




City of Austin

Animal Services Office, Austin Animal Center

7201 Levander Loop, Austin, TX 78702

TO: Mayor and City Council

FROM: Abigail Smith, Chief Animal Services Officer 

DATE: April 15, 2014

SUBJECT: Response to Resolution 20131017-037

Resolution number 20131017-037 requested the City Manager provide a report on the regulatory authority of the federal, state, and city governments to legislate safeguards for animals and aquatic life that are maintained at a public aquarium, to include information on steps governmental agencies and other entities have taken to enhance the health and safety of these animals and to accredit public aquariums. Please allow this memorandum and the referenced attachments to serve as the requested report.

The information provided is concerning major, or primary, regulatory authorities and accreditation entities, but do not attempt to capture or describe each and every entity that may have jurisdiction over the existence and operation of and animals held by an aquarium, or every regulation that may apply, because there are many variables that affect the answer to these questions. And, importantly, the foremost variable in determining whether any particular state or federal regulation or no state or federal regulation is implicated when an aquarium possesses a particular animal (and which agency, if any, has jurisdiction to enforce it) is the species of animal in question and, in some cases, where an individual specimen of a species originated.

Finally, it is important to note that an aquarium that is open to the public is a “zoo” as that term is commonly defined.¹ Thus, the laws and regulations detailed in this report apply equally to certain animal species and individual specimens of species, regardless of whether a zoo or aquarium holds that species or individual specimen. In fact, the laws and regulations are, with a few exceptions, enforced equally by the agencies identified here no matter whether the holder of an animal to which a regulation applies is a zoo, aquarium, or any other business, institution, or individual.

CITY OF AUSTIN REGULATORY AUTHORITY

ANIMAL SERVICES OFFICE

Title 3 of the City Code concerns the regulation of animals within the City. Chapter 3-5, specifically, regulates the keeping of dangerous animals. These provisions generally prohibit a person from keeping or possessing a dangerous animal, which is defined as any animal determined by the State of Texas to be a dangerous wild animal or as an animal of any other species of wild or feral animal that by its nature or breeding is capable of inflicting serious bodily injury to a human.

¹ Merriam-Webster.com defines “zoo” as “a place where many kinds of animals are kept so that people can see them;” and as “a garden or park where wild animals are kept for exhibition.” Merriam-Webster.com further provides that a zoo is a “[p]lace where wild and sometimes domesticated animals are exhibited in captivity. Aquatic zoological gardens are called aquariums.”



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However, section 3-5-1 of the City Code permits a zoo to keep a dangerous animal or animals within the City limits, if certain conditions are met. The Austin Aquarium is a zoo as that term is commonly defined. Thus, the Austin Aquarium may keep and display dangerous animals. Code provisions do require that each animal enclosure utilized by a zoo meet the requirements prescribed by section 3-2-11 of the City Code (*Enclosure Required*), and a zoo must also maintain liability insurance that is required under section 3-5-2 (*Insurance Required*).

Additionally, section 3-5-1 of the City Code requires a person who keeps an injured or orphaned dangerous animal for the purpose of rehabilitating the animal to hold the appropriate state and/or federal license or permit for such rehabilitation. Thus, if the Austin Aquarium is rehabilitating injured or orphaned dangerous animals, it must be properly permitted by the appropriate state and/or federal agencies (generally, the Texas Parks and Wildlife Department and U.S. Fish and Wildlife Service).

Finally, both the City's Animal Services Office and officers with Police Department enforce provisions of Title 3 of the City Code, including, also, section 3-2-5 (*Proper Care of Animals*), which requires animal owners to keep animals in a clean, sanitary, and healthy condition.

Failure by the Aquarium to meet any of these requirements included in Title 3 of the City Code is a Class C misdemeanor, and city personnel (an animal services officer or a police officer) may issue a citation for non-compliance with any of these regulations.

POLICE DEPARTMENT ANIMAL CRUELTY UNIT

The Police Department's Animal Cruelty Unit (unit) conducts animal cruelty investigations as defined under chapter 42 of the Texas Penal Code. Section 42.092 of the Penal Code governs cruelty to non-livestock animals, and creates an offense for torturing an animal, failing unreasonably to provide necessary food, water, care, or shelter to an animal, or confining an animal in a cruel manner, among other actions or non-actions. An animal cruelty offense is, at minimum, a Class A misdemeanor, and may rise to a state jail felony if the person has two previous convictions under the statute.

STATE OF TEXAS REGULATORY AUTHORITY

The primary regulatory authority in Texas of wildlife is the Wildlife Division of the Texas Parks and Wildlife Department. The Wildlife Division issues permits to persons who intend to possess, display, care for, propagate, collect, transport, or sell protected wildlife species. "Protected wildlife" is broadly defined in the Texas Parks and Wildlife Code to include all indigenous wildlife in the state, including mammals, birds, reptiles, amphibians, fish, and other aquatic life.

The Wildlife Division issues as many as 16 different types of wildlife permits. One example that may be required by zoo or aquarium is a permit for zoological collection. These permits are issued to agents of facilities accredited by the American Zoo and Aquarium Association (AZA) or to agents of facilities that meet the standards established by Parks and Wildlife regulations and whose letters of recommendation are from current zoological permit holders or from representatives of AZA accredited zoos. Native wildlife can be held under this permit to further scientific understanding of protected wildlife, encourage management and conservation of protected wildlife, or further awareness and understanding of the biology of protected wildlife.



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The Wildlife Division also issues permits to individuals for rehabilitation of orphaned and injured wildlife. Facilities are inspected prior to permit issuance. It is not legal to propagate, sell, or hold protected wildlife for public display under a rehabilitation permit, unless authorized. A permit holder who intends to also rehabilitate birds must also hold a permit from the U.S. Fish and Wildlife Service.

The Wildlife Division also issues permits to individuals who intend to breed and sell native wildlife that is listed as endangered, and it enforces regulations related to the transfer and importation of wildlife in the state.

A list and short explanation of some of the relevant statutes that regulate wildlife in the state, and that are primarily enforced by the Texas Parks and Wildlife Department, are attached as **Exhibit A**.

FEDERAL REGULATORY AUTHORITY

The Federal government, and specifically the United States Fish and Wildlife Service (USFWS) regulates the interstate and international movement of protected wildlife, i.e. endangered species, migratory birds, marine mammals, and injurious species.

Federal Regulations regarding the establishment of an aquarium would come into play mainly under the following circumstances:

Import

If any wildlife or plant is to be imported into the United States, the wildlife must be declared at a “designated port,” and the import must be accompanied with any required permits associated with importing species protected by the Convention on International Trade in Endangered Species (CITES). CITES is described more fully in **Exhibit B**, attached.

Injurious Species

Injurious wildlife are mammals, birds, amphibians, reptiles, fish crustaceans, mollusks and their offspring that are injurious to the interests of human beings, agriculture, horticulture, forestry, wildlife, or wildlife resources of the United States.

The Lacey Act (18 U.S.C. 42; 50 CFR 16) regulates the importation and interstate transport of animal species determined to be injurious. A list of the federal list of injurious species can be found at <http://www.fws.gov/injuriouswildlife>. The Lacey Act is described more fully in **Exhibit B**, attached.

An aquarium can be granted a permit for importation or interstate transportation of live specimens of injurious wildlife for legitimate scientific, medical, educational, or zoological purposes. Permits are issued through the USFWS Division of Management Authority located in Arlington, Virginia.

The State of Texas also has a list of invasive species that are prohibited from being entered into Texas. Introducing such species into Texas may constitute a violation of the Lacey Act **16 U.S.C. §§ 3371-3378**.

The U.S. Department of Agriculture enforces the Animal Welfare Act (AWA). The AWA is a very important act because it is the only Federal statute concerned with the welfare of the animals, rather than regulating financial and procedural matters concerning zoo animals. Its scope, however, is greatly limited by the statute’s definitions. In order to be covered by the AWA, the zoo or aquarium animal must first meet the definition of



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animal within the statute. Unfortunately, the definition of animal within the Act greatly limits the protection offered to zoo and aquarium animals. Specifically, the definition of animal includes only warm blooded animals. Warm-blooded animals include humans, non-human mammals, primates, and birds. Therefore, all cold-blooded animals, including insects, fish, reptiles, and amphibians are excluded from any protection under the AWA.

Other federal agencies also possess regulatory authority over zoos and aquariums in certain situations. A list of those agencies and a short description of their general authority is attached as **Exhibit C**.

Exhibit B also lists and generally describes other important federal and international laws that regulate wildlife.

ACCREDITATION

“Accreditation” is a process in which certification of competency, authority, or credibility is presented. Generally, the decision by an entity or business to seek accreditation is voluntary. The primary organizations that accredit aquariums are:

Association of Zoos and Aquariums (AZA). AZA accredits zoos and aquariums through a group of experts called the AZA Accreditation Commission, which carefully examines each zoo or aquarium that applies for AZA membership. Only those zoos and aquariums that meet AZA’s high standards can become members of AZA.

Alliance of Marine Mammal Parks & Aquariums (Alliance). The Alliance offers accreditation to zoological parks and aquariums and research institutions studying marine mammals. Membership is based on successful completion of the Alliance's accreditation process, which assures that an applicant meets the association's Standards and Guidelines.

Zoological Association of America (Association). The Association was formed in February 2005 to promote responsible ownership, management, conservation, and propagation of animals in both private and public facilities through professional standards in husbandry, animal care, safety and ethics.

No ordinance or state statute was found that requires a zoo or aquarium to seek and obtain accreditation from any of these or similar organizations.

SeaWorld San Antonio is accredited by the AZA and the Alliance.

The following Texas zoos and aquariums are accredited by the AZA: Abilene Zoological Gardens; Caldwell Zoo; Cameron Park Zoo; Dallas World Aquarium; Dallas Zoo; El Paso Zoo; Ellen Trout Zoo (Lufkin); Fort Worth Zoo; Fossil Rim Wildlife Center (near Glen Rose); Gladys Porter Zoo (Brownsville); Houston Zoo, Inc.; Landry's Houston Aquarium, Inc.; Moody Gardens Rainforest and Aquarium (Galveston); San Antonio Zoological Society, and; Texas State Aquarium (Corpus Christi).



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The following Texas zoos and aquariums are accredited by the Association: Austin Savanna, Austin; Animal World and Snake Farm Zoo, New Braunfels; Fort Worth Zoo; Fossil Rim Wildlife Center (near Glen Rose); Frank Buck Zoo, Gainesville, and Kapi'yva Exotics, Pearland.

Finally, for further detailed discussion of the laws affecting zoos and aquariums please see **Exhibit D**, which is an article first published in 2004 by the Michigan State College of Law.

SUMMARY AND RECOMMENDATION

Today, there are a number of state and federal agencies charged with overseeing a zoo's compliance with many different animal and commerce laws that apply its operation. There has been no precedent found in which a municipality has adopted ordinances to increase its local authority and oversight of zoos (and aquariums) that vary greatly from the City of Austin Code provisions mentioned above. Staff recommendation at this time is to work within the existing framework of oversight to determine if further authority is necessary or if current local, state and federal oversight is sufficient to ensure the health and safety of animals kept at a zoo or aquarium. If there are any questions, please feel free to contact me at 512-978-0536.

Cc: Marc A. Ott, City Manager
Bert Lumbreras, Assistant City Manager
Animal Advisory Commission



EXHIBIT A

EXAMPLES OF STATE STATUTES THAT REGULATE WILDLIFE

Chapter 43 of the Texas Parks and Wildlife Code (TPWC). Chapter 43 of the TPWC requires permits for zoological collection, rehabilitation, and educational display of certain species of indigenous wildlife that is classified as “protected” in the State. The Texas Parks and Wildlife Department’s Wildlife Division issues the appropriate permits. Whether permitting is required depends upon the type and, in some cases, number of specimens of the particular wildlife species at issue.

Under Texas Parks and Wildlife rules, zoological collection permits are issued only to facilities that are either accredited by the American Zoo and Aquarium Association or are in compliance with facility standards set by the Texas Parks and Wildlife Department.

Chapter 61 of the TPWC - known as the Wildlife Conservation Act of 1983. The purpose of the Wildlife Conservation Act is to provide a comprehensive method for the conservation of wildlife resources in the state for hunters and fishermen. It grants the Parks and Wildlife Commission wide authority to determine hunting and fishing seasons, and it makes poaching a criminal offense. It applies to all wild animals, wild birds, and aquatic animal life.

