sup> Not surprisingly, the pilot program was established in those

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138. Compare WASH. REV. CODE § 77.15.245 (2012), with OR. REV. STAT. § 498.164 (2012).

139. WASH. REV. CODE § 77.15.245(2).

140. *Id.*

141. *Id.*

142. *Id.* § 77.15.245(4).

143. See generally Donald A. Martorello & Richard A. Beausoleil, *Characteristics of Cougar Harvest with and Without the Use of Dogs*, 7 MOUNTAIN LION WORKSHOP 129 (2003), available at <http://mountainlion.org/publications/7th%20Mt.%20Lion%20Workshop%202003.pdf>

144. *Id.*

145. *Id.*

146. *Id.* at 133.

147. See Kertson, *supra* note 134, at 96 (detailing a number of bills introduced in the legislature including SB 5001, which authorized the creation of Public Safety Cougar Removal Hunts with the aid of dogs and allowed WDFW to issue permits in any management area based on the number of complaints in the area).

148. WASH. ADMIN. CODE § 232-28-285 (2012).

149. *Id.*

northeastern Washington counties that initially opposed I-655 and claimed that the use of dogs encourages mountain lions to stay away from human populations.<sup>150</sup> As carnivore research scientist Brian N. Kertson argues, the passage of SSB 6118 “suggest[s] that cougar management legislation in Washington may be influenced by political and social factors and may not reflect understanding of cougar ecology and behavior.”<sup>151</sup>

In recent years, some evidence suggests support for Kertson’s claims. For example, WDFW admitted “the most notable decline in complaints occurred before the pilot program began.”<sup>152</sup> Furthermore, WDFW believed that mountain lion “populations were likely already declining in the area due to heavy hunting during the general seasons.”<sup>153</sup> Finally, the Department found no “published studies that suggest [mountain lions] change their behavioral patterns towards people when randomly harassed with dogs.”<sup>154</sup> Despite these findings, WDFW recommended an extension of the pilot program,<sup>155</sup> which the legislature approved for another three years before extending it for an additional five years in 2011.<sup>156</sup>

Recent scientific findings also appear to contradict the current program. In 2006, researchers at Washington State University’s Large Carnivore Conservation Laboratory (“LCCL”) completed and published a study that suggested that the mountain lion population in the Pacific Northwest was declining and recommended “reduced levels of exploitation.”<sup>157</sup> Additional studies suggested a number of reasons other than increased population density for continued conflict with human populations. For example, researchers found that heavy hunting produced no decline in the density of mountain lions, but it produced a significant decrease in the age of independent males.<sup>158</sup> The LCCL concluded that

150. Kertson, *supra* note 134, at 93.

151. *Id.* at 92.

152. WASH. DEP’T FISH & WILDLIFE, PILOT COUGAR CONTROL PROGRAM: 2008 LEGISLATIVE REPORT 16 (2008) [hereinafter WASH. PILOT PROGRAM].

153. *Id.*

154. *Id.* at 18.

155. *Id.* at 21.

156. WASH. ADMIN. CODE § 232-28-285 (2012). A bill is currently in the Senate to extend the pilot program until 2018. *See* S.B. 6287, 63d Leg. Reg. Sess. (Wash. 2014).

157. Catherine M.S. Lambert et al., *Cougar Population and Viability in the Pacific Northwest*, 70 J. WILDLIFE MANAGE. 246, 246 (2006).

158. Hugh S. Robinson et al., *Sink Populations in Carnivore Management: Cougar Demography and Immigration in a Hunted Population*, 18 ECOLOGICAL APPLICATIONS 1028, 1028 (2008). This phenomenon creates what biologists refer to as a source-sink system. The overhunted area serves as a sink for immigration into the area, while nearby lightly hunted areas provide a source for emigration to the areas no longer controlled by other mountain lions. Because mountain lions are highly territorial, and because hounding selectively kills older males, the sink pulls juvenile males into the area. *See generally id.*

mountain lion populations appear to remain constant regardless of the percentage of the population that hunters harvest.<sup>159</sup> These findings contradicted prior assumptions that population growth occurred because the remaining population simply increased reproduction.<sup>160</sup> Ultimately, the decline in older males correlated to an increase of juveniles, who tend to be less cautious around humans.<sup>161</sup> Thus, a disproportionate juvenile population, not a large population overall, resulted in increased conflict with humans.<sup>162</sup>

