



Animal Protection Index (API) 2020

United States of America: ranking D

Executive summary

The United States (US) has a few key pieces of animal welfare legislation applicable at the federal level. The Animal Welfare Act (1966) sets general standards for the humane care and treatment that must be provided for certain animals who are bred for commercial sale, exhibited to the public, used in biomedical research, or transported commercially. The Horse Protection Act (1970) prohibits sore horses from participating in shows, exhibitions, sales or auctions and the Humane Slaughter Act (1978) mandates humane slaughter for certain species. Most US animal welfare laws are enacted at the state level. However, the scope of application of statutes vary across states.

Since the API was first published in 2014, several new pieces of legislation have been enacted and have been positive for animal welfare. The Preventing Animal Cruelty and Torture Act (PACT), unanimously passed by Congress in November 2019, makes it a federal crime to engage in animal crushing. At the state level, California passed Proposition 12 in November 2018, considered one of the most progressive pieces of animal welfare legislation in the world. In fact, it sets specific minimum space requirements for animals raised for food, thus effectively banning cages for laying hens, sow stalls, and crates for calves. Furthermore, California passed the Circus Cruelty Prevention Act in May 2019, which outlaws the use of all wild animals in circuses. In October 2019, California became the first state to prohibit the sale of fur products, with a ban entering into force on 1 January 2023. California and Maryland also passed legislation prohibiting pet stores from sourcing animals from commercial breeders. Massachusetts passed two Protect Animal Welfare and Safety (PAWS) Acts: the first one in 2014 established an animal welfare task force, while PAWS II aims to improve cross-reporting of animal cruelty to law enforcement agencies, prevents the automatic euthanasia of animals confiscated from the animal fighting industry; and modernizes the state's prohibitions against animal sexual abuse. In November 2019, Michigan passed Senate Bill 0174, which mandates cage-free conditions for egg-laying hens and prohibits the sale of non-cage-free eggs by December 2024.

However, there remains room for improvement in many areas related to animal welfare. Notably, there is a clear lack of federal protection for animals, since the Animal Welfare Act (1966) does not apply to birds, rats and mice used for research, horses used for research and farm animals. There is no federal legislation protecting farm animals during the rearing phase. Plus, the Humane Slaughter Act does not apply to poultry or fish. Furthermore, the US Department of Agriculture has removed public access to thousands of reports documenting the numbers of animals kept by research laboratories, companies, zoos, circuses and animal transporters, and whether those animals are being treated humanely in accordance with the Animal Welfare Act (1966). Since 3 February 2017, anyone wishing to access such information needs to file a Freedom of Information Act request, which can take months to be processed. Furthermore, cruel practices such as fur farming and various uses of animals for entertainment purposes are allowed in the US.



The US Department of Agriculture is responsible to promulgate laws and regulations pertaining to animal welfare on a limited number of issues. Its subsidiary the Animal and Plant Health Inspection Service (APHIS) is responsible for enforcing the Animal Welfare Act, implemented by the APHIS Animal Care and Veterinary Units. With regards to animals used in scientific research, it is required that all institutions intending to use animals for research establish an Institutional Animal Care and Use Committee (IACUC) to review the experiment planned. The Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM), created in 2000, promotes the Three Rs principles (Replacement, Reduction, Refinement) and collaborates internationally on the development of alternatives to animal research.

Given the extensive body of scientific evidence, the US Government is urged to define in legislation, at a minimum, all vertebrates, cephalopods and decapod crustaceans as sentient. Furthermore, the US Government is strongly encouraged to expand the use of the Animal Welfare Act (1966), so that it applies to all sentient animals. The US Government is strongly encouraged to amend the PACT Act (2019), with removing the exemption for the animals killed for food or used in scientific research. Building upon the example of California's Proposition 12, the US Government is urged to ban the worst forms of confinement for farm animals. In particular, the use of farrowing crates, sow stalls, and cages should be banned. The US Government is also urged to ban the production and sale of fur products, since fur farming is inherently cruel and causes pain, distress and suffering to animals. The US Government is also encouraged to outlaw cruel forms of entertainment that cause animal suffering, such as the use of animals for circuses, rodeos, fights, races, rides on wild animals, and the use of marine mammals in shows. The US Government is also urged to support the re-introduction and enactment of the Humane Cosmetics Act that would phase out cosmetic animal testing and the sale of cosmetics tested on animals. The US Government is strongly encouraged to allocate sufficient annual funding to ensure the effective implementation and enforcement of animal welfare standards. Further legal and policy recommendations are associated with each Animal Protection Index (API) indicator and contained in the relevant sections of this report.