Chapter 67 of the TPWC. Chapter 67 requires the Texas Parks and Wildlife Department to develop and administer management programs to insure the continued ability of nongame species of fish and wildlife to perpetuate themselves successfully and requires the Parks and Wildlife Commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species. The chapter creates penalties for violation by any person of a regulation established under the chapter.

Chapter 68 of the TPWC. Chapter 68 of the TPWC requires a permit to possess, take, or transport endangered fish or wildlife for zoological gardens or scientific purposes or to take or transport endangered fish or wildlife from their natural habitat for propagation for commercial purposes without the permit. Under chapter 68, a species of fish or wildlife that is indigenous to Texas is endangered if listed on: (1) the United States List of Endangered Native Fish and Wildlife; or (2) the list of fish or wildlife threatened with statewide extinction as filed by the director of the Texas Department of Parks and Wildlife. The State of Texas recognizes as endangered a number of indigenous species that are not recognized by the federal government as endangered.

EXHIBIT B

EXAMPLES OF FEDERAL STATUTES THAT REGULATE WILDLIFE

Lacey Act of 1900: Signed into law in 1900. The Lacey Act protects both plants and wildlife by creating civil and criminal penalties for a wide array of violations. It prohibits trade in wildlife, fish, and plants that have been illegally taken, transported or sold. The statute has been amended a number of times over the years. Today it is primarily used to prevent the importation or spread of potentially dangerous non-native species. The Lacey Act was the first federal law that regulated commercial animal markets.

Endangered Species Act: The Endangered Species Act (ESA) is one of the dozens of United States environmental laws passed in the 1970s. Signed into law by President Richard Nixon in late 1973, it was designed to protect critically imperiled species from extinction as a "consequence of economic growth and development untempered by adequate concern and conservation." The ESA is administered by two federal agencies, the United States Fish and Wildlife Service (the FWS) and the National Oceanic and Atmospheric Administration (NOAA) (which includes the National Marine Fisheries Service, or NMFS). NOAA handles marine species, and the FWS has responsibility over freshwater fish and all other species. Species that occur in both habitats (e.g. sea turtles and Atlantic sturgeon) are jointly managed.

Penalties under the ESA: There are different degrees of violation with the law. The most punishable offenses are trafficking, and any act of knowingly "taking" (which includes harming, wounding, or killing) an endangered species. The penalties for these violations can be a maximum fine of up to \$50,000 or imprisonment for one year, or both, and civil penalties of up to \$25,000 per violation, may be assessed. In addition to fines or imprisonment, a license, permit, or other agreement issued by a Federal Agency that authorized an individual to import or export fish, wildlife, or plants may be revoked, suspended or modified.

The Animal Welfare Act: The Animal Welfare Act (AWA) was signed into law by President Lyndon B. Johnson in August, 1966. It is the only Federal law in the United States that regulates the treatment of animals in research and exhibition. Other laws, policies, and guidelines may include additional species coverage or specifications for animal care and use, but all refer to the AWA as the minimally acceptable standard for animal treatment and care. The U. S. Department of Agriculture (USDA) and Animal and Plant Health Inspection Service (APHIS) oversee the AWA. Animals covered under this Act include any live or dead cat, dog, hamster, rabbit, nonhuman primate, guinea pig, and any other warm-blooded animal determined by the Secretary of Agriculture for research, pet use or exhibition.

The USDA requires businesses that buy or sell warm-blooded animals, exhibit them to the public, transport them commercially, or use them in teaching or experiments, to be licensed or registered. Failure to become licensed or registered is a punishable violation of the AWA. Depending on the basis of the business, the APHIS determines whether the business should be licensed, registered, or both. Business owners are responsible for knowing about registration and licensing requirements.

Under the AWA, an exhibitor is a business or a person that displays animals to the public. Exhibitors must be licensed by APHIS under Class C licenses. Exhibitors include zoos, educational displays or exhibits, marine mammal shows, circuses, carnivals, and animal acts.

APHIS officials make unannounced facility inspections to ensure compliance with regulations, and to identify unregistered facilities. Facilities inspected or investigated include any dealer, exhibitor, research facility, handler, carrier, or operator of an auction sale. Under the AWA, these facilities are to be inspected at least once a year, with follow-up inspections conducted until deficiencies are corrected.

Penalties under the AWA: Violations of the AWA may result in suspension and revocation of a facility's license. Further, any dealer, carrier, exhibitor, handler, operator, or research facility that violates any provision of the AWA may be assessed a penalty of no more than \$10,000 for each violation. Any person who knowingly fails to obey an order made by the Secretary of Agriculture is subject to a civil penalty of \$1,500 for each offense.

Marine Mammal Protection Act: The Marine Mammal Protection Act of 1972 (MMPA) was the first act of Congress to call specifically for an ecosystem approach to natural resource management and conservation. It was signed into law in October, 1972 by President Richard Nixon. MMPA prohibits the taking of marine mammals, and enacts a moratorium on the import, export, and sale of any marine mammal, along with any marine mammal part or product within the United States. The Act defines "take" as "the act of hunting, killing, capture, and/or harassment of any marine mammal; or, the attempt at such." The MMPA provides for enforcement of its prohibitions, and for the issuance of regulations to implement its legislative goals.

Authority to manage the MMPA is divided between the Secretary of the Interior through the FWS, and the Secretary of Commerce, which is delegated to the NOAA. Subsequently, a third Federal agency, the Marine Mammal Commission (MMC), was established to review existing policies and make recommendations to the FWS and the NOAA to better implement the MMPA. Coordination between these three Federal agencies is necessary in order to provide the best management practices for marine mammals.

The MMPA prohibits the take and exploitation of any marine mammal without appropriate authorization, which may only be given by the FWS. Permits may be issued for scientific

research, public display, and the importation/exportation of marine mammal parts and products upon determination by the FWS that the issuance is consistent with the MMPA's regulations.

INTERNATIONAL PROTECTION OF WILDLIFE

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES): CITES is a multilateral treaty to protect endangered plants and animals. It was drafted as a result of a resolution adopted in 1963 at a meeting of members of the International Union for Conservation of Nature (IUCN). The convention was opened for signature in 1973, and CITES entered into force on July 1, 1975. Its aim is to ensure that international trade in specimens of wild animals and plants does not threaten the survival of the species in the wild, and it accords varying degrees of protection to more than 34,000 species of animals and plants.

CITES is one of the largest and oldest conservation and sustainable use agreements in existence. Participation is not voluntary, and countries that have agreed to be bound by the Convention are known as Parties. Although CITES is legally binding on the Parties, it does not take the place of national laws. Rather it provides a framework respected by each Party, which must adopt their own domestic legislation to implement CITES at the national level.

EXHIBIT C

The following Federal Agencies generally possess regulatory authority over zoos and aquariums:

U.S. Fish and Wildlife Regulatory Scope:

Convention on the International Trade of Endangered Species
Endangered Species Act
Marine Mammal Protection Act
Migratory Bird Treaty Act
Wild Bird Conservation Act

National Marine Fisheries Regulatory Scope:

Endangered Species Act
Marine Mammal Protection Act
Highly Migratory Species (Sharks)

USDA / Animal and Plant Health Inspection Regulatory Scope:

Animal Care: Animal Welfare Act inspections and standards for public display of warm-blooded animals
Veterinary Services: Import and export of species monitored for human and animal health purposes

Centers for Disease Control and Prevention Regulatory Scope:

Import/export of animals (human health threats) and non-human primates

Federal Aviation Administration Regulatory Scope:

Humane transportation of animals

Food and Drug Administration Regulatory Scope:

Interstate movement of animals (human health threats)

Homeland Security Regulatory Scope:

Air shipment/inspection of animals

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Detailed Discussion of the Laws Affecting Zoos

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- **Kali S. Grech**
- **Michigan State University College of Law**
- **Publish Date: 2004**
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I. Introduction

The majority of Americans will visit a zoo or similar facility that exhibits animals at some point in their lives. Under current laws, the amount of protection each animal is afforded within U.S. Zoos and related animal exhibitions, varies by species. In denotative terms, a zoo is "a collection of living animals usually for public display." This relatively simple definition gives no indication of the implications a zoo has for animals confined to their cages.

Wild animals have intrigued humans throughout history. The first animal exhibitions were recorded as far back as Ancient Egypt where wild animals, regarded as objects of wealth, were presented as gifts to the pharaohs. Queen Hatshepsut opened the first zoo in 1500 B.C. and approximately 500 years later, around the year 1000 B.C., the Chinese emperor, Wen Wang, founded the Garden of Intelligence. [1] This enormous zoo covered about 1,500 acres. To display power and wealth, rulers from Northern Africa, India, and China established many small zoos between 1,000 and 400 B.C. The Romans used animals commonly found in zoos for entertainment; they watched hundreds of thousands of them fight to the death in arenas. The Greeks established the first public zoos, which were used by students to study animal and plant life.

King Henry I created the first wild animal menagerie in Britain. Animal menageries remained private collections until the early part of the 19th century, at which time they became open to the general public. Public accessibility in Western Europe began at zoological collections in Paris, Vienna, Dublin, and later, in London. The Zoological Society of London justified London's zoological collection as "the advancement of zoology and animal physiology and the introduction of new and curios subjects of the Animal Kingdom." [2] Throughout the 19th and early 20th century, there were only a small number of animal collections. These consisted of animals from around the world, captured by the Victorian explorers or presented as gifts from parts of Africa and Asia in return for diplomatic favors. [3] In the 1950s, there was a 'zoo boom' during which time entrepreneurs recognized the potential money to be made from exhibiting wild animals to satisfy public curiosity. [4] German collector, Carl Hagenbeck, built the first wild animal park in 1848. He allowed the animals outdoor access, believing their enclosure should more closely resemble nature.

Today, there is a push by animal rights activists to that same effect. Until the 20th century, there was little or no concern for the welfare of zoo animals. It was not until the late 1970s and early 1980s that the appearance of zoos began to change to reflect the public opinion; this transition took place as people were educated about the true conditions endured by zoo animals. Currently, the public image of zoos is changing through methods ranging from mission statements to welfare inspections in order to justify their existence to their critics and the public. It is no question that zoos have come a long way from the time of Ancient Egypt towards ensuring the welfare of zoo animals, but the question remains: Is it enough? Is the welfare of zoo animals protected today? This paper will examine existing laws that pertain to zoo animals, from regulating their movement and trade to ensuring their welfare. Clearly, there are significant deficiencies both in the laws and in their enforcement, which leaves the welfare of zoo animals at risk.

Zoos exist in today's society for a myriad of reasons including, as the American Zoological Association (hereinafter "AZA") claims, conservation, education, science, and recreation. [5] Whatever purpose they exist for, the status of the animals is the same: The animals are property owned by the Zoo. This severely limits their protection under the law, as well as the ability of people concerned about their care and welfare to bring suit on their behalf. Proponents of animal rights, however, argue that regardless of their intent, zoos reinforce the notion of human domination over non-human animals, which is never beneficial to animals. Animal rights advocates argue that the existing laws are insufficient to protect the welfare of animals kept in captivity.

II. Laws that Pertain to Zoo Animals

A. Federal Statutes

i. The Animal Welfare Act

One of the most important laws protecting zoo animals is the Animal Welfare Act (hereinafter "AWA"). The AWA is a very important act because it is the only Federal statute concerned with the welfare of the animals, rather than regulating financial and procedural matters concerning zoo animals. Its scope, however, is greatly limited by the statute's definitions. The Act's effect is also limited by lack of enforcement both because of the limited resources of the department charged with enforcing the act, and the lack of a citizen suit provision.

The Animal Welfare Act [6] was originally passed in 1970 as a result of public outcry over the exposure of the research industry's practice of stealing pets to use in medical research. Section 2131 of the Act asserts Congress' intent to regulate animals, which are part of interstate commerce, and fall within the scope of the Act as interstate or foreign commerce to ensure their protection and humane treatment. [7] The Act protects zoo animals by regulating both dealers and exhibitors of animals falling within the scope of the act.

The AWA gives authority to the Secretary of Agriculture to "promulgate standards to govern the humane handling, care, treatment, and transportation of animals [that fall within the scope of the Act]." [8] These standards include "minimum requirements for handling, housing, feeding, watering, sanitation, shelter from extremes of weather and temperatures, adequate veterinary care," [9] and "for a physical environment adequate to promote the psychological well-being of primates." [10] This illustrates one of the Act's limitations: only minimum standards are set forth for the welfare of the animals covered by the Act. Minimum standards, especially with regard to certain highly intelligent

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species, are not enough to truly ensure the welfare of animals because their psychological well-being is not addressed. The Secretary of Agriculture's regulations can be found in Title 9 of the Code of Federal Regulations §§1.1-4.11. Part 1 contains definitions for terms used in parts 2 and 3; part 2 provides administrative requirements and sets forth institutional responsibilities for regulated parties; and part 3 contains specifications for the humane handling, care, treatment, and transportation of animals covered by the AWA [11]. (For more information see the [Overview of the U.S. Animal Welfare Act](#), by David Favre.)