If citizens concerned with protecting mountain lions continue to utilize the initiative process, they will need to reconsider the method. The cases of Oregon and Washington show that political and regional influences are significant barriers to upholding the purpose of a citizen initiative. If proponents hoped to either limit the number of mountain lions being killed or limit the methods used to hunt them, they have in many ways failed. Regardless of success or failure, direct democracy still has the ability to improve public safety and species conservation, as well as meet the concerns of both animal protectionists and hunters, but must do so through new and creative methods.

#### IV. ALTERNATIVE APPROACHES: BEYOND HUNTING BANS

Ultimately, the prohibition of hounding has neither eliminated the practice nor helped to conserve mountain lions. Rather, it has done little more than frustrate management agencies and hunters. On the other hand, complete hunting bans, like the one imposed in California, are not popular with pro-hunting advocates who object to any limit on their ability to hunt.

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at 1033–35; Hilary S. Cooley et al., *Source Populations in Carnivore Management: Cougar Demography and Emigration in a Lightly Hunted Population*, 12 ANIMAL CONSERVATION 321 (2009).

159. Press Release, Washington State University, New Paradigm: WSU Research Prompts State Policy to Reduce Cougar Problems and Overharvest, Maintain Ample Hunting (Sept. 25, 2012) [hereinafter WSU Press Release], available at <http://news.cahnrs.wsu.edu/2012/09/25/new-paradigm-wsu-research-prompts-state-policy-to-reduce-cougar-problems-and-overharvest-maintain-ample-hunting/> (discussing the stable population numbers regardless of a 10% or a 35% cull); see also Hilary S. Cooley et al., *Does Hunting Regulate Cougar Populations: A Test of the Compensatory Mortality Hypothesis*, 90 ECOLOGY 2913 (2009); Cooley et al., *supra* note 158; BECK ET AL., *supra* note 14, at 50–51 (“The cougar harvest level probably reflects hunter effort, or cougar vulnerability, more than it reflect cougar numbers”).

160. WSU Press Release, *supra* note 159.

161. *Id.*

162. *Id.*

Therefore, proposing bans on hunting mountain lions, at least while healthy populations remain, is an impractical approach.<sup>163</sup>

Advocates of using the initiative process are not without recourse, but they must focus their efforts elsewhere. Prohibitions of hunting or the modification of hunting practices are not the only initiatives that promote mountain lion conservation, nor are they probably the best. Therefore, states in the West should focus on (1) funding habitat conservation; (2) financing university and nonprofit research; (3) promoting community awareness and public outreach; and (4) providing a mechanism for citizen suit provisions to enforce the first two criteria. The final Parts in this Note will discuss these alternative approaches to using the citizen initiative.

### A. *Funding Habitat Conservation*

In the past, hunting and hunting methods have been the focus of mountain lion conservationists operating under the initiative process because hunting is the “most visible and easily fixed” threat to mountain lions.<sup>164</sup> However, many scientists have pointed to habitat loss and fragmentation “as the greatest long-term threat” to mountain lions.<sup>165</sup> Individual mountain lions occupy areas over 300 square kilometers with dispersal distances on average of 65 kilometers.<sup>166</sup> Mountain lions are