Animal Protection Index Indicators

Goal 1: Recognition of animal sentience and prohibition of animal suffering

1. Animal sentience is formally recognized in legislation

| Analysis of the legislation | |
|--|---|
| Ranking | D |
| <p>There is no recognition of animal sentience at the federal level. Several pieces of legislation recognize that animals can suffer, but animals are not defined as sentient in law.</p> <p>In particular, the preamble to the Humane Methods of Slaughter Act of 1958, which is now enforced as the Humane Slaughter Act 1978,¹ explains that the use of humane methods in the slaughter of livestock prevents needless suffering (7 U.S.C. s.1901), and the Animal Welfare Act of 1966² requires the avoidance or minimization of pain and distress during experimental procedures (7 U.S.C. s.2143). However, the definition of animals covered by the scope of the Animal Welfare Act is narrow, referring to 'any live or dead dog, cat, monkey (non-human primate mammal), 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'. The term 'dog' refers to 'all dogs, including those used for hunting, security and breeding purposes'. As such, the definition explicitly excludes 'birds, rats of the genus <i>Rattus</i> and mice of the genus <i>Mus</i> bred for use in research, horses not used for research purposes, farm animals such as, but not limited to, livestock or poultry' and all cold-blooded animals including fish, amphibians and reptiles (7 U.S.C. s.2132).</p> <p>The Animal Welfare Act also requires dealers, exhibitors, and research facilities to ensure that environments provided for non-human primates promote the 'psychological well-being' of the animals (7 U.S.C. s.2143).</p> <p>State legislation on this area is also limited in scope and is inconsistent between states. While animal sentience is not the subject of a dedicated legislation, many state laws include language regarding the physical and psychological suffering of animals. For instance, New York's Elephant Protection Act,³ enacted in 2017 and which prohibits the use of elephants in any type of entertainment act, acknowledges that 'elephants are complex, highly intuitive and intelligent animals.'</p> <p>Analysis</p> <p><i>Those animal protection measures which exist in the United States have been introduced for the most part at state rather than federal level, owing to the 10th amendment to the Constitution that provides for powers not expressly given to the United States to belong to the States and the People. This legislative approach, whereby because animals are not mentioned in the US Constitution, animal</i></p> | |

¹ <https://www.govinfo.gov/content/pkg/USCODE-2014-title7/pdf/USCODE-2014-title7-chap48.pdf>

² <https://www.animallaw.info/statute/us-awa-animal-welfare-act#2139>

³ <https://www.nysenate.gov/legislation/bills/2017/s2098/amendment/b>



protection is left for the most part to individual states, presents a barrier to improving animal welfare through the recognition of sentience.

The Animal Welfare Act is the main piece of legislation addressing animal welfare at the federal level (United States Code, Title 7 (Agriculture), Chapter 54 (Transportation, Sale, and Handling of Certain Animals), Sections 2131 - 2159). This Act recognizes the capacity of animals to suffer or be distressed, which implies a state of mental suffering. Moreover, for non-human primates, the Act prescribes enrichment of the animal's environment to promote psychological well-being. Therefore, the Act recognizes aspects of animal sentience, but animals are not defined as such in the law.

However, the Animal Welfare Act is very much limited since it only applies to certain animal species and contains wide exemptions. Notably, the legislation excludes farm animals, who constitute the overwhelming majority of animals present in the country. The exclusion of rats and mice used in research from the partial recognition of sentience in the Animal Welfare Act represents a considerable barrier to improving animal welfare, particularly as 95% of animals used in research are estimated to be rats and mice.⁴

The Animal and Plant Health Inspection Service (APHIS), a division of the United States Department of Agriculture is responsible for the enforcement of the Animal Welfare Act. The Department's website contains some information on animal welfare but there are no statements that mention animal sentience, or the science of sentience, or that draw attention to the feelings and levels of awareness and consciousness in animals, or the importance of protecting animals for their own sake as sentient beings.