In order to be covered by the Act, the zoo animal must first meet the definition of animal within the statute. Unfortunately, the definition of animal within the Act greatly limits the protection offered to zoo animals:

The term "animal" means any live or dead dog, cat, nonhuman primate, guinea pig, hamster, rabbit, or such other warm-blooded animal, as the Secretary may determine is being used, or is intended for use, for research, testing, experimentation, or exhibition purposes, or as a pet; but such term excludes (1) birds, rats of the genus *Rattus*, and mice of the genus *Mus*, bred for use in research, (2) horses not used for research purposes, and (3) other farm animals, such as, but not limited to livestock or poultry, used or intended for use as food or fiber, or livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber. With respect to a dog, the term means all dogs including those used for hunting, security, or breeding purposes. [12]

Warm-blooded animals include humans, non-human mammals, primates, and birds. Therefore, all cold-blooded animals, including insects, fish, reptiles, and amphibians are excluded from any protection under the Act. [13] This is unfortunate when you consider the large number of cold-blooded animals kept in zoos across the country. It is evident when visiting a zoo that cold-blooded animals are much less protected, as mammals and well-known animals are kept in enclosures made to mimic their natural habitat and reptiles are typically kept in small glass cages.

Most zoo animals are regulated under [9 CFR §3 Subpart F](#), which lists the specifications for the humane handling, care, treatment, and transportation of warm-blooded animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates, and marine mammals. [14] Primates are regulated under [§3 Subpart D](#) and marine mammals are included under [§3 Subpart E](#). These sections set out only minimal basic requirements for food, water, housing, and sanitation, and have little to do with the quality of existence for wild animals in captivity. [15] One of the strongest regulations protecting the welfare of zoo animals is 9 CFR §2.131, which deals with the handling of animals. This section defines the care anyone handling animals must use within the confines of the AWA. It restricts the use of deprivation and drug training techniques, and requires that animals are exhibited in suitable areas and climates for an appropriate period of time. [16] It also provides standards of care for young animals, performing animals, and ensures the safety of the public and of animals where there is interaction between them [17]. Certain specific mandates are issued within this section; however, many of the standards are vague and fail to offer meaningful guidelines. The directive is given "the animal shall only be exhibited consistent with its well-being," but who determines what "well-being" constitutes? This is a very subjective measure that could be easily influenced by the biases of zoo veterinarians. Combined with the infrequent inspections by Animal and Plant Health Inspection Service (hereinafter "APHIS"), the agency with the power to enforce the act, it is doubtful the welfare of animals is ensured. Regardless, this section has proven to be most pertinent in ensuring that the welfare of zoo animals is observed during exhibition.

Zoos are also subject to the AWA under the regulations applying to dealers and exhibitors define those categories of people who must be licensed in order to engage in particular animal activities, and seek to prohibit unqualified individuals from obtaining a license. [18] Clearly, zoos and dealers selling animals to zoos fall within the Act under the following definitions:

The Act defines "dealer" as:

[A]ny person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of, (1) any dog or other animal whether alive or dead for research, teaching, exhibition, or use as a pet [19]

The AWA defines “exhibitor” as:

[A]ny person, public or private, exhibiting any animals, which were purchased in commerce or the intended distribution of which affects commerce, or will affect commerce, to the public for compensation, as determined by the Secretary, and such term includes carnivals, circuses, and zoos exhibiting such animals whether operated for profit or not; but such term excludes retail pet stores, organizations sponsoring and all persons participating in State and country fairs, livestock shows, rodeos, purebred dog and cat shows, and any other fairs or exhibitions intended to advance agricultural arts and sciences, as may be determined by the Secretary. [20]

These definitions include a broad range of animal facilities. From public zoos and private collections to small roadside attractions housing exotic animals, entertainment animals used at circuses, theme parks, and carnivals, these facilities are all subject to the [Animal Welfare Act](#).

Anyone who meets the above definitions, must then meet the license requirement:

No dealer or exhibitor shall sell or offer to sell, or transport, or offer for transportation, in commerce to any research facility, or for exhibition, or for use as a pet any animal, or buy, sell, offer to buy or sell, transport or offer for transportation, in commerce, to or from another dealer or exhibitor under this chapter any animals, unless and until such dealer or exhibitor shall have obtained a license from the Secretary and such licenses shall not have been suspended or revoked. [21]

Additionally “[e]very research facility, every intermediate handler, every carrier, and every exhibitor not licensed under §2133 of this title shall register with the Secretary in accordance with such rules and regulations as he may prescribe.” [22] There are also record-keeping and marking requirements under the act, which govern the purchase, sale, transportation, and identification of animals as the secretary prescribes in the regulations. [23] Through these provisions everyone dealing with animals, from trainers to transporters, are covered by the Act and are therefore, subject to some provision or requirement relating to those animals. A violation of these regulations will ideally lead to enforcement of punishment provisions within the act, including, eventually rejection of exhibitor licenses.

The U.S. Department of Agriculture (hereinafter “USDA”) has delegated primary responsibility for enforcing the AWA to APHIS, which is further divided into two divisions that administer and enforce the Act: Animal Care and Veterinary Services. Animal Care is the welfare enforcement branch of APHIS. Their mission statement summarizes their role:

Animal Care . . . [establishes] standards of humane animal care and treatment and [] monitor[s] and achieve[s] compliance with the Animal Welfare Act through inspections, education, and cooperative efforts. [24]

Veterinary Services is mainly concerned with livestock; however, the affiliated National Center for Import and Export regulates the import and export of zoo animals. Some animals imported from foreign countries for exhibition in zoos will be subject to the Center’s regulations and oversight.

A facility can have up to three pre-licensing inspections in an attempt to meet the standards. The USDA is required to inspect research facilities once per year and conduct follow-up examinations until AWA violations are corrected. [25] They may also engage in any inspections deemed necessary pursuant to a complaint. [26] With the exception of the pre-licensing procedure, all subsequent inspections are unannounced. [27] APHIS employs 104 inspectors to survey the 2,000+ licensed facilities currently in existence. [28] Despite these seeming protections under the AWA, constraints of budgets and logistics often frustrate the enforcement of the Act.

Not only is enforcement under the act inadequate, but private citizens are also usually unable to gain standing to challenge violations. Until 1998, in the matter of [Glickman v. Animal Legal Defense Fund](#), no one had been successful in satisfying the standing requirement under the AWA, other than for an economic injury, let alone challenging the Secretary’s regulations under the act. [29] Mr. Jumove, the plaintiff in [Glickman](#), repeatedly visited the Long Island Game Farm Park and Zoo, and repeatedly filed complaints with the USDA after observing animals living in inhumane conditions. [30] Mr. Jumove sought to challenge the USDA’s regulations, promulgated by the Secretary, because although the zoo was currently in compliance with the regulations set forth for primates, they were inadequate for

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meeting the standard. [31] The AWA dictates that the Secretary's regulations shall include a minimum requirement for the physical environment to promote the psychological well-being of primates. [32] Mr. Jumove alleged that the Secretary had failed to do this in the existing regulations, and the primates at the zoo were suffering due to this deficiency.

Mr. Jumove claimed aesthetic injury, caused from viewing the primates being kept inhumane conditions during various visits to the park in the past. Mr. Jumove planned to return to the zoo, so future injury was imminent. Mr. Jumove's experience and past work enabled him to identify signs of stress amongst the primates. In response to Mr. Jumove's various complaints to the USDA, inspections were done, all of which found that the facility was in compliance with all USDA regulations. The court found that the USDA's regulations caused Mr. Jumove's aesthetic injury, which could be redressed by a favorable decision by the court. Therefore, Mr. Jumove met the Article III requirements for standing, and could sue on behalf of the welfare of those particular primates.

There is no citizen suit provision within the AWA, therefore, Mr. Jumove also had to prove that he met the prudential standing requirements. He was able to do this since the interest he sought to protect was within the zone of interest protected by the statute. [33] The AWA was passed to protect the welfare of animals, and Mr. Jumove's claims also sought that same interest. The requirements for standing severely limit who can sue on behalf of zoo animal's welfare and are very strictly adhered too; unless all the conditions are met, as in this case, there will be no standing to sue on behalf of the animal to protect their welfare.

Although he was able to procure standing, Mr. Jumove and the Animal Legal Defense Fund lost on all claims when subsequently tried on the merits. [34] The court held that the Secretary's new regulations, although not specifically requiring group housing for primates, were sufficient to maintain the psychological well-being of primates. This case illustrates the difficulty, if not impossibility, of successfully challenge existing regulations in order to improve the welfare of animals within such facilities.

Critics have various legitimate complaints about the USDA's enforcement of the Act. First, the Office of Management and Budget (hereinafter "OMB") controls almost everything that the USDA does. Their oversight requires that APHIS will communicate and clear all actions with the OMB before proceeding. This presents a problem because the OMB is not concerned with animal welfare; its job is to protect business. [35] The office evaluates how any action by APHIS will affect dollars and cents. The two department's ideologies obviously conflict since the OMB's cost considerations are inconsistent with the AWA's purpose of protecting animals regardless of the cost. Additionally, critics argue that AWA violators have too many chances prior to punishment with APHIS' enforcing the ACT which contributes to the continuance of animals' suffering. Critics argue that the USDA needs to interpret the AWA from the animals' perspective. The USDA's regulations only require bare minimums and lack specific standards for the care of any exhibited animals.

The USDA's enforcement has also been targeted by critics, who cite several problems with the administration of the Act. First, the USDA only keeps inspection records for three years. Therefore, the USDA does not have a true compliance record of the exhibitors or other entities it regulates, as it is limited by a three-year paper trail. [36] Another problem with the USDA's administration of the Act is the department's propensity to enter into Stipulation Agreements or Consent Decrees with entities it alleges violated the AWA. Under such agreements, the only admission the charged entity makes is that the USDA has jurisdiction over it. The entity neither has to admit or deny liability; the party charged with a violation is not required to admit it has violated the statute. In future actions, the Administrative Law Judge would not be able to use the prior Act to assess more severe penalties as a repeated offender.

There are several areas where improvements to the AWA are necessary, so that the Act's mandate of protecting animals is carried out. APHIS clearly lacks adequate resources to properly conduct inspections of the thousands of facilities that house wild animals, which, in turn, hinders the effectiveness of the Act. The Animal and Plant Health Inspection Service needs additional funding to hire more inspectors to consistently and effectively conduct yearly surprise evaluations and inspections resulting from a complaint. If the AWA had a citizen suit provision, any concerned citizen who sees a zoo animal kept in inadequate provisions could bring suit to enforce provisions that protect that animal's welfare. This would compensate for the Service's lack of resources that currently results in the inadequate enforcement of the AWA's provisions. Additionally, the USDA should adopt species-specific regulations providing for care and handling. Currently, under the regulations in §3 Subpart F, which covers the majority of zoo animals, species as diverse as giraffes, zebras, elephants, prairie dogs, and

polar bears are provided protections. Specific species threatened with extinction that are housed often have additional protections from other federal acts.

ii. Endangered Species Act

The [Endangered Species Act](#) (hereinafter "ESA") was signed by President Richard Nixon on December 28, 1973, and passed both houses of Congress. [\[37\]](#) It was designed to protect wildlife and their habitats for the sake of biodiversity. [\[38\]](#) The ESA's protections extend *only* to those species formally listed in Section 4 of the Act as "threatened" or "endangered." [\[39\]](#) The responsibility for listing species is split between the Secretary of the Interior, whose authority to list species is delegated to the U.S. Fish and Wildlife Service, and the Secretary of Commerce, whose authority is further delegated to the National Marine Fisheries Service. [\[40\]](#) Not only can these officials seek to have a species listed or a listing revised, but under §1533(a), any interested person can petition the Secretary of the Interior to do so. The Secretary must then determine if such petition is warranted, and publish his decision in the Federal Register within 12 months. [\[41\]](#) This determines whether further action by the Secretary is required as prescribed in §1533(b)(6). The decision to list species as "threatened" or "endangered" must be in compliance with §4 of the Act, which instructs the agencies to base their final decision exclusively on the "best scientific and commercial data available." [\[42\]](#)

Currently, there are over 1,050 animal species designated as either "threatened" or "endangered" and 555 of those are foreign species. [\[43\]](#) One problem with the Act is that foreign species are not granted the benefit of Critical Habitat Designation that native non-captive species are afforded. The Act applies to listed species being imported, exported, bought or sold in interstate or foreign commerce, or taking of those species. [\[44\]](#) Therefore, only some zoo animals will be protected, and only some actions regarding these animals will be limited or regulated. The standards for determining whether a species should be listed are found in §4 of the Act. Listed species can be found at [50 CFR §17.11 and §17.12](#) (link to pdf listing of species). The ESA does not regulate possession of endangered species, nor the welfare of those possessed. Rather, it regulates only the movement of those species within the U.S. and even then, only where interstate commerce or a "take" is involved. Section 7 of the ESA makes it unlawful to import or export listed species from the U.S. or to take any species *within* the U.S. [\[45\]](#) The term "take" is defined in §3 of the Act, "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." [\[46\]](#) "Harass" is further defined in the regulations as "an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering." [\[47\]](#) Unfortunately, the regulation goes on to exempt other practices including "(1) animal husbandry practices that meet or exceed the minimum standards for facilities and care under the Animal Welfare Act, (2) breeding procedures, or (3) provisions of veterinary care..." [\[48\]](#) According to Mark Carpenter, a senior biologist at U.S. Fish and Wildlife Services (hereinafter "USFWS"), the exemption for normal animal husbandry is accepted by USFWS to mean the zoological display and exhibition of listed wildlife, greatly limiting the protection of zoo animals by this Act. [\[49\]](#) Therefore, only the sale and transport, and other non-animal husbandry related acts will be regulated under the Endangered Species Act.