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163. While hunting bans remain unlikely in western states, citizens might consider proposing initiatives in states that do not currently have stable mountain lion populations in the East and Midwest. Some states east of the Rocky Mountains already have protections in place for mountain lions. *See, e.g.*, N.H. REV. STAT. § 208:1-b (2013) (prohibiting hunting in the state or the possession of a mountain lion carcass taken in the state); S.C. CODE ANN. REGS. 123-150 (2013) (listing the eastern cougar on the State List of Endangered Wildlife Species of South Carolina). Other states allow mountain lion hunting in one form or another. *See, e.g.*, NEB. REV. STAT. § 37-473 (2012) (allowing for the issuance of mountain lion hunting permit); ALA. ADMIN. CODE r. 220-2-.06 (2012) (designating mountain lions as game animals). *See* Press Release, U.S. Dep’t of Fish & Wildlife, U.S. Fish and Wildlife Service Concludes Eastern Cougar Extinct (Mar. 2, 2011), available at <http://www.fws.gov/northeast/ecougar/newsreleasefinal.html> (detailing the results of the completion of FWS’s five-year review declaring the eastern cougar extinct). Now that the eastern cougar has been declared extinct, FWS will remove it from the endangered species lists, where it has been since 1973. Presumably, western mountain lions that migrated to eastern states were protected under the ESA. Once the eastern cougar is removed, all protection of mountain lions in the East will be up to individual states.

164. Negri & Quigley, *supra* note 54, at 230.

165. *Id.*; *see generally* BECK ET AL., *supra* note 14.

166. JEFF A. TRACEY & KEVIN R. CROOKS, EVALUATING LANDSCAPE CONNECTIVITY IN COASTAL SOUTHERN CALIFORNIA USING INDIVIDUAL-BASED MOVEMENT MODELS: A REPORT TO THE NATURE CONSERVANCY AND THE CALIFORNIA DEPARTMENT OF FISH AND GAME 7 (2004), available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=26338>. 300 square kilometers is equivalent to approximately 115 square miles. *See also*

solitary creatures that “coexist in a system of individual home ranges with varying amounts of overlap.”<sup>167</sup> A male’s home range tends to overlap with several females, but not with other males, and some studies suggest that mountain lions self-regulate their territories through “mutual avoidance, territorial markings, and cannibalism,”<sup>168</sup> while other studies note that mountain lion populations are limited only “by prey availability.”<sup>169</sup>

Because of the expansive range requirements noted above, among other factors, large carnivores like mountain lions are particularly vulnerable to extinction in a fragmented landscape.<sup>170</sup> Population islands that are cut off from the larger population through natural and artificial barriers such as roads and towns prevent migration of individuals which is a necessary practice for the maintenance of genetic diversity.<sup>171</sup> Experts point to the example of the Florida panther as a worst case scenario for genetic isolation.<sup>172</sup> Furthermore, the disappearance of mountain lions as a top-of-the-food-chain predator “may generate cascades that ripple down the food web.”<sup>173</sup>

The loss of mountain lion habitat is also a concern for human safety. There is evidence to suggest a correlation between the increased human use of mountain lion habitat and the number of attacks.<sup>174</sup> However, mountain lion experts are unsure of the exact reasons for attacks, but they have found that mountain lions still “show a proclivity for using [shared]

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Harley Shaw, *The Emerging Cougar Chronicle*, in *COUGAR: ECOLOGY AND CONSERVATION* 17, 19 (Maurice Hornocker & Sharon Negri eds., 2009) (presenting a compilation of studies that indicate habitat ranging from 75 to 150 square miles for males and 25 to 50 square miles for females, and when prey is scarce and scattered up to 700 square miles).

167. Becky Pierce & Vernon C. Bleich, *Mountain Lion*, in *WILD MAMMALS OF NORTH AMERICA: BIOLOGY, MANAGEMENT, AND CONSERVATION* 744, 750 (George A. Feldhamer et al. eds., 2nd ed. 2003).

168. *Id.*

169. Becky Pierce et al., *Social Organization of Mountain Lions: Does a Land-Tenure System Regulate Population Size?*, 81 *ECOLOGY* 1533, 1540 (2000).

170. TRACEY & CROOKS, *supra* note 166, at 6–7.

171. Pierce & Bleich, *supra* note 167, at 753.

172. Negri & Quigley, *supra* note 54, at 230. While the Florida panther (*Puma concolor coryi*) is considered a subspecies of North American mountain lions according to its listing as an endangered species, no distinctive characteristics distinguish them from other North American mountain lions, and all present-day mountain lions north of Nicaragua technically represent a single subspecies. See M. Culver et al., *Genomic Ancestry of the American Puma* (*Puma concolor*), 91 *J. HEREDITY* 186 (2000).