Enforcement mechanisms

At the federal level, there are enforcement mechanisms for legal provisions arising out of the limited recognition of aspects of sentience in the Animal Welfare Act and the Humane Slaughter Act. The Animal and Plant Health Inspection Service (APHIS), a division of the United States Department of Agriculture is responsible for the enforcement of the Animal Welfare Act. However, the mechanisms to enforce these Acts are limited since due to the low number of federal inspectors - under 100 inspectors are in charge of checking welfare standards for all industries and uses of animals including farms, puppy mills, circuses etc.

Enforcement measures for relevant anti-cruelty statutes have been put into place at the state level.

Key recommendations

- **At present, the Animal Welfare Act only recognizes aspects of sentience and is not applicable to all species. The US Government is strongly encouraged to extend the reach of the Animal Welfare Act, so that the Act is applicable to all categories and uses of animals, and at a minimum, to all vertebrates.**
- **Given the extensive body of scientific evidence proving that animals are sentient, the Federal**

⁴ David Favre, "Overview of the U.S. Animal Welfare Act", Animal and Legal Historical Centre, 2002 available at: <http://www.animallaw.info/articles/ovusawa.htm>



Government is urged to recognize that all animals for whom there is scientific evidence – at a minimum, all vertebrates, cephalopods and decapods crustaceans – are sentient beings and to enshrine this principle into federal legislation. Recognizing animals as sentient will underpin further animal welfare considerations.

2. There are animal protection laws that prohibit causing animal suffering either by a deliberate act of cruelty or by a failure to act

| Analysis of the legislation | |
|--|---|
| Ranking | C |
| <p>The Puritan colonies were some of the first in the world to introduce laws to protect animals from cruelty and negligence, under Liberties 92 and 93 of the Puritans of Massachusetts Bay Colony code in 1641.⁵ During the 19th Century, individual states began to introduce anti-cruelty legislation.⁶ By 1921, all 48 states had included anti-cruelty statutes in their laws.⁷ In recent years, there has been increasing support for cruelty to animals to be regarded as a felony rather than a misdemeanor.</p> <p>Passed by Congress in 1966, the Animal Welfare Act sets general standards for the humane care and treatment that must be provided for certain animals who are bred for commercial sale (including internet sale), exhibited to the public, used in biomedical research, or transported commercially. The Animal Welfare Act does not contain a general anti-cruelty provision, but simply refers to preventing the suffering of animals in specific circumstances. However, the Act is not applicable to all species. All cold-blooded animals (including fish, amphibians, reptiles), birds, farm animals such as, but not limited to, livestock or poultry, horses not used for research purposes and rats of the genus <i>Rattus</i> and mice of the genus <i>Mus</i> bred for use in research are not included in the scope of application of the Animal Welfare Act.</p> <p>Congress has assigned responsibility for enforcing the Animal Welfare Act to the US Department of Agriculture. Within USDA, the Animal and Plant Health Inspection Service (APHIS) is in charge of this task. The APHIS has produced the Animal Welfare Regulations (Code of Federal Regulations, Title 9 (Animals and Animal Products), Chapter 1 (Animal and Plant Health Inspection Service, Department of Agriculture)⁸ in order to interpret the Animal Welfare Act into enforceable standards. The USDA</p> | |

⁵ Emily Stewart Leavitt and Diane Halverson, *The Evolution of Anti-Cruelty Laws in the United States*, in: *Animals and Their Legal Rights in A Survey of American Laws from 1641 to 1990*, Animal Welfare Institute, 1990

⁶ David Favre & Vivien Tsang, *The Development of the Anti-Cruelty Laws During the 1800's*, Detroit College of Law Review, 1993 accessed at: <http://www.animallaw.info/articles/arufavrehistcruelty1993.htm#The%20Legal%20Framework%20in%20the%20United%20Stat>

⁷ Judith Ho, *Information Resources on Human-Animal Relationships Past and Present*, Animal Welfare Information Center (AWIC) Resource Series No. 30, U.S. Department of Agriculture, Agricultural Research Service, National Agricultural Library Animal Welfare Information Center, March 2005

⁸ https://www.aphis.usda.gov/animal_welfare/downloads/bluebook-ac-awa.pdf



can amend existing regulations and/or create new regulations, but only Congress can change the actual legislation.