Another limitation of zoo animal protection under the Act comes about in Section 7(d), which allows the Secretary to give permission for listed species to be imported or exported, subject to licensing requirements and regulations as the Secretary prescribes. [\[50\]](#) Under §1539, the Secretary may permit any take of a species for "scientific purposes or to enhance the propagation or survival of the affected species, including, but not limited to, acts necessary for the establishment and maintenance of experimental populations pursuant to subsection (j)," which regulates such experimental populations (those populations of species outside their original habitat ranges). [\[51\]](#) The standard for the Secretary of the Interior to issue such exemption permit is found in subsection (d) which dictates that the Secretary's decision must be made in good faith only where the proposed act will not disadvantage any endangered species and the purpose and policy of the ESA will be carried out. [\[52\]](#) Due to the aforementioned stipulations in the statute, zoos can usually move animals between facilities without permits, since there is very little buying and selling of listed zoo animals and normal animal husbandry is exempt from the take provision of the ESA. [\[53\]](#) However, Section 9 of the ESA extends the scope of the Act's coverage even further, to include both private and public sectors. It asserts that "no 'person' defined as all private and public entities, whether individuals or organizations can import... export...take...possess, sell, deliver, carry, transport, or ship any endangered species of wildlife." [\[54\]](#)

The USFWS' power under the act comes from Section 11, which provides enforcement mechanisms in the form of both civil and criminal penalties. [\[55\]](#) Civil penalties allow damages up to \$25,000 for

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violations, as well as a discretionary award of attorneys' fees to the prevailing party. [56] Criminal penalties include fines of up to \$50,000 and/or up to one year in prison per violation. [57] USFWS has a division of law enforcement that handles police-type actions, investigations, arrests, etc. Fish and Wildlife also has a solicitor's office that handles the preparation of prosecutions under the Act. Cases are brought by the Justice Department for the United States. The U.S. District courts implement the specific sentencing requirements for violations. Additionally, Section 11 authorizes citizen suits to be filed against any person who allegedly violated the Act. [58]

Even though there is a citizen suit provision within the Endangered Species Act, standing is a limitation on the ability to challenge agency action under the law. Specifically, the following case illustrates the inability of citizens to challenge the methods used to obtain foreign species. In 1986 the Fish and Wildlife Service and the National Marine Fisheries Service, on behalf of the Secretary of the Interior and the Secretary of Commerce respectively, promulgated a joint regulation interpreting §7(a)(2) to require consultation only for actions taken in the United States or on the high seas. Therefore, U.S. action abroad was exempt from all provisions of the ESA. Defenders of Wildlife, as an organization dedicated to wildlife conservation, filed suit against the Secretary of the Interior, seeking a declaratory judgment that the new regulation is in error as to the geographic scope. [59] They also sought an injunction requiring the Secretary to reinstate the initial interpretation, which covered U.S. action abroad. The Court of Appeals affirmed the district court holding, which found standing based on a procedural injury. Section 7 requires interagency consultation; therefore it seems that the citizen suit provision of the ESA would create a procedural right to consultation in all persons. However, the Supreme Court disagreed, holding that plaintiffs did not have standing to challenge the regulation because the "injury in fact requirement is not satisfied by congressional conferral upon all persons of an abstract self contained non-instrumental right to have the executive observe procedures required by law." [60] Basically, the court reiterated that a generalized grievance, such as the plaintiff's in this matter, is never enough. The injury requirement is very strict; the party seeking review must be among the injured. Past exposure to illegal conduct is never enough without the existence of continuing adverse effects.

In contrast, the court found standing where a suit was brought under the ESA on behalf of circus elephants, who plaintiffs alleged were being abused, in ASPCA v. Ringling Bros. and Barnum and Bailey Circus, 317 F. 3d 334. In this matter, plaintiff Thomas Rider, who worked as an elephant handler, sued for mistreatment of the elephants manifested through visible injuries resulting from the training practices of the circus. Plaintiff alleged his injury was imminent because he would return to view the elephants, even if not employed by the circus in the future. He also alleged that he could detect mistreatment of the elephants through visible manifestations of abuse apparent on the elephants' legs and feet. He claimed that he suffered aesthetic and emotional injury from seeing the animals being mistreated in their current situation at the circus. The citizen suit provision of the ESA only eliminates the need to prove the prudential standing requirement, and therefore, Article III standing requirements must still be met. The Court found that the plaintiff had alleged enough to show injury in fact which is "an invasion of a judicially cognizable interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical." [61] The court examined his alleged ability to recognize the effects of mistreatment and what the injunction he sought would accomplish. The court held that the plaintiff's allegations were insufficient to withstand a motion to dismiss for lack of standing, based on the plaintiff's purely emotional, aesthetic claim.

Even if a citizen gains standing, the claim itself may fail under the ESA. In the matter of In Defense of Animals v. Cleveland Metroparks Zoo, [62] the plaintiffs brought action in state court challenging the proposed move of lowland gorillas from one zoo to another for mating purposes. Plaintiff's set forth three claims, first, that the movement of the specific gorilla at issue would result in needless pain and risk to that gorilla, an endangered species. Second, plaintiff's alleged the movement of the specific gorilla would result in harm to the plaintiffs who monitor the Gorilla's health. Finally, they claimed the movement of the specific gorilla would result in harm to the plaintiff's interests as taxpayers. [63] The court held that the claim was preempted under the ESA, pursuant to the specific provision within the Act, stating the intent to preempt any state law or regulation which applies to the importation or exportation of or interstate foreign commerce in endangered species. The court found that the federal law, ESA, completely occupies the field of interstate commerce in gorillas as an endangered species, and therefore, such a claim is preempted by the federal law. The court found the same with regard to plaintiff's AWA claim, holding that its provisions regarding the transportation of non-human primates when applied to endangered species also preempts any state laws which might be applied to attempt to regulate such commerce. Therefore, the plaintiff's claims were necessarily federal in nature, and the

matter was properly removed to federal court. The federal court, however, dismissed the action for failure to state a claim. They held that the notice requirements within the ESA citizen suit provision had not been provided, and even so, there was no violation of the ESA based on the transportation of the gorilla. Finally, the court found that the Plaintiffs could not state a cause of action under the AWA since that statute does not provide for private suits to enforce its terms. [64]

While the ESA provides a citizen suit provision and stiffer enforcement penalties, zoos are not typically subject to suits under the ESA. As with the AWA, adequate enforcement and application to foreign acquisition of species remains difficult. Since most species of interest at zoos are acquired from foreign lands, restrictions on trade of certain species is an additional restriction on zoos.

iii. The Lacey Act

Prior to being amended, the [Lacey Act](#) made it a crime to:

[I]mport species of wild animals, wild birds, fish (including mollusks and crustaceans), amphibians, reptiles, or the offspring or eggs or any of the foregoing which the Secretary of the Interior prescribes by regulation to be injurious to human beings or to the interests of agriculture, horticulture, forestry, or wildlife, except that the Secretary may permit importation for zoological, education, medical, or scientific purposes [65]

The broad exemption within makes the Act and its provisions virtually inconsequential for zoo animals. While there is a limit on the importation of such animals, it is easily and frequently avoided.

As amended, the [Lacey Act](#) prohibits dealing in wildlife taken, transported, or sold in any manner that violates any state, national, or foreign law. [66] The amended version, however, exempts zoo animals. The statute specifically states that it is not applicable to persons licensed or registered and inspected by the Animal and Plant Health Inspection Service or any other Federal agency or wildlife sanctuary, i.e. all zoos housing animals regulated under the AWA. [67] Even where this provision applies, it is limited to violation of certain foreign laws only. This section came before the court in the matter of [U.S. v. Henry Molt](#), [68] in which the Defendant's motion to dismiss the case brought on behalf of endangered species, was granted. The court held that the foreign laws and regulations of the Lacey Act are intended for protection of wildlife in those countries, here, wildlife located in Fiji and Papua New Guinea. The Lacey Act would not be violated by transportation of wildlife in a foreign country in a vehicle without registration plates or a driver's license, as local law requires. The Lacey Act does not apply to a violation for a motor vehicle infraction, rather, only to violations of wildlife protection laws.

Overall, the Act does not delegate legislative power to foreign governments, but simply limits illegally taken wildlife from the stream of foreign commerce. The Act prohibits the importation of endangered species into the U.S., and it directs the Secretary of State to seek similar action in foreign countries. The legislative history indicates the intent of the Act is to dry up the U.S. market for such species, thereby depleting the demand for such in foreign countries and sharply reducing the trade of such species. [69] The broad exemption in the act for exhibition animals, along with strict requirements, make this statute virtually inapplicable to zoo animals.

iv. Species Specific Protections

Several laws in existence protect specific species of wild animals that are not even native to the U.S.. These species-specific statutes include the [African Elephant Conservation Act](#), the [Asian Elephant Conservation Act](#), the Great Ape Conservation Act, and the Rhinoceros and Tiger Conservation Act. Although the goals of these Acts are noble, it seems they are less effective than they intend. Generally, the Acts contain findings of Congress about the current endangered status of these animals, the causes of their endangerment, and Congress' intent to protect them through the provisions of the Acts. Most importantly, the statutes establish specific species conservation funds, from which the Secretary of the Interior may provide financial assistance for approved projects for research, conservation, management, or species protection. The funds designated range from \$5,000,000 for Asian Elephants, African Elephants, and Great Apes, to \$10,000,000 for Rhinos and Tigers. These fund are only designated for a specific period of years, but presumably may be renewed upon expiration. The first of these Acts to be passed was the Rhinoceros and Tiger Conservation Act of 1995. [70] The [African Elephant Conservation Act](#) also requires the Secretary to establish a moratorium on the importation of raw and worked ivory from an ivory producing country that does not meet specified criteria, including being a party of [CITES](#) and adhering to CITES limitations on ivory trade. The [African Elephant](#)

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Conservation Act imposes civil and criminal penalties on any person who among another things, imports raw ivory from any country other than an ivory producing country, or from a country for which a moratorium is in effect, or who exports raw ivory from the U.S.. The Act also provides a reward for anyone who furnishes information that leads to a civil penalty or conviction under the Act. Beyond providing funding for conservation efforts and some limits on the ivory trade in the U.S., it seems these Acts have had little effect to actually protect endangered species.

As with other acts, there seems to be a lack of enforcement mechanisms written into the act and a lack of resources to carry out the mandates of the act. The future of zoo animal protection may then rest outside U.S. federal law.