173. TRACEY & CROOKS, *supra* note 167, at 7.

174. Linda L. Sweanor & Kenneth A. Logan, *Cougar-Human Interactions*, in *COUGAR: ECOLOGY AND CONSERVATION* 190, 202 (Maurice Hornocker & Sharon Negri eds., 2009).

habitats during times when human use is minimal.”<sup>175</sup> Regardless, as human populations grow, and those populations continue to shift to lands near mountain lion habitat, the probability of attacks will increase.<sup>176</sup>

The confluence of human and mountain lion populations in the same areas is not only a threat to the safety of humans but also to mountain lions. Human developments, especially roads, impede mountain lion movement, affect mountain lion food sources, and lead to mountain lion mortality through automobile accidents and depredation.<sup>177</sup> Vehicle strikes have been noted as a leading cause of death in some populations, and experts tend to believe that “the deaths may be indicative of a developing crisis.”<sup>178</sup>

Increasingly, climate change is becoming an issue for wildlife managers,<sup>179</sup> and mountain lion experts are slowly beginning to address the issue as it relates to habitat loss.<sup>180</sup> According to ecologist Reed Noss, animals previously adjusted to changes in the Earth’s climate not through evolution but through dispersal into new habitats.<sup>181</sup> He notes that animals would likely adapt in a similar manner today except for the problem of habitat fragmentation.<sup>182</sup> As Sharon Negri and Howard Quigley put it, “birds and butterflies can alter their flight patterns, but any range shift for

175. *Id.* at 197.

176. *Id.* at 197–98; *see also* Beck, *supra* note 12, at 99 (stating that “increased human encroachment into cougar habitat appears to be the major cause of increased cougar attacks on humans”).

177. Sweanor & Logan, *supra* note 174, at 202.

178. *Id.* at 202–03.

179. *See, e.g.*, U.S. FISH & WILDLIFE SERV., RISING TO THE URGENT CHALLENGE: STRATEGIC PLAN FOR RESPONDING TO ACCELERATING CLIMATE CHANGE (2010), available at <http://www.fws.gov/home/climatechange/pdf/CCStrategicPlan.pdf>

180. Negri & Quigley, *supra* note 54, at 231; *see also* R. Bruce Gill, *To Save a Mountain Lion: Evolving Philosophy of Nature and Cougars*, in COUGAR: ECOLOGY AND CONSERVATION 5, 15 (Maurice Hornocker & Sharon Negri eds., 2009) (noting the habitat loss for mountain lions in coastal regions as sea levels rise).

181. Negri & Quigley, *supra* note 54, at 231.

182. *Id.*; *see also* Morgan Erickson-Davis, *American Cougars on the Decline: “We’re Running Against the Clock,” Says Big Cat Expert*, MONGABAY (Jan. 17, 2011), [http://news.mongabay.com/2011/0117-morgan\\_cougar\\_quigley.html](http://news.mongabay.com/2011/0117-morgan_cougar_quigley.html) (discussing the opinion of mountain lion expert Howard Quigley that mountain lion populations will most certainly return to the eastern United States due to their “impressive capability for dispersal,” but that humans must still “mak[e] way” for their migration by providing sufficient natural habitat). Recent studies suggest that mountain lions are already beginning to recolonize the East and Midwest. *See* Michelle A. Larue et al., *Cougars are Recolonizing the Midwest: Analysis of Cougar Confirmations During 1990–2008*, 76 J. WILDLIFE MGMT. 1364, 1364 (2012) (finding that “seventy-nine percent of cougar confirmations occurred within 50 [kilometers] of highly suitable habitat,” but noting the capability of mountain lions to reestablish territory further east).