The Horse Protection Act⁹ of 1970 is the other legislation related to animal welfare and applicable at the federal level. The Act prohibits sore horses from participating in shows, exhibitions, sales or auctions. The Act also prohibits the transportation of sore horses to or from any of these events.¹⁰ This Act also does not contain a general anti-cruelty provision.

The third legislation applicable at the federal level addressing animal protection is the Humane Slaughter Act. The Act states that to prevent needless suffering, to ensure safer and better working conditions and to benefit producers, processors and consumers, 'the slaughtering of livestock and the handling of livestock in connection with slaughter shall be carried out only by humane methods'.¹¹ However, the Act does not apply to poultry or fish. In September 2019, the USDA approved new rules enabling slaughter lines to be sped up and allowing state inspection officials at pig slaughterhouses to be replaced by company employees.¹²

In 2010, federal legislation was introduced banning the creation, sale and possession with intent to sell of animal crushing or stomping films.¹³ The Animal Crush Video Prohibition Act¹⁴ of 2010 bans the creation and distribution of obscene animal torture videos that show the intentional crushing, burning, drowning, suffocating and impaling of puppies, kittens and other live animals for the titillation of viewers.

Since the API was first published in 2014, the Preventing Animal Cruelty and Torture (PACT) Act 2019¹⁵ was introduced and unanimously passed by Congress in November 2019.¹⁶ President Trump signed the Bill into law on 26 November 2019.¹⁷ The PACT Act would make it a federal crime to engage in 'animal crushing', defined as 'actual conduct in which one or more living non-human mammals, birds, reptiles, or amphibians is purposely crushed, burned, drowned, suffocated, impaled, or otherwise subjected to serious bodily injury' (Section 48). It is also an offense to create or distribute an animal crush video, defined as 'any photograph, motion-picture film, video or digital recording or electronic image that depicts animal crushing and is obscene'. Exceptions to this concern visual depiction of 'customary and normal veterinary, agricultural husbandry or other animal management practice; the slaughter of animals for food; hunting, trapping, fishing or another sporting activity not otherwise prohibited by Federal law; medical or scientific research; necessary to protect the life or property of a person; performed as part of euthanizing animals'.

Most of animal anti-cruelty provisions are enacted at the state level. The content and scope of state legislation varies significantly, with many exceptions to anti-cruelty statutes. Over the past two decades,

⁹ https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/hpa/ct_hpa_reg_sections

¹⁰ https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/SA_HPA

¹¹ <https://www.govinfo.gov/content/pkg/USCODE-2014-title7/pdf/USCODE-2014-title7-chap48.pdf>

¹² <https://www.theguardian.com/environment/2019/sep/18/us-moves-to-scrap-speed-limits-on-pig-slaughter-lines>

¹³ <http://edition.cnn.com/2010/POLITICS/12/10/animal.cruelty/>

¹⁴ <https://www.congress.gov/bill/111th-congress/house-bill/5566>

¹⁵ <https://www.congress.gov/bill/116th-congress/house-bill/724/text>

¹⁶ <https://www.npr.org/2019/11/07/777280602/trump-is-expected-to-sign-bill-making-animal-cruelty-a-federal-crime>

¹⁷ <https://edition.cnn.com/2019/11/26/politics/donald-trump-animal-cruelty-act-signed-trnd/index.html>



all 50 states have passed statutes enabling certain abusive acts against certain animals or animal fighting offences to be prosecuted as felonies rather than as misdemeanors.¹⁸ The Animal Legal Defense Fund publishes an annual compendium of general animal protection and related statutes for all the states, principal districts and territories of the United States and Canada, which offers an overview of the legislation of each state.¹⁹ Common themes include protecting animals from cruel treatment, abandonment, poisoning and providing food, water and shelter. However, the scope of statute provisions varies significantly from state to state, with application to different categories of animal or activity and with many exceptions to legal protection. Common exceptions include animals reared for food, hunting, fishing, trapping, common agricultural practices, veterinary practices, pest control, rodeos, zoos, circuses, and killing of someone's own animals on his or her property if done humanely. In some instances, there is a duty of care, and the legislation in some states creates a cruelty offence by reference to causing suffering, while others do not refer to suffering. Currently 34 of the 50 states specifically exclude livestock from anti-cruelty provisions.^{20,21}

For example, in Alabama, it is a misdemeanor to subject an animal of which the person has custody to cruel mistreatment or neglect, or to kill or injure an animal belonging to another without good cause. The offense is a felony if the act is done intentionally or knowingly and the act of cruelty or neglect involves the infliction of torture (Alabama Code s.13A-1-1-14). This provision therefore focuses on the conduct of the offender rather than on the suffering effect on the animal.