B. State Laws

States are subject to the Animal Welfare Act, but because the AWA only sets forth minimum standards governing the care and welfare of animals, states are also free to create their own laws to protect animals. The only requirement is that states create stricter standards than the federal law. Today every state has enacted its own unique law prohibiting cruel treatment of animals. Forty-one states and the District of Columbia provide felony-level penalties for certain types of cruelty violations. [71] State anti-cruelty statutes do not afford zoo animals legal rights, but do provide protection against cruelty. Similar to the federal Animal Welfare Act, each state's definition of "animal" and the statute's exemptions limit the effectiveness of anti-cruelty laws. Many states take a broad approach defining "animal" as every living creature except a human being, and thereby including every animal within its scope. However, some states exempt classes of animals or whole kingdoms. Only three states, Minnesota, Mississippi, and Oklahoma provide no exemptions. Some states, including Georgia, Idaho, Michigan, Missouri, New Jersey, and Washington entirely exempt zoo animals and/or exhibition animals from its anti-cruelty provisions. Pennsylvania's law proves to be one of the strongest since the intent to protect zoo animals in captivity is specifically mentioned. Some states including Arkansas, Kentucky, and South Dakota allow for additional licensing or permitting requirements by states or local government. However, some state's including Connecticut, Hawaii, Iowa, Mississippi, Missouri, Nebraska, New Mexico, and North Carolina have no specific provisions in their anti-cruelty laws to protect exhibited animals. For more information on state laws applying to zoo animals see the Animal Protection Institute's Website, <http://www.api4animals.org/1308print.htm>.

California's anti-cruelty law applies to "every dumb creature," creating a very broad scope of application. [72] It prohibits maliciously and intentionally maiming mutilating, torturing, wounding, or killing animals. [73] Cruelty includes overdriving, overloading, overworking, torturing, tormenting, depriving of necessary sustenance, drink or shelter and cruelty beating, mutilating, or killing any animal. Such a violation can result in a misdemeanor or felony charge and include a fine up to \$20,000 and up to one year in prison. It also allows for forfeiture or seizure of the animal and recovery for cost of care. It exempts farming, hunting, and research from its provisions. [74] The Texas anti-cruelty statute, on the other hand, differentiates punishment based on what offense has been committed. On a person's first offense of neglect, it is a class A misdemeanor, but allows for a fine up to \$4,000 and imprisonment up to one year. [75] On the third offense for neglect, the charge is a state jail felony with a fine up to \$10,000 and a minimum of 180 days in prison; however, one could be sentenced up to two years. For the first offense of intentional cruelty, it is a state jail felony, with up to \$10,000 in fines and 180 days to two years in prison. The most severe punishment is for the third offense for intentional cruelty, including seriously injuring or poisoning. The charge is a felony of the third degree with a fine up to \$10,000 and two to ten years imprisonment. [76]

Enforcement of state anti-cruelty laws is left up to state and local law enforcement. More and more, there are divisions dedicated solely to enforcing animal anti-cruelty statutes being developed in large cities. It is questionable though, how general enforcement agencies located in high-crime areas would have the staffing and resources to strictly enforce animal anti-cruelty statutes.

One important new piece of state legislation was recently passed in Louisiana. LA HB 1621 makes it a Class 4 violation to kill a current or former zoo or circus animal for sport. The law prohibits zoos and circuses from providing, selling or donating any animal for use in a canned hunt, which is where hunters pay a fee to kill captive, tame animals. This mandate also prohibits transferring any animal from a zoo or circus to a canned hunt, and prohibits canned hunting facilities from purchasing, accepting as a donation, or receiving any animal formerly housed in a zoo or circus. Prior to this

protection, retired zoo and circus animals would often end up in canned hunting facilities. (For more on the issue of canned hunts, [click here](#).)

State Anti-Cruelty laws, so long as they are not preempted by the [AWA](#) nor exempt zoo animals all together, are a valid source of protection for zoo animals. Like federal statutes however, only the most heinous offenses will be prosecuted as budget and staff constraints are always a hindrance to effective enforcement. While maltreatment can be addressed at the state level, it is the actual taking of zoo animals from their native habitats in other countries that poses considerable problems.

C. International Protections

i. CITES

Roughly 5,000 species of animals are protected from over exploitation through international trade regulations found within the [Convention on International Trade in Endangered Species](#) (hereinafter "CITES"). [77] CITES was drafted as a result of a resolution adopted in 1963 at a meeting of members of the World Conservation Union. The text of the Convention was agreed to on March 3, 1971 and entered into effect on July 1, 1975. [78] This Convention facilitates cooperation between nations to protect wild plants and animals from over exploitation in international trade. [79] It was designed to ensure that international trade in species of wild animals does not threaten their survival. Annually the international wildlife trade is estimated to be worth billions of dollars and it includes hundreds of millions of plant and animal specimens. [80] Adherence to this international treaty is voluntary. Once a country joins CITES, the Convention is legally binding – that country must then implement the Convention into their own national laws. The Convention recognizes that countries best manage the wildlife within their own borders and therefore, does not dictate wildlife management for member countries. Rather, it leaves parties of the Convention free to regulate the trade of animals within its borders. This could be beneficial to animals in one country, but a hindrance for species in another, since laws will inevitably vary. According to the U.S. Fish and Wildlife Service, CITES currently has 166 members. [81]

Article I of the Convention defines the terms. It is interesting to note that the term "[s]pecimen" means "any animal or plant, whether alive or dead," therefore this applies both to animals listed in the appendices and the products derived from those animals. [82] Unlike the [AWA](#), [CITES](#) does not determine protection based on type of animal, but rather solely on listing status. Any type of species can potentially be listed, from leeches to lions. While more charismatic creatures such as bears and whales are better known examples of CITES species, the most numerous groups include less popularized animals such as corals, mussels, and frogs. [83]

There are three appendices that list species and subspecies to which the Convention applies. Placement of a species in Appendix I, II, or III determines the degree that the Convention parties regulate trade in that species. According to the Convention, animals listed in Appendix I shall:

[I]include all species threatened with extinction which are or may be affected by trade. Trade in specimens of these species must be subject to particularly strict regulation in order not to endanger further their survival and must only be authorized in exceptional circumstances. [84]

Well-known endangered species, including the Asian elephants and the Panda Bear are listed in Appendix I. Animals that are not presently threatened with extinction, but may become so unless trade and use of such specimens is subject to strict regulations are listed in Appendix II. [85] A permit from the importing country is not required for an Appendix II species. Appendix III contains species that are protected in at least one country that has asked other CITES parties for assistance in controlling the trade. [86] For example, one may ship the scarlet macaw from Panama, but not from Costa Rica. [87] One would need an export permit for Appendix III species only when the export is from a country that has included the species on its Appendix III list. Importation of an Appendix III specimen still requires a certificate of origin. Each party to the Convention must designate one or more Management Authority in charge of administering the licensing system and one or more Scientific Authority to advise them on the effects of trade on the status of the species.

CITES operates by subjecting international trade to controls that require all import, export, re-export, and introduction for the species covered by CITES be authorized through a licensing system. Any trade

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of such species listed requires the prior grant and presentation of an export permit which can only be granted when all conditions are met. Animals listed in Appendix I cannot be exported without an export permit, that may only be granted where the Scientific Authority of the state has confirmed it will not be detrimental to the species and the management authority confirms that the species was obtained lawfully, the shipment will minimize the risk of injury and cruel treatment to the animal, and the receiving country has obtained an import permit. [88] The import of an Appendix I species requires the prior grant of an import permit, which requires that the Scientific Authority find that the import is not for purposes detrimental to the species and that the recipient is well-equipped to handle and care for it. The Management Authority must also find that the specimen is not to be used for primarily commercial purposes. [89]

The protections for animals and restrictions in their trade decrease as their listing status decreases. Trade of animals in Appendix I is almost non-existent, unless there is a prior grant of authority, which is only to occur in exceptionally limited circumstances. In contrast, trade of animals listed in Appendix III only requires that the animal was not obtained unlawfully and transport of the animal minimize the risk of injury or cruel treatment. This illustrates just how important it is to ensure proper listing of animals that are endangered or threatened, so that they may be afforded the most protection available under the Convention.

Once a species is listed in Appendix I or II, any amendments to the listing must abide by the provisions set forth in Article XV. Under this Article, any party to the convention may propose an amendment to Appendix I or II for consideration 150 days before the meeting. A two-thirds majority, who must be present and voting, adopts amendments. For any other amendment, a meeting of the parties is convened upon written request by one-third of the parties to amend. The amendment is adopted upon a two-thirds majority vote of the parties. [90]

Captive-born animals are subject to different standards under the Convention. The treaty states "[s]pecimens of an animal species included in Appendix I bred in captivity for commercial purposes...shall be deemed to be specimens of species included in Appendix II." [91] Additionally, where the Management Authority of the state of export is satisfied that any specimen of an animal species was bred in captivity, a certificate from the Management Authority is accepted in lieu of any of the permits or certificates required under the provisions of Articles III, IV, or V, which govern the import and export of species listed in Appendix I, II and III. [92] A final exemption under Article VII allows traveling zoos, circuses, and other exhibitors to move without permits or certificates as long as they register full details of the specimens they transport with the Management Authority. The Management Authority must be satisfied that the animals will be transported in a manner that will minimize risk of injury, damage to health, or cruel treatment. Unfortunately, species that are listed in the appendices, but born in captivity, are afforded much less protection under CITES than their free-roaming counterparts. One benefit of this provision however, is that captive breeding programs at zoos can reintroduce species into the wild without obtaining prior permits. The frequency of this occurring, though, is rare since reintroduction is costly and difficult. In addition to captive animals, the Convention exempts species that were acquired before CITES provisions applied to them. These "pre-Convention" specimens have no protections afforded them under the Act. However, even where no export or import permit is required, the USFWS still requires documentation.

In addition to the [Endangered Species Act](#), the USFWS administers CITES, and therefore, controls import and export of listed species to and from the U.S.. The regulations implementing CITES can be found in 50 CFR Ch 1 Part 23. CITES does not apply *within* the U.S., since it deals only with crossing international boundaries, specifically international trade of a listed species. The USFWS adopts the CITES standard nomenclature, since it is the international standard. Mike Carpenter, senior biologist with the USFWS, reports the list of species regulated under the U.S. Endangered Species Act is wholly separate and unrelated to the list of species in the appendices to the International CITES Treaty. Species may be listed on one or the other or both, but the reasons for listing, the listing process, the legal requirements, and the benefit of listing is entirely different and unrelated.

The Treaty dictates in Article XI that the parties must convene regularly, meeting at least once every two years. During these meetings the convention will update and amend the Treaty. Non-governmental organizations may participate in meeting, but they have no vote. This section of the Treaty also discusses the procedure for meetings and the role of the Secretariat of the Convention. Article XIV discusses the impact of the International Treaty on domestic legislation. According to the provisions of the Treaty, member parties are free to adopt more strict regulations than the international standards for

their own country. A member state may withdraw from the Convention at any time, pursuant to the process of denunciation laid out in Article XXIV.

This treaty was litigated in the matter of The Humane Society of the U.S. v. Bruce Babbitt [93]. In this matter, the plaintiffs appealed from the district court's grant of summary judgment in favor of the Secretary of the Interior, which would allow Lota, an Asian elephant, to be transferred from the Milwaukee Zoo to a circus. The Humane Society of the U.S. (hereinafter "HSUS") was challenging a certificate issued by the Secretary that exempted Hawthorn, the Asian elephant's handlers, from the ESA and CITES. Although Asian elephants are subject to regulation under both CITES and the ESA as an endangered species, the USFWS had issued a certificate designating Lota, to be a pre-Convention animal and therefore, exempt from CITES import and export restrictions. [94] The court found that the USFWS regulation interpreting commercial activity to exclude the transportation of an endangered species across state or national borders, where there is no change of ownership or control of the animal was valid. The court found that the interpretation of commercial activity was not unreasonable because it was in accord with the legislative history of the act. [95]

The movement and transfer of Lota was determined to be exempt from the provisions of the ESA regulating her trade and movement. Additionally, the court found that the HSUS could not establish facts sufficient to prove they had standing to challenge the USFWS finding that Lota was a pre-Convention animal and therefore, not subject to CITES. The court did state, "while we can imagine a situation where a frequent zoo visitor's systematic observation of an animal species might be sufficiently threatened by the removal of some or even one animal from the zoo to make out a cognizable claim for standing purposes, this does not appear to be such a case." [96] Here, the plaintiff was a resident who claimed that he had visited the zoo several times during the period that Lota was held by them. Plaintiffs asserted injury because the challenged conduct threatened to diminish or deplete the overall supply of endangered animals available for observation and study, rather than the specific animal who was being affected by such provisions. The court ultimately found that the plaintiffs lacked standing to sue on behalf of Lota, because they could not establish a concrete injury in fact, causation, or redressability. It seems, therefore, that the court has left room for someone who visits a specific zoo on a frequent basis and plans to return to bring suit on behalf of the welfare of a specific animal, i.e. an elephant, where the person feels the Secretary's regulations are inadequate to ensure the animal's welfare. A claim of this sort should draw attention to the fact that laws protecting elephants do not provide for their mental well-being, despite their being highly intelligent creatures. Hopefully this will be a feasible claim in the future to ensure animals, especially highly intelligent ones, are well-protected.