[mountain lions] requires running a gauntlet of suburbs and freeways in search of alternative habitat.”<sup>183</sup> Therefore, citizen initiatives should focus on the acquisition of mountain lion habitats and corridors connecting key habitats to each other.<sup>184</sup>

The group of wildlife managers, biologists, and scientists that drafted the *Cougar Management Guidelines* suggest managing habitats by designating sink (subpopulations with negative growth rates) and source populations (subpopulations with stable or increasing growth).<sup>185</sup> The group suggests that the source population habitats be managed with “low or no cougar harvest, low road density, . . . and few opportunities for human-cougar conflicts” while providing for connectivity with sink populations to enhance population resilience and genetic diversity.<sup>186</sup> They also note that many of these “natural refugia” currently “have no legal, long-term protected status” except as part of a national or state park.<sup>187</sup> With some experts suggesting that a minimum reserve size to sustain a mountain lion population for 100 years is 1,000 to 2,200 square kilometers, the current legally protected habitat is insufficient.<sup>188</sup>

One example for funding conservation of habitats and corridors is California’s Habitat Conservation Fund (“HCF”) created under Prop 117. The HCF program currently grants money for habitat conservation projects only to public agencies.<sup>189</sup> The grant program provides two important features that make it a good example of citizen’s initiative proposals. First, the program gives special preference to projects that protect corridors connecting key habitats.<sup>190</sup> Second, the program is required to spend one-third of its yearly funds to protect mountain lions

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183. Negri & Quigley, *supra* note 54, at 231. To make matters worse, Negri and Quigley point out that a recent study suggests that ecosystems that lose a keystone species, such as mountain lions, are more vulnerable to the impacts of climate change. *Id.*

184. *See, e.g.*, BECK ET AL., *supra* note 14, at 8 (“A large landscape approach on the order of thousands of square kilometers of well-connected habitat with thriving natural prey populations, is necessary for healthy, self-sustaining populations”); *see also South Coast Missing Linkages Project*, SCIENCE & COLLABORATION FOR CONNECTED WILDLANDS, <http://www.scwildlands.org/projects/scml.aspx> (last visited Mar. 15, 2013) (detailing a collaborative project including California State Parks, National Park Service, and others to “address fragmentation at a landscape scale”).

185. *Id.* at 30.

186. *Id.*

187. *Id.* at 30–31.

188. Paul Beier, *Determining Minimum Habitat Areas and Habitat Corridors for Cougars*, 7 CONSERVATION BIOLOGY 94, 101 (1993); KENNETH A. LOGAN & LINDA L. SWEANOR, *DESERT PUMA: EVOLUTIONARY ECOLOGY AND CONSERVATION OF AN ENDURING CARNIVORE* 178 (2001); *see also* BECK ET AL., *supra* note 14, at 31.

189. Meral, *supra* note 77.

190. *Id.*

and their prey populations.<sup>191</sup> However, the program is set to end in 2020.<sup>192</sup>

Despite over twenty years of operation, the HCF has not done enough to protect Californian mountain lions because habitat fragmentation remains the greatest risk to their survival.<sup>193</sup> Still, several lessons can be learned from the Habitat Conservation Fund. Initiatives should develop habitat conservation funds that (1) draw from a more prodigious revenue source; (2) allow for yearly increases in funding; (3) permit private entities and nonprofit organizations to apply for grants; and (4) continue in perpetuity.

These suggestions could be implemented in the following way. In California, the HCF appropriated the majority of its \$30 million from an unallocated portion of the tobacco tax and received the rest of the money from a plethora of other smaller sources.<sup>194</sup> A more stable source of revenue, such as lottery contributions, would be a better way to advance habitat conservation. For example, a program like Great Outdoors Colorado, which is used for a number of natural resource-related activities, received \$56 million from the lottery in 2011.<sup>195</sup> A prospective initiative could ensure an increase in habitat conservation funding by including a provision that the funding increase by an annual growth rate plus inflation. A more modest approach would simply declare a percentage of funds from a revenue source such as the lottery, under the assumption that lottery revenues will grow over time.

In addition, the California program allows only state and city governments to apply for funding from the HCF.<sup>196</sup> By permitting private entities to apply, a state could encourage a corporation or landholder to donate land toward habitat conservation. Furthermore, if nonprofits could apply, they may be able to direct a project in collaboration with a government or private entity. Finally, habitat conservation is a long-term

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191. *Id.*

192. *Id.*

193. See, e.g., Jeff A. Sikich & Seth P.D. Riley, *Understanding the Conservation Needs of Mountain Lions in an Urban Southern California Landscape*, 10 MOUNTAIN LION WORKSHOP 191, 191 (2011), available at [http://www.carnivoreconservation.org/files/meetings/mtn\\_lion\\_2011.pdf](http://www.carnivoreconservation.org/files/meetings/mtn_lion_2011.pdf).