In Michigan, it is an offense to cruelly drive, work or beat an animal, to transport an animal in a cruel and inhumane manner, or negligently to allow an animal to suffer unnecessary neglect, torture or pain. There is also a duty to provide adequate care for an animal of which a person has charge or custody (Michigan Penal Code 750.50). There are exceptions for the lawful killing of livestock or customary animal husbandry of livestock, and for lawful fishing, hunting, trapping, wildlife control, pest or rodent control, and animal research.

In Florida, it is a misdemeanor unnecessarily to overload, overdrive, torment, deprive of necessary sustenance or shelter, or unnecessarily mutilate, or kill any animal, or to transport an animal in a cruel or inhumane manner. The offence is a felony when done intentionally, or when the owner or person with custody or control of the animal fails to act, resulting in the cruel death, or excessive or repeated infliction of unnecessary pain or suffering. This protection extends to 'every living dumb creature' (Florida Statutes 828.12).

In Texas, there are separate provisions protecting livestock and non-livestock domesticated or captive wild animals (Texas Penal Code 42.09). It is prohibited intentionally or knowingly to torture a livestock animal, where 'torture' means any act that causes unjustifiable pain or suffering, or to transport or confine an animal in a cruel and unusual manner, where 'cruel manner' includes a manner that causes or permits unjustified or unwarranted pain of suffering. It is an exception if the conduct is a generally accepted and otherwise lawful animal husbandry or agricultural practice involving livestock animals.

¹⁸ Rebecca F. Wisch, Overview of State Cruelty Laws, 2005, updated 2010 available at:

<http://www.animallaw.info/topics/tabbed%20topic%20page/spuscruelty.htm>

¹⁹ <http://aldf.org/resources/advocating-for-animals/animal-protection-laws-of-the-united-states-of-america-and-canada/>

²⁰ <https://blog.humanesociety.org/wp-content/uploads/2018/12/State-Rank-2018-MT-WY-1.pdf>

²¹ <https://blog.humanesociety.org/wp-content/uploads/2018/12/State-Rank-2018-AL-MO-1.pdf>



In relation to domesticated or captive wild animals, it is prohibited intentionally, knowingly or recklessly to torture an animal or in a cruel manner to kill or cause serious bodily harm to an animal, or to transport an animal in a cruel manner. There is also a duty of care in relation to both categories of animals.

On 14th March 2014, South Dakota became the final state to introduce a felony provision for malicious acts of animal cruelty and cockfighting.²²

Since the API was first published in 2014, Massachusetts passed two Protect Animal Welfare and Safety (PAWS) Acts. In 2014, following a case of cruelty towards a dog named Puppy Doe, Massachusetts passed the first PAWS Act and formed an animal welfare task force. After numerous deliberations from this task force, the PAWS II Act was passed in 2018. PAWS II aims to improve cross-reporting of animal cruelty to law enforcement agencies by officials responsible for the protection of seniors, children and the disabled; prevents the automatic euthanasia of animals confiscated from the animal fighting industry; and modernizes the state's prohibitions against animal sexual abuse. The Act also requires property owners and other responsible parties to inspect properties for the presence of abandoned animals and includes a mandate that insurance companies collect relevant data in the event of a dog-related incident. Furthermore, PAWS II explicitly prohibits the drowning of animals.²³

Furthermore, on 6 November 2018, Proposition 12 was passed in California, setting specific minimum space requirements for animals raised for food, thus effectively banning cages for laying hens, sow stalls, and crates for calves.²⁴

Analysis

Overall, anti-cruelty laws have been the prerogative of individual states for over 120 years.²⁵ State laws govern issues of liability for harm to animals or harm caused by animals. Federal laws have been introduced on a limited number of topics where there is multi-state involvement, such as transport of animals over state borders, or human health implications.

The very limited scope of application of the Animal Welfare Act is a major hurdle to implementing consistent animal welfare standards for all