The matter of Born Free v. Gale Norton, [97] indicates how difficult, if not impossible, it is to contest a decision by the Secretary of the Interior to import endangered species. In this matter, the zoo sought to import African elephants from Swaziland, claiming that they would be killed if they were not transported. The court held that the advocates, Born Free, failed to show a likelihood of success to warrant preliminary injunctive relief. Despite the potential detrimental effects to the remaining foreign herd, no overall detriment to the species was shown since the elephants were to be used for breeding and proceeds from their importation would benefit the foreign elephant habitat. Further, the court found that the zoo's proposed purposes of breeding and education outweighed their commercial purpose of increased admissions revenues as a result of displaying the elephants. [98]

In the matter of Pedersen v. Benson, [99] an importer had a permit to import five giraffes from Kenya, three of which were sold and released to public zoos after the requisite quarantine period. The other two were bought by 'Africa USA,' but not released. One of them had a heart attack and died. Plaintiff's filed suit to have the other one they purchased released. The permits, issued by APHIS, were issued under the further understanding that all the giraffes would be consigned to an approved zoological park. Africa USA is a privately-owned zoo, and lacks governmental control. The government feared that giraffes, as ruminates, could be infected or exposed to hoof and mouth disease. The government had conducted the necessary inspection of the facility and found that the zoo met all qualifications except for the "governmental control" requirement. [100] The Court found no basis to uphold the government's claim that a government officer may impose an ad hoc system of licensure upon any citizen, or upon any one group, i.e. private zoos, as opposed to another. Here, the importation was specifically permitted for all five animals, and any one animal was just as much a potential carrier of hoof and mouth disease as this particular giraffe. Therefore, this matter was dismissed for failure to state a cognizable claim. [101] While the Secretary is free to regulate the transport of animals, especially where there is concern with the spread of infectious diseases, he can not apply his

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standards arbitrarily. Ultimately, Africa USA, having met all current requirements set forth in CITES, was allowed to import their one remaining giraffe to their private zoo facility.

While CITES sets forth restrictions on the international trade of zoo animals it is limited to species being traded after CITES was adopted. Even then challenges to the decision to import or export, once a permit has been granted, are rarely, if ever, successful. While CITES regulates trade by either allowing or restricting it, voluntary standards regulate the specifics of the transport.

D. Voluntary Standards

i. International Air Transport Association

The International Air Transport Association (hereinafter "IATA") governs the majority of transport of animals by air, ranging from live cats and dogs to large exotic zoo animals. Animals have been transported by air since the early 1930s. The IATA claims that today's methods are the most humane and expedient for long distance transport. [102] It claims that one of its main objectives is to ensure humane air transport for all animals, whether pets or wild animals. The IATA Live Animal Regulations is the worldwide standard for transporting live animals by commercial airlines. Some member countries also enforce the regulations for the transportation of live animals within their country. Government agencies, such as the USFWS and the management authorities of CITES, also enforce the IATA regulations for the packaging of endangered species for international transport.

The IATA represents a large portion of the airline industry and provides the specific standards required for transport for those member airlines. Currently, it represents 270 airlines consisting of 95% of air traffic. [103] It operates similar to the American Zoological Association in that membership is voluntary; but it is extremely valuable within the industry to establish credibility. An applicant airline that fulfills all membership entry requirements (application form, supporting documents, application and entrance fee, and membership dues), will be admitted to IATA, subject to successful completion of the IATA Operational Quality Standard (OQS) audit process. Starting January 1, 2000, all new members must now demonstrate that they operate according to recognized international Operational Quality Standards. These standards include an appropriate live animal transport policy.

The U.S. Department of Agriculture recently announced in the U.S. Federal Register its intention to apply the U.S. Animal Welfare Act (AWA) to all flights operated by non-US carriers as of April 7, 2004. This requires carriers serving the U.S. market to fully comply with 9 CFR, Chapter 1 (A) (3). According to the IATA the USDA indicates that the existing IATA Live Animal Regulations observed by IATA carriers today comply with the U.S. requirements for the most part. [104] In addition to the USDA regulation of animal transport, 22 USCS §1978 allows the Secretary of the Interior or the Secretary of Commerce to certify to the President that a national of a foreign country either directly or indirectly engaged in trade or taking, which diminished the effectiveness of any international program for endangered or threatened species. Thereafter, the President may direct the Secretary to prohibit the bringing or importation into the U.S. of any products from the offending country for any duration the President determines appropriate. [105]

Organizations where membership is voluntary seem to offer more meaningful regulations and protections for zoo animals. They set forth strict, specific standards, and additional enforcement mechanisms are provided to ensure members adhere.

i. AZA

The AZA is an organization of zoos and related facilities that meet the accreditation and certification standards respectively. The AZA states that its "zoos and aquariums are places where people connect with animals. "[It is] therefore dedicated to excellence in animal care and welfare, conservation, education, and research that collectively inspire respect for animals and nature." [106] Although all AZA institutions housing mammals are regulated by the Animal Welfare Act or Marine Mammal Act, all accredited institutions are also bound by the AZA code of Professional Ethics. This is a somewhat heightened standard for the care and welfare of their zoo animals. In most cases, the AZA's accreditation standards and minimum animal husbandry guidelines exceed those in the AWA, ensuring the welfare of all zoo animals. The AZA cites animal health and welfare as the highest priority of the AZA accredited institutions. Each member institution is required to develop a Program Animal Policy.

One of the most important aspects of the policy is ensuring animal welfare standards are met, including those for housing, husbandry, handling, and human-animal interactions. [107]

According to Steve Olson, Director of Government Affairs at the AZA, there are currently 213 AZA members – about 35 of which, are aquariums that exhibit only cold-blooded animals (fish) and are not subject to the AWA or Marine Mammal Protection Act. The AZA maintains two credentialing programs: Accreditation, for Institutional members, and Certification for Related Facility members. For the purposes of AZA's certification program a Related Facility is defined as:

[T]hose organizations holding wildlife but not open to the public on a regularly scheduled, predictable basis. This includes, but is not limited to, wildlife ranches, wildlife refuges or rehab centers, research facilities, sanctuaries, survival centers, breeding farms, and educational outreach organizations. [108]

Related Facilities must be inspected and certified before becoming an AZA member. This requires the facilities to achieve and maintain or surpass the same basic standards as Institution members. The inspection and review process falls under the authority of the Accreditation Commission even though Related Facilities are not considered accredited, they are only certified. International facilities apply for certification under the same rules as those that apply to facilities located in the U.S.. The AZA cites the benefits of certification as a “publicly recognized badge signifying commitment to collection management, veterinary care, ethics, . . . conservation, education, safety and security. . .” [109] Once granted, certification remains valid for five years, and expires at the end of that time period. Facilities must successfully complete the full process again before being re-certified. There is no guarantee the credential will be renewed during subsequent inspections. According to the AZA their standards are subject to continuous review and enhancement requiring increased levels of professional commitment to achieve and maintain accreditation or certification. [110] Once an organization has been accredited or certified, they are expected to continuously advance their professional operation and constantly maintain or surpass all professional standards, policies, guidelines, or resolutions adopted by the AZA.

For the purposes of AZA accreditation, a zoological park is defined as:

A permanent cultural institution which owns and maintains wildlife under the direction of a professional staff, provides its collection with appropriate care and exhibits them in an aesthetic manner to the public on a regularly scheduled, predictable basis. They shall further be defined as having as their primary business the exhibition, conservation, and preservation of the earth's fauna in an educational and scientific manner. [111]

The Accreditation Commission consists of a Chairperson and eleven Commissioners who serve three-year terms. The AZA president-elect makes appointments to the Commission and selects the Chair and Vice Chair. The AZA Director manages the Commission and its programs. It takes approximately six months from the time the application is submitted For the AZA to inspect the facility, hold a hearing, and make a decision. Even after a facility has been accredited or certified, the AZA can inspect the facility at any time.

Besides administering a certification and accreditation program to ensure welfare of zoo animals, AZA cites conservation and education as two of its member's main goals. Education and conservation must be an integral component of each member's Program Animal Policy. The Species Survival Plan Program (SSP) is one of the organization's conservation methods, designed to help ensure the survival of certain species. This program is carried out through a breeding program, research, training, educating the public, and reintroducing wildlife “where appropriate.” [112] It is interesting to note that a program developed specifically to ensure species flourish has no requirement of reintroduction. The program more accurately represents a captive species survival program; its effect is to ensure the survival and proliferation of captive populations only.

The SSP master plan outlines the goals that the AZA has for that specific population. It makes breeding and management recommendations for each animal with consideration given to the logistics and feasibility concerns (i.e. permit requirements), as well as maintenance of natural social groupings. These master plans may even include recommendations not to breed animals, to avoid the problems of surplus animals. For further information on surplus zoo animals see discussion below, in Part III (b) of this document.

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The AZA also has a Government Affairs Department that represents the interests of the association before the U.S. Congress and Federal Agencies. This group works with government officials to develop Federal legislation and regulations that are favorable to its members and their interests. Government Affairs also plays an integral role in educating its members and the public about existing rules and regulations and assisting with any state or legislative matters requested by their members. Finally, this group participates in a number of international treaties and conventions impacting fish and wildlife, including CITES. They would be allowed as a Non-Governmental Organization to participate in their meeting (i.e. try to influence parties), however, they would not be allowed to vote.

While the AZA may promulgate and impose standards to ensure the welfare of zoo animals, its obvious bias must be considered when evaluating their effectiveness. The AZA's bias results from the fact that it is an organization of zoo professionals. It is in the business of zoo keeping, so its main goal is to keep zoo animals in zoos. It is debatable whether its aim is to truly ensure the welfare of zoo animals. In imposing the AZA rules and policies, these zoo professionals are highly influenced by the bottom line – money. On one hand they would not want to jeopardize their chosen career-path, but it must be remembered that a healthy animal is worth more to them than an abused or dead one. However, if the welfare of the animals is the AZA's main concern, it's questionable whether they would still be keeping zoo animals in cages.

III. Implications of Keeping Wild Animals in Captivity

A. A Case Study: The Elephant

i. Description of the Elephant

There are two types of elephants found in zoos in North America today, the Asian and the African. Although very similar, there are also differences between these two species. The Asian elephant is smaller than the African elephant and has smaller ears, a domed forehead and rounded back, unlike its African relative. [113] Elephants in general are very emotional creatures, highly intelligent, and social in nature.

The African elephant is the largest living land mammal. Today, the populations are mostly confined to small parks and reserves, their habitat being only a fraction of what it once was. Their life span in the wild averages 60 years or longer. [114] Two African elephant species are recognized: the larger and more widespread savanna elephant, and the forest elephant, which is smaller, has downward-pointed tusks, and smaller, rounder ears. [115]

Captive elephants respond to 70 to 80 different commands in the human language, and some understand a hundred. [116] Between 20 and 30 commands are necessary simply for care and maintenance. For example, an elephant's toenails grow at a rate suited to walking at least twenty to thirty miles each day in the wild. [117] Without trimming they can soon become ingrown, and lead to painful infections. Once an elephant stops moving, at the rate it is used to in the wild, it is highly susceptible to arthritis in the bones of its large column-like legs. In the old days, when zoo elephants were simply thrown into cages for a lifetime of solitary confinement, most became so crippled they could no longer have walked away even if set free. [181] According to Douglas Chadwick, who researched elephants both in captivity and in the wild for a period of five years, one can still find places, such as the zoo in Paris, where the elephant on display is expected to stand on ruined legs alone in a dim room until it dies. [119]

To keep a captive elephant in reasonable health, it should be exercised, socially stimulated by both its handlers and by other elephants, and trained to, at the very least, lift one leg at a time to undergo nail-filing on an almost daily basis. [120] The elephant should also be trained to be manageable enough to submit to veterinary attention. If the vet has to knock out the animal with drugs every time he needs to treat some affliction, the risk of death becomes considerable. Accidental overdoses and allergic reactions are always threats, but the main problem arises since elephants breathe differently than most mammals do. [121] Instead of a diaphragm contracting and creating a vacuum in the pleural cavity to draw in air, their lungs depend upon the muscles that surround them to force air in and out. As a result, an elephant that falls unconscious onto its side is likely to develop serious breathing problems in a short time. If it collapses onto its knees with its head hanging down forward, the breathing passage becomes choked off and the animals will suffocate even more quickly. [122] Training is also beneficial because the more tricks a captive elephant is taught the better various muscle groups are kept in tone

and the more alert and active its mind remain. Zookeepers justify captivity, claiming they are safeguarding elephant's physical and mental health.