194. Meral, *supra* note 77.

195. GREATER OUTDOORS COLO., GOCO 2012 FACT BOOK: GOCO'S INVESTMENT OF LOTTERY PROCEEDS 3–4 (2012), available at <http://www.goco.org/sites/default/files/GOCO%20At%20A%20Glance.pdf> (accounting for about 50% of total revenue from the lottery, while the other 50% of funds goes to other public programs, some of which are also natural resource-related).

196. Meral, *supra* note 77.

goal, and any initiative must provide for a guaranteed revenue stream that proceeds indefinitely into the future.

### *B. Financing University and Nonprofit Research*

Funding long-term research projects to better manage mountain lion populations is a difficult task for government wildlife agencies with limited financial resources and staff members. As in many specialty areas, government agencies often contract out research or assistance to university departments or non-profit organizations. This is also the case in mountain lion management. Take for example, the Colorado Department of Wildlife's ("DOW") ten-year study on the effect of sport hunting on the Uncompahgre Plateau in southern Colorado.<sup>197</sup> Wildlife biologists at DOW work with researchers at Colorado State University ("CSU") to examine mountain lion blood samples to reveal types of diseases suffered by mountain lions and the frequency of exposure.<sup>198</sup> DOW also worked with other CSU researchers to examine models designed to estimate mountain lion abundance and density.<sup>199</sup>

A prime example of non-profit, university research having an independent impact on mountain lion policy is the aforementioned Washington State University Large Carnivore Conservation Lab. LCCL describes itself as a "non-profit wildlife research organization that prides itself on rigorous, scientifically based conservation biology," which "relies on graduate students and post-docs to conduct the bulk" of its research.<sup>200</sup> The lab depends, for many of its activities, on external research grants that it must obtain on its own.<sup>201</sup>

Learning from programs like LCCL and the collaboration between DOW and CSU, citizens should develop a plan to fund research activities through a citizen's initiative. One option is to couple the funding for the research with funding for habitat conservation. Another method would be to raise revenue from the individuals who are using the resources most. For example, governments could raise money from property taxes on

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197. *Cougar/Puma/Mountain Lion*, COLORADO PARKS AND WILDLIFE (Nov. 7, 2012, 8:20 PM), <http://wildlife.state.co.us/Research/Mammal/CougarPumaMountainLion/Pages/CougarPumaMountainLion.aspx>.

198. *Id.*

199. *Id.*

200. *Large Carnivore Conservation Lab, Students, Collaborators, & Sponsors*, WASH. STATE U. SCH. ENV'T, <http://environment.wsu.edu/facilities/carnivore/scs.html> (last visited Mar. 10, 2013); *Large Carnivore Conservation Lab*, WASH. STATE U. SCH. ENV'T, <http://environment.wsu.edu/facilities/carnivore/> (last visited Mar. 10, 2013).

201. *Large Carnivore Conservation Lab, Students, Collaborators, & Sponsors*, *supra* note 200.

individuals who choose to build their homes in or near mountain lion habitat. Governments could also collect a portion of the proceeds from hunting licenses, camping permits (especially wilderness permits), and general parks passes. Furthermore, governments could fund research with revenues generated from penalties associated with poaching or other environmental crimes. Finally, an initiative may require wildlife agencies to seek private and federal grants for university and nonprofit research. Ultimately, some combination of these would be required to fund long-term programs.

### *C. Community Outreach and Public Awareness*

One of the strongest influences working against efforts to protect mountain lions and their habitat is public misperception about these mysterious animals. Some nonprofit groups and wildlife agencies are working together to control hunting practices and curb human-mountain lion conflict. For example, WildEarth Guardians, a nonprofit group, has worked with agencies in Colorado, Montana, and New Mexico to institute a hunter education program to help hunters identify females and adolescents.<sup>202</sup> The Colorado Wildlife Commission first adopted a voluntary hunter education program in 2005 and introduced a mandatory program, the first of its kind, in 2007.<sup>203</sup> Prior to acquiring a license to hunt mountain lions, hunters are required to pass an online exam with a score of eighty percent or better.<sup>204</sup> The program has aided in a decrease in female mountain lions killed in Colorado,<sup>205</sup> which will help maintain a healthy population. However, the program does not address the problem of human-mountain lion conflict, and it may even lead to an increase in conflict if adult males are giving way to adolescents.

