



Submissions in response to the Food Safety and Environmental Hygiene Panel Meeting on the topic of "Trap-Neuter-Return trial scheme for stray dogs and handling of animal cases"

Executive Summary

STOP supports using TNR in the long term, for the purposes of controlling the stray dog population, to replace the current Catch and Kill policy adopted by the Government in Hong Kong.

If it is the Government's stance that the TNR trial scheme is a mandatory pre-requisite before it will consider endorsing TNR as a full-time program across all territories in Hong Kong, STOP **urges the trials to commence as soon as possible, within the first quarter of 2014, and without further delay.**

If the AFCD and/or SPCA are minded to proceed immediately to a full TNR program now without the need of an academic trial, STOP would **fully support that**. We believe that this is the position that many other animal welfare organizations are taking, and we echo that.

The purpose of our submissions is to:-

- (i) show support to the Government's TNR trial scheme provided that it commences **as soon as possible in the first quarter of 2014 without further delay**;
- (ii) suggest how the Government can "**do more**" by **minimizing its interference** with volunteers and NGOs who are already carrying out TNR; and
- (iii) reinforce why TNR should **replace** the Catch and Kill policy for the purposes of controlling the stray dog population.

A. THE PRACTICAL ANGLE: Government's TNR trial scheme VS volunteers' TNR

STOP supports any positive step taken by the Government towards implementation of TNR in Hong Kong. The trial scheme is at least a step in the right direction **provided that** it is implemented as soon as possible without further delay. We commend the Government in:-

- (i) recognizing that TNR is a feasible alternative to the inhumane and outdated Catch and Kill policy.
- (ii) promoting TNR as a positive and humane way of controlling the stray population without the unnecessary killing of stray animals.
- (iii) widening the scope of TNR population control to dogs (as opposed to just cats under the existing Cat Colony Care Program).

Additionally, STOP **urges the Government to allow and support volunteers and NGOs to conduct their own TNR in parallel to the government-endorsed TNR trial scheme.**

For reasons that will become apparent below, there is no reason for the Government to prevent the TNR work that is being carried out by volunteers and NGOs because there is nothing unlawful. In fact, we believe that the Government, volunteers and NGOs have a **common interest** in respect of TNR and can work together and share resources.

- (i) Volunteers and NGOs who properly conduct their own TNR are **not** committing any offence under Hong Kong law; what they are doing is in line with the legislative intention behind the Rabies Ordinance (please see legal analysis in section B).
- (ii) We respect that the Government has to adhere to certain procedures, timelines and systems. However, we urge the Government to allow some flexibility by supporting the volunteers and NGOs with their lawful TNR work during the trial. We do not see any conflict between what the volunteers and NGOs are currently doing and what the Government intends to do in its TNR trial scheme. **All parties are acting in the best interests of public health and animal health.**
- (iii) Many volunteers and NGOs have been conducting their own TNR with great success. They have been able to do so at their own expense, cost-effectively and without any reliance on the Government.
- (iv) We echo the submissions of Dr Tinny Ho of the TNR Fund HK. There are many volunteers and NGOs in Hong Kong who have experience locating, befriending and catching stray dogs for the purposes of neutering them. We urge the Government to have open communications with these groups, to share talent and resources, with the view of achieving a successful TNR trial scheme and to carry out as much TNR in as many areas in Hong Kong as possible.

B. THE LEGAL ANGLE: how the Government can “do more” by minimizing its interference with TNR volunteers’ work

With reference to Professor Whitfort and Dr Woodhouse’s “*Review of Animal Welfare Legislation in Hong Kong*” dated June 2010 and having reviewed the relevant legislation ourselves, STOP is of the view that any person carrying out TNR is **not** the “legal keeper” of the stray dog and should **not** be prosecuted for abandonment under section 22 of the Rabies Ordinance. Our legal interpretation of “keeper” is as follows:-

1. The legal definition of “keeper”¹ under section 2 of the Rabies Ordinance **excludes** a person who has seized or taken possession or custody of an animal for the purpose of *examining or vaccinating* it in accordance with this Ordinance. As such, the AFCD or any volunteer or NGO who handles a stray dog for the purposes of examining, vaccinating or desexing it should **not** assume legal responsibility for the stray dog.
2. The Rabies Ordinance provides that any person who keeps a dog over the age of 5 months must get a license for that dog. In order to get a valid license, the keeper must arrange for the dog to be vaccinated against rabies, and proof of vaccination is

¹ “Keeper” in relation to an animal is a person who (a) owns the animal or has it in his possession or custody; or (b) harbours the animal; or (c) occupies the land or premises on which the animal is usually kept or permitted to remain; or (d) is the parent or guardian of a person under the age of 16 years who is the keeper of the animal pursuant to paragraphs a, b, or c of this definition, but does not include a person who has seized or taken possession or custody of an animal under this Ordinance or who has possession or custody of an animal of the purpose of examining or vaccinating it in accordance with this Ordinance.

evidenced by the dog's microchip. The point to highlight here is that the keeper's act of vaccinating and microchipping the dog are steps that need to be taken in order to satisfy the legal obligation of *obtaining a license* (so to be compliant with the Rabies Ordinance), and should **not** be confused with automatically making the keeper the *legal keeper* of the dog. The Rabies Ordinance **excludes** the category of people who examine and vaccinate animals from the definition of legal keepers. This shows the intention of the law to allow *temporary* keepers who handles the animal in order to **protect public and animal health** to be **exempt from assuming liability**.

3. It is well established that dog ownership does not pass upon giving it treatment or medication; a vet does not become liable for a dog just because he operates on it or gives it medical treatment.
4. All the above indicates that the legislative intent of the Rabies Ordinance is that the AFCD or any volunteer would **not** become the legal owner of a stray dog through provision of vaccination, microchip identification and/or neutering procedures. As such, **a volunteer who handles a stray dog for the purposes of TNR should not be held to be the legal owner of that dog and therefore should not be exposed to being prosecuted for abandonment under the Rabies Ordinance if that stray dog is later caught by the AFCD for whatever reason.**
5. An improvement to the current system is for the AFCD to **create a separate category** under the microchip registration system for "**volunteers**" and exempting this category of volunteers from being responsible for the behaviour of the stray against which the volunteer's name is registered. We note that a similar suggestion is also made by Dr Tinny Ho of TNR Fund HK.

C. THE POLICY ANGLE: a recap on why Catch and Kill is NOT effective

STOP would like to remind the Government why TNR is the most effective long-term control measure of the overpopulation of stray dogs.

- (i) Population of animals can be controlled without the suffering or killing of animals. Controlling the overpopulation by killing has no impact on numbers. WHO has published supporting statistics and recommends controlling the stray dog population by neutering combined with rabies vaccination.
- (ii) The AFCD spent approximately HK\$30million on the capture, housing and killing of stray dogs and cats in 2009-2010². Although not a strictly comparable figure, we note the Government has put aside HK\$5.8million for the TNR trial scheme which is intended to last for 3 years. TNR is not only a more effective method, but we believe is also a most cost-effective method.
- (iii) TNR is internationally recognized as a humane method of controlling stray population. Countries that endorse this method include Australia, USA, Canada, India, Europe, parts of Africa, South America and the UAE. We question why Hong Kong is falling behind in this respect.

**Submitted by the Co-Chairs of STOP!
Sara Troughton / Elaine Siu / Tina Chu
3 January 2014**

² Reference from Professor Whitfort and Dr Woodhouse's "Review of Animal Welfare Legislation in Hong Kong" dated June 2010