A young untrained Asian elephant male sells for \$30,000 and up, and a well-trained one could be worth over a million. [123] Elephants are such highly intelligent creatures, they are capable of teaching themselves tricks on their own. As Douglas Chadwick cites, "at any number of zoos, the elephants have figured out how to turn on water faucets . . . to unfasten certain types of shackles put on their feet at night or even re-chain themselves when they know trainers are approaching." [124] They have also been known to remove doors to their cages by undoing the nuts and bolts or using tools to break away safety mechanisms to keep them from turning on faucets. Tava, a female at Marine World once used a log in the yard as a lever to pry open a barred retaining wall and used logs to build a bridge across a moat. [125] At another zoo, handlers found elephants throwing tires from their yard to a nearby tree weighing down the branches so the elephants could eat the tree. [126] There is also evidence to support the finding that elephants have their own way to communicate through infrasound frequencies and vocalizations and they may be able to differentiate between colors.

Elephants in confinement, having food on a regular basis, yet frequently bored, will work considerably harder for a reward of play than for food. The trick in training them, therefore, is to combine learning with play. As one trainer notes, "it's not the physical hurt you can give them; it's the mental punishment that finally controls them." [127] However, to safely keep a captive elephant, Chadwick notes, "some degree of physical pain is almost inevitably required." [128] The main tool used is the ankus, a short stick with a sharp metal hook at the tip. Although pachyderm, means "thick skinned," and is a synonym for elephant, the elephant's skin is actually thin and fairly easily scratched and torn. This means that the ankus, the primary tool used to train elephants, can cause them great pain. As trainers note, it also easily captures their attention. When the ankus lacks effectiveness, trainers move on to a cattle prod. When the elephant is especially balky, the handler might hose down the elephant first with water, and then put the electric prod to it. [129] According to Chadwick's documentation "sooner or later, a handler may have to just plain beat some elephant in a last-ditch effort to establish control before the animal kills someone or has to be destroyed itself." [130] Handlers believe that it is crucial to become, in effect, the top elephant in the hierarchy, appearing dominant, to make the others in the herd responsive to their commands.

The tide in dominance and control of elephants in captivity may be turning. In recent years, there has been a definite swing in the popular consciousness of Western society toward recognizing our commonality with intelligent mammals. Elephants in the wild have been known to mourn their dead, and even bury them. Elephants even express emotion through releasing moisture from their eyes, similar to humans crying when sad.

Since 1976, the Asian elephant has been listed on Appendix I of CITES. [131] In the last half of this century, the wild population has declined to an estimated 34,000–54,000 individuals. [132] The main reasons for this reduction are the increase of human population and human demands on natural resources, which destroy the living conditions of the elephants in their natural habitat. [133] Poaching is also still a major problem for elephants in the wild. These are the arguments of zoo proponents, used to support their claims regarding the need to maintain a captive population.

Following a 50% reduction in African elephant populations between 1979 and 1989, the parties to CITES listed the African elephant on Appendix I. [134] Since then, there have been proposals, including those scheduled to be decided at the upcoming meeting of the parties, to transfer certain African elephant populations to Appendix II or to trade ivory internationally on a limited basis. In 1997, the parties agreed to allow the transfer to Appendix II of the elephant populations in Botswana, Namibia, and Zimbabwe, and a subsequent auction of raw ivory to buyers from Japan. [135] The proposals were adopted in conjunction with a commitment to establish a monitoring system capable of detecting any negative impacts of the downlistings and trade. [136] In 2000, the elephant population of South Africa was also transferred to Appendix II, but there was no agreement for further ivory trade. Between January 2000 and June 2002, there were reports that 1,059 African and 39 Asian elephants had been poached for their ivory. [137]

Zoos have increasingly become reservoirs for endangered species, taking on the role of artificial breeding grounds. Zookeepers have been working to standardize the commands used in elephant training so that animals shipped between facilities in the hope of building reproductive social groups can be more easily handled. [138] Yet, in all of North America there have been no successful births of African elephants and only approximately fifty births of Asian elephants. [139] The breeding physiology

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and psychology of these animals in captivity is still virtually unknown. One problem for zoos is that with captive breeding, the elephants cannot be publicly displayed for nearly five years at a time. This includes a twenty-two month period of gestation and two to three years of nursing. Then they have to wait several more years until the young elephant can begin training. Therefore, capturing wild elephants is oftentimes the easier and less expensive method. Young elephants continue to mature into their early teens, and in the wild they are cared for by their mothers until that time. Lengthy nurturing, similar in length to human maturation periods, presupposes a good deal of intelligence. [140] Douglas Chadwick's research details the extent of their intelligence:

Like humans, elephants are designed to learn most of what they need to know. The extended period of nurturing is part of that process, and they continue learning throughout their long lives. Their brain is highly convoluted – another measure of intelligence, which they share with humans, great apes, and dolphins. And they have the largest brain of all land mammals. It weighs four times as much as ours.

In the wild, female Asian elephants travel and live in complex family units, which average four to eight animals, comprised of related adult cows and their immature offspring. [141] Both male and female African elephants live in socially complex family units, also comprised of related adults and their offspring. The groups average eight to ten animals; however, when there are times of danger, i.e. severe drought or intense poaching, many family units will come together to form a large herd comprised of 500-1,000 individuals. Unfortunately, in captivity elephants are deprived of their social companions and family members. Young are separated from their mothers at a very early age, and are usually kept with no more than two to five other elephants. The cost of keeping a single elephant is a major factor limiting zoos ability to keep them in social groups, as they would be in the wild.

All of these characteristics indicate why captivity is contrary to elephant well-being. Unfortunately, captivity seems to often lead ultimately to the premature death of the animal, even with laws in place. The question remains, whether elephants are safer in captivity, suffering with physical and emotional pain throughout their short lives, or are they better off in the wild where their habitat is rapidly being depleted and the trade for their tusks has caused the vast majority of the population to be slaughtered by poachers. Appalling incidents have occurred in zoos and similar facilities over the years that further prove that captivity is harmful to elephants, despite laws in place to supposedly protect them.

ii. Incidents involving elephants

Recently, and throughout the history of elephant captivity, there have been repeated tragic incidents nationwide involving zoo elephants. Animal rights activists are currently pushing stronger than ever for zoos to release their animals to designated sanctuaries. There are nearly 400 elephants living in zoos across America, and they maintain the status of being one of zoo's biggest money-makers. However, five zoos have closed their elephant habitats in recent years.

While doing his research, Douglas Chadwick documented several incidents involving battered trainers and battered elephants in California in the mid-nineties. The San Diego Zoo acquired a "half-tough" elephant named Dunda, who reacted to her new social environment by threatening and injuring several people. One day, a crowd of tourists witnessed several trainers gang up to work Dunda over with whatever they had in their hands, including shovels. The public outcry was furious. [142] Dunda later killed someone. [143] At the San Francisco zoo, a female named Tinkerbelle hurt a veterinary technician. The public, having heard reports of painful training practices, blamed the situation on the elephant's handlers, assuming the elephant was only lashing back at its tormentors. [144]

Tinkerbelle and the San Francisco Zoo are again in the forefront of public outcry aimed at keeping elephants out of zoos. On March 7, 2004, the San Francisco zoo euthanized Calle, a 37 year-old Asian elephant. On April 22, 2004, Maybelle a 44 year-old African elephant died from conditions resulting from captivity. Two dead elephants in two months – it was a tragedy by any standard. Both Calle and Maybelle suffered from chronic colic, arthritis, and foot and joint problems. Calle also suffered from chronic infections of her feet and bones that she developed during her time at the zoo. Their health had deteriorated so badly during their time at the zoo that they had trouble walking and were given painkillers on a regular basis. Now that these two elephants are gone, their companions, Lulu (former companion of Maybelle) and Tinkerbelle (former companion of Calle) are kept in solitary confinement. The elephants are held in lots of less than half an acre. Critics are quick to point out that the premature death of these elephants occurred when they should have been in the prime of their lives. In the wild, elephants can breed well past age 50. Additionally, Maybelle, along with the zoo's two surviving

elephants, were captured from the wild as babies and have spent virtually their entire lives in San Francisco, which means all their health problems are directly attributable to their time in captivity at the zoo. [145]

On April 8, 2004, after the death of the first elephant, Calle, the San Francisco Commission of Animal Control and Welfare passed a resolution calling on the Board of Supervisors to take immediate action to pass a resolution, ordering a transfer of the then three surviving elephants at the zoo. Their report concluded that the zoo does not have the space or climate to provide an adequate or appropriate environment for elephants. [146] On May 20, 2004, after the death of Maybelle, the City Services Committee reviewed the situation and voted to strengthen Supervisor Fiona Ma's resolution requesting the transfer of the remaining two elephants immediately to the Performing Animal Welfare Sanctuary (hereinafter "PAWS") in northern California. On June 8, 2004, the San Francisco Board of Supervisors passed a resolution putting additional pressure on the zoo to relocate the remaining two elephants to PAWS. Two weeks prior to that, the City Recreation and Park Department's Zoo Committee authorized the move of the two remaining elephants. Critics were quick to point out that the AZA has been dragging its feet in making a recommendation for fear that public perception of housing elephants in zoos would change. Ultimately, Manuel Mollinedo, the San Francisco Zoo Director, has decided to release the elephants to one of two sanctuaries for elephants nationwide; however, no date has been set. The zoo risks losing its AZA accreditation because their decision is contrary to the AZA's recommendations to transfer the elephants to another zoo.

PAWS is located in San Andreas, California and is comprised of 2,300 acres. It is regulated by the U.S. Department of Agriculture and the California Department of Fish and Game. The sanctuary is non-profit, run solely on donations. There is a similar facility located in Hohenwald, Tennessee, but it only houses female pachyderms. All of the elephants at both sanctuaries have a history marred with tragedy. Without getting into the horrific details, it is safe to say that they have earned the respite they are afforded at the sanctuary. At the refuge there is a "no dominance" approach to elephant handling, which employs patience and persuasion rather than chains and bull hooks. Unlike zoos, which manage elephants as a species, the refuge manages and cares for elephants as individuals, which has led to a vast improvement in their physical and mental health. They are also cared for using homeopathic natural medicines as much as possible, rather than sustaining them on a diet of painkillers, as is the regular practice in zoos. (Click [here](#) for PAWS website.)

The publicity surrounding the elephants at the San Francisco Zoo came just a week after the Detroit Zoo Director, Ron Kagan, made a decision to release the Detroit Zoo's elephants to the sanctuary in Tennessee. For 81 years, the Detroit Zoo had housed elephants, but zoo officials decided to close it based solely out of concern for the animals' welfare. The two elephants at the Detroit Zoo also suffered from ailments resulting from their captivity. Wanda developed arthritis and Winky had foot problems from sleeping in a standing position, which is unnatural for elephants that sleep on soft surfaces in the wild. Additionally, they had to spend the entire cold Detroit winter indoors, which exacerbated these conditions. The zoo's facilities, which allowed the elephants one acre of space, already vastly exceeded the AZA standards. The zoo doubled its elephant habitat six years ago and had plans to do another major expansion, however, the zoo determined that ultimately nothing they could do would be good enough to protect the health and welfare of the elephants. As Ron Kagan stated, "it was the realization that nothing we could do could mitigate the severity of the winters, or the reality that elephants live in large groups, and don't breed well in captivity...it became a realization that improving things for elephants really meant not having them." [147] Despite visitor's disappointment, the zoo has raised the bar for zoos across America, setting a precedent that puts the welfare of animals above the entertainment of zoo visitors, in essence the needs of animals before the desires of humans. As the Detroit Press wrote:

The Detroit Zoo has been increasingly dedicated to education, animal rescue, and conservation. Kagan uses animals to teach people how to respect the natural world around them . . . because everything that people do has an impact on the planet and its myriad species. [148]

This is huge precedent for other zoos nationwide to follow. Kagan hopes the public adopts his philosophy that "the zoo is the window into our humanity and how we treat other things in nature." [149] If zoos are truly representative of the image they present, then the welfare of the animals within the zoo must be ensured.