Many wildlife agencies have programs to educate citizens living near mountain lion populations about ways to reduce encounters with mountain lions. The Colorado DOW publishes the “Living with Lions” brochure with information about safety measures for recreation activity, suggestions for people with homes near mountain lion habitat, and information on who

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202. *Cougars*, WILDEARTH GUARDIANS, [http://www.wildearthguardians.org/site/PageServer?pagename=priorities\\_wildlife\\_carnivore\\_protection\\_cougars](http://www.wildearthguardians.org/site/PageServer?pagename=priorities_wildlife_carnivore_protection_cougars) (last visited Feb. 15, 2013).

203. Wendy Keefover, *Mountain Lion Mothers & Kittens a Little Safer Today*, WILDEARTH GUARDIANS (Nov. 11, 2011), <http://www.wildearthguardians.org/site/News2?page=NewsArticle&id=7323>.

204. *Id.*

205. *Id.*

to call if an attack occurs.<sup>206</sup> When a mountain lion threatens an area, DOW alerts citizens by placing warning signs in their neighborhood with information related to protecting their children and pets.<sup>207</sup> California operates a similar program called “Keep Me Wild” that educates citizens on mountain lion behavior and how to protect against attacks.<sup>208</sup>

Most of the practices that reduce risks to humans in mountain lion country might be common sense, but awareness remains important for newcomers to the area.<sup>209</sup> Yet, the reactionary nature of the current education programs are problematic in that people only learn about these simple safety measures *after* an attack.<sup>210</sup> Given the negative press that mountain lions often receive following a rare attack,<sup>211</sup> it may be difficult by this point to separate the fear from the reality.

#### D. Citizen Suit Provisions

Groups hoping to influence wildlife management can also litigate. Some plaintiffs have succeeded in challenging mountain lion activities through procedural statutes like NEPA and CEQA.<sup>212</sup> However, very few procedural challenges have occurred at the state level.<sup>213</sup> This may be the

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206. See COLO. DEP'T WILDLIFE, LIVING WITH LIONS, *available at* <http://wildlife.state.co.us/SiteCollectionDocuments/DOW/Education/LivingWithWildlife/LivingWithLions.pdf>.

207. *Living with Wildlife*, COLO. PARKS & WILDLIFE, <http://wildlife.state.co.us/WildlifeSpecies/LivingWithWildlife/Pages/LivingWith.aspx> (last updated Oct. 17, 2012, 4:41 PM).

208. See *Mountain Lions in California*, CAL. FISH & GAME, <http://www.dfg.ca.gov/keepmewild/lion.html> (last visited Nov. 10, 2012).

209. Sweanor & Logan, *supra* note 174, at 201 (stating that the best way to keep mountain lions away from one's home in mountain lion country is to eliminate “attractants” such as keeping pets in predator-proof enclosures between dusk and dawn, not feeding other wildlife, and keeping garbage under control).

210. See, e.g., BECK ET AL., *supra* note 14, at 95 (“Managers should be proactive rather than reactive.”).

211. See generally Jennifer R. Wolch et al., *Changing Attitude Toward California's Cougars*, 5 SOC'Y & ANIMALS 95 (1997).

212. See, e.g., *Mountain Lion Coalition v. Fish & Game Comm'n*, 214 Cal. App. 3d 1043, 1051–52 (Cal. Dist. Ct. App. 1989) (holding that CDFG did not meet the requirement of CEQA when it authorized the mountain lion hunt); *Sierra Club v. U.S. Fish & Wildlife Serv.*, 235 F. Supp. 2d 1109, 1131 (D. Or. 2002) (holding that Service had failed to address cumulative effects on mountain lion populations under NEPA); *Nat'l Wildlife Fed'n v. Norton*, 332 F. Supp. 2d 170, 188 (D.D.C. 2004) (holding that USFWS decision to issue a permit violated the Endangered Species Act, NEPA, and the Clean Water Act).

213. See, e.g., *Black Hills Mountain Lion Found. v. S.D. Game, Fish & Parks*, No. 05-343 (Cir. Ct. S.D. Sept. 28, 2005) (holding that SDGFP did not violate state regulations governing management of wildlife).

result of the lack of strict procedural mechanisms required by fish and wildlife departments. A ballot initiative could provide for a citizen suit provision similar to the Endangered Species Act or the Clean Air Act attached to the provision for habitat conservation or research.<sup>214</sup>

These citizen suit provisions should allow for two types of suits. Attached to the habitat conservation provision should be an additional provision that allows citizen suits against a citizen, corporation, nonprofit, or government agency that received a grant for habitat conservation but did not utilize the funding in the appropriate manner. For example, if a citizen acquires funding from the habitat conservation funds to establish an easement for a wildlife corridor but instead builds a fence across the land, that citizen could be sued under the citizen suit. Second, a caveat could be attached to the research provision that requires a wildlife agency to fully consider the research findings funded through the initiative process. The initiative could go so far as to require that the outside research be followed unless there are overwhelming reasons to ignore them. Under this provision, management decisions that do not consider the outside research appropriately or weigh other factors more heavily could be declared arbitrary and capricious.<sup>215</sup>

## V. CONCLUSION

Based on the experience in California, initiatives that focus on hunting bans are preferable for conservation purposes, but they are politically difficult and socially complicated. Initiatives in Oregon and Washington prove that bans on hunting methods tend to be counterproductive and may actually hurt mountain lion populations. In the western states where significant mountain lion populations exist, the best long-term strategies for mountain lion conservation through the initiative process should emphasize aspects other than hunting. Citizens should focus their efforts on (1) funding habitat conservation; (2) financing

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214. Citizen suit provisions are rare as part of a ballot initiative. *See* Andy Kerr & Sally Cross, *Successfully Using Ballot Measures for Environmental Protection*, 8 WILD EARTH 72, 72 (1998) (suggesting that the inclusion of “highly unpopular or complicated provisions, such as those allowing for citizen suits, is the kiss of death for a ballot item.”); *see also* Jeffrey D. Kline & Catriona Armstrong, *Autopsy of Forestry Ballot Initiative: Characterizing Voter Support for Oregon’s Measure 64*, 99 J. FORESTRY 20, 21 (2001) (discussing a ballot initiative that included a citizen suit provision, which failed by an overwhelming majority); *but see* ALASKA STAT. § 46.03.481(a) (2013) (codifying Alaska Measure 2 that allowed for a citizen suits against cruise ship operators or the state for any violation of a permitting program).

215. *See, e.g.*, 5 U.S.C. § 706(2)(A) (2012) (stating the standard of review under the federal Administrative Procedure Act).

university and nonprofit studies; (3) raising public awareness about mountain lions through community outreach; and (4) enacting a statutory mechanism for citizens to challenge an agency's neglect of the first two criteria.

Wildlife managers find themselves between several interest groups, and they will feel pressure to meet the concerns of all parties.<sup>216</sup> While everyone seems to agree that sound science is critical to wildlife management, they will continue to disagree about whose side the science supports. Unfortunately, this issue will remain regardless of whether citizen initiatives provide for more scientific research. While public and hunter education programs are helping to conserve mountain lion populations, some wildlife advocates do not believe they go far enough. Likewise, hunters and wildlife managers are rarely pleased with lawsuits from these groups. Thus, initiatives will simultaneously serve wildlife advocates, public welfare and mountain lions, and be more palatable to hunters and wildlife departments, if they move away from hunting bans and focus on habitat conservation, research, and public education.

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216. See, e.g., BECK ET AL., *supra* note 14, at 51 (discussing the situation in which an increase in harvest quotas "are subject to diametrically opposed interpretation," where hunting advocates believe that the more cougars killed means an increasing population, but conservation advocates note the increased harvest as evidence of over-exploitation).