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Finally, on June 1, 2004, Misha, a 7,000 pound 23 year old African elephant, knocked down her trainer and gored him with her tusk. Misha has lived twenty-one of her twenty-three years at Marine World. Her trainer has since recovered, but Misha remains in solitary confinement, separated from her companions by a fence. Misha previously acted aggressively two years ago when she took a swing at her trainer. Misha was taken from her family in the wild when she was still a baby. "Marine World is known to use 'negative reinforcement as well as systematic corporal punishment in the daily management of elephants." [150] Marine World's main training tool is the ankus or bull hook and the amusement park also chains the elephants for prolonged periods. Marine World also offers elephant rides to the public, contrary to the recommendation of the AZA. Marine World's track record of keeping elephants in captivity is abysmal; there were six previous elephant deaths in a period of six years. For more information on the deaths of the previous six elephants please see www.idausa.org/news/currentnews/six_flags.html. In addition to the death of the six elephants, dozens of other animals, including orcas, dolphins, wallabies, and kangaroos have died at Marine World since Six Flags took over in 1997. In 1999, a tiger mauled a woman during a photo shoot. Critics argue the park unnecessarily exposes the animals to stress by keeping them near roller coasters and other noisy rides.

All of these unfortunate situations for elephants indicate a pattern resulting from keeping elephants in an unnatural state: captivity. They are deprived of their families, social structures, and freedom to roam. This leaves elephants susceptible to physical and mental illness and ultimately, results in an untimely demise. More zoos should follow the example of the Detroit Zoo and accept that no matter how much money they spend, the zoo's confinement will always be inadequate for the world's largest land mammals. Until more zoos grasp and adhere to this ideology, the elephants housed within will continue to suffer.

These incidents all occurred, despite there being laws in place to supposedly protect elephants. This illustrates the inadequacy of current laws. All of the elephants and zoos examined are subject to the statutes, treaties, and voluntary standards discussed above. These laws, however, do little to ensure the welfare of the elephants. CITES regulated the export of the elephants from their native home-land and import into the U.S. Although they are endangered species, they are exempted from the ESA under the exemption for normal animal husbandry, which includes the exhibition of animals. The ESA would only apply if there were some further "take" of the species. The IATA regulated the transport of the elephants, assuming they were shipped on an airline that is an IATA member. The AWA would govern the housing, handling, and care of the elephants within the zoos. Zoos such as San Francisco and Detroit are in compliance with AWA regulations, though, so current standards seem deficient. Additionally, San Francisco and Detroit are both AZA members, that meet its heightened standards, which also seem to be inadequate for ensuring the welfare of elephants. State anti-cruelty laws do not apply, unless there is first a violation, i.e. cruelty to the elephants. Finally, Asian and African elephants have specific statutes in place, however, these are aimed more towards species conservation, and have little affect if any for elephants living in zoos. The welfare of the animals is not ensured by any of our current laws. Standards for care, housing, and transport are only minimal guidelines and have proven to be inadequate and infrequently enforced. The few standards there are purporting to protect the welfare of zoo animals, set forth only minimum standards, which are obviously not enough. Finally, cruelty statutes are not enforced until after the crime has been committed, and even then, only the most heinous crimes are prosecuted.

For a listing of "elephant free" zoos, please see the Save Wild Elephants website at <http://www.savewildelephants.com/elefreezoos.asp>

B. Other Issues Arising from Keeping Wild Animals Captive

i. Surplus zoo animals

While zoos may be concerned about the health and welfare of animals exhibited before the public, there are breeding programs, operating behind closed doors that produce "surplus" animals. The zoos seem to be less concerned with the welfare and fate of these animals as they are easily sold off at auctions or to dealers in shady, back door transactions. The exotic and wild animal trade is an extensive industry. A black market has emerged because sale and transport of both species and their products is so highly regulated. Many animals no longer wanted by zoos go to canned hunts, other zoos, or are sold for various uses of their bodies. [151] Canned hunts involve customers paying a fee in exchange for a guarantee that they will be able to hunt and kill exotic game animals. Canned hunts

allow the illusion of hunting a dangerous animal, by enclosing them in to small spaces where they have little chance against a close range weapon. Unfortunately, there are no limits on how many animals one could kill at such a canned hunt, so long as patrons are willing to pay the price. Additionally, canned hunters are not required to carry hunting licenses and firearm experience is not required. [152]

There are currently over two thousand such hunting facilities in over twenty-five states in the U.S. [153] Many of these operations are less than 100 acres in size, although there are some as large as 16,000 acres. [154] However, even though some of the animals used have a large area in which to roam, they are essentially domesticated animals that have been raised by humans all their lives and have little fear of them. They have depended on humans for food and shelter their entire lives and are unaware that they are now being hunted by the same creatures that once cared for them. Some animals are even caged or tethered within the enclosure, to allow for guaranteed kills. [155] For more information on canned hunts [click here](#).

To protect zoo animals from being sold to canned hunts, laws like [Louisiana's](#) are needed that will prohibit zoos and circuses from providing, selling, transferring, or donating any animal for use in a canned hunt. There needs to be more laws that prohibit canned hunting facilities from purchasing, accepting as a donation, or receiving any animal formerly housed in a zoo or circus. At this point, it is not illegal in most states for zoos to sell their surplus animals to canned hunting facilities. This practice, however, is inconsistent with the mandates of the American Zoological Association. The AZA requires "excellence in and commitment to animal care, professionalism, ethics, conservation, and education." [156] The numbers of animals sold into canned hunts, however, evidences a lack of enforcement or ambivalence toward this underground trade. [157]

Unfortunately, surplus zoo animals seem to be more common than one would think. To maintain a healthy, genetically diverse captive population, some over-breeding is necessary. Many of these animals get lost in the paperwork and end up in sub-standard conditions. Alan Green and the Center for Public Integrity exposed this phenomenon in the book "Animal Underworld, Inside America's Black Market for Rare and Exotic Species," in which they exposed case upon case of zoo animals disappearing. The animals would be sent to a "breeding facility" in the U.S., but would later show up in shoddy roadside animal attractions, suffering from improper care and inhumane handlers, or worse yet, used for their parts in various product industries. Many exotic animal dealers disguise themselves as persons concerned with animal rights and conservation. Instead of actually protecting such interests, they allow for the exact opposite; they are adept at making animals vanish from regulation. [158] These animals end up suffering and or dead.

Specific examples of such a practice include Edward Novak, who sold exotic animals to the suppliers of auctions and commercial hunting operations. [159] Although the AZA was notified that Novak was serving as a middle-man between zoos and canned hunt suppliers, dozens more AZA accredited zoos continued sending animals to him. Novak sold one of the animals to Burton Sipp, a professional horse trainer and petting zoo owner. Sipp was subsequently engaged in horrendous incidents of animal cruelty within his own facilities. Despite being aware of his track record, AZA accredited facilities subsequently gave Novak multiple animals. [160] Another dealer, Jim Fouts, was exposed by "60 Minutes" in 1990 for re-consigning zoo animals to auctions attended by canned hunt operators. AZA members subsequently declared him persona non grata. However, since then, Fouts has supplied animals directly to at least one canned hunt distributor and has received numerous surplus zoo animals from AZA members. [161]

These incidents are not only limited to North America, as this black market in illegal trade of exotic species is international in scope. [162] The International Animal Exchange is one such example. Despite many AZA zoos refusing to do business with it, they have managed to acquire large numbers of surplus giraffes from AZA zoos, which are then shipped to Mexico, Thailand, Turkey, and other overseas destinations. [163] The foreign buyers are known for having been involved in exotic animal smuggling, in violation of international treaty. By tampering with records, smugglers make the animals appear to be captive born, and therefore, not subject to international treaty. Several such animals have been killed in transport because of the sub-standard conditions they are kept in, all of which is allowable since there are no laws to protect them. [164] These incidents are not isolated -- far from it. Alan Green's research exposed case after case of surplus and retired zoo animals experiencing an unnecessary and tragic fate, despite U.S. and international laws, regulations, and voluntary standards in place, to supposedly protect them. Making an exotic wild animal disappear is far too easy for those looking to profit from the illegal and unethical trade. Unfortunately, the practice of AZA accredited zoos

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selling their surplus and retired animals to sources for canned hunts and animal products is more regular than most people would care to believe.

The zoo's justification for such actions also seems to be their argument; they are more concerned with saving the entire species as a whole, rather than individual zoo animals. [165] As Mike Carpenter, former zoo-keeper for ten years and now senior biologist at USFWS stated, some surplus breeding is necessary to maintain a captive healthy population, with genetic diversity. Instead of concerning themselves with the welfare of individual zoo animals, they concern themselves with the "health" of the population, or rather captive population. These standards are used to justify the treatment of the individual animals, that may suffer greatly as a result.

To remedy this situation, the USDA needs to protect animals from such transfers. The standards for acquisition and disposition records of transfers need to be available to the public and more strictly regulated. After all, the court of public opinion may have more sway than an action in federal court. But, it is this tragic end to many zoo animals' existences that underlie the ineffective network of laws that only marginally protect them.

IV. Conclusion

Several findings seem apparent after reviewing existing laws to protect zoo animals. First, zoo animal welfare protections are only found in State and Federal anti-cruelty statutes. The majority of existing statutes and regulations govern only the transport or trade of animals or animal products, ensuring their status in the world market is assured without eradicating the species. These laws purport to protect the well-being of the species as a whole, rather than a specific animal. Secondly, well known charismatic animals are afforded much more protection under existing laws, both under specific statutes protecting them and the AWA, which exempts all cold-blooded animals. Additionally, certain species are afforded much more protection than others. Certain well-known and well-liked animals have specific statutes and funding in place to protect them, while other less popular animals are completely exempted from statutes that could protect them. Thirdly, there is a lack of enforcement mechanisms within the statutes. Adding to the problem, most state and federal governing agencies are over worked and under funded, leading to less than optimal enforcement of the statutes that exist. An increase in funding and/or public concern would put pressure on such agencies to ensure that minimal standards are upheld, at the very least. Lastly, only minimal standards currently exist. Tighter controls and stricter regulations would lead to an overall improved quality of life for zoo animals.

The laws currently in place to protect zoo animals have proved inadequate thus far. While the AWA does purport to protect the welfare of animals, only minimum standards exist, and even then, huge classes of animals are exempted from the provisions. Other statutes regulating transport and documentation of zoo animals apply only to animals specifically listed. With regard to the existing statutes, ineffective enforcement, resource shortages, and the lack of citizen suit provisions to allow concerned parties to argue on behalf of zoo animal welfare hinder the process. Voluntary standards are admirable, but not required. And in light of such exposes as "Animal Underworld," all laws, regulations, and voluntary standards seem to be ineffective in truly protecting zoo animals. Unfortunately, under the existing circumstances, this means that zoo animals suffer simply so patrons can observe them at the zoo, which is an unfair lifetime sentence for any innocent, sentient being.

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- [7] [7 USCS §2131](#)
- [8] [7 USCS §2143\(a\)\(1\)](#)
- [9] [7 USC §2143\(a\)\(2\)\(A\)](#)
- [10] [7 USC §2143\(a\)\(2\)\(B\)](#)
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- [17] [9 CFR §2.131 \(b\), \(c\)\(2\), \(c\)\(4\)](#)
- [18] [7 USCS §2133](#)
- [19] [7 USCS §2132\(f\)](#)
- [20] [7 USCS §2132\(h\) \(italics added\)](#)
- [21] [7 U.S.C.A. § 2134](#)
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- [26] [7 USC §2146\(a\)](#)
- [27] Email from Barbara A. Kohn, Senior Staff Veterinarian, APHIS to Kali S. Grech, Student, USF School of Law, AWA Info (June 23, 2004).
- [28] *Id.*
- [29] [Glickman v. Animal Legal Defense Fund](#), 154 F.3d 426 (D.C. Dist 1998).
- [30] *Id.* at 428
- [31] *Id.*
- [32] 7 USC §2143
- [33] [Glickman](#) 154 F.3d at 445
- [34] [Animal Legal Defense Fund, Inc. v. Glickman](#), 204 F.3d 229 (D.C. Dist. 2000).
- [35] Stanley, 16 Pace Env'tl. L. Rev. 103
- [36] *Id.* at 109

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[37] Sonia S. Waisman, Bruce A Wagman & Pamela D. Frasch, *Animal Law Cases and Materials* p. 556.

[38] Id.

[39] Id.

[40] Id. at 557

[41] Id. at 558

[42] 16 USC §1533(b)(1)(A) (2004).

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[44] Email from Michael Carpenter, Senior Biologist, U.S. Fish and Wildlife Service, to Kali S. Grech, Student, USF School of Law, Zoo Animals, etc. (June 16, 2004).

[45] 16 USC §1538(a)(1)(A)-(B) (2004).

[46] 16 USC §1532(19) (2004).

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[50] 16 USC §1538 (d)

[51] 16 USC §1539 (2004).

[52] 16 USC §1539(d)

[53] Email from Michael Carpenter.

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[57] Id.

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[59] Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992).

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[63] Id. at 101

[64] Id. at 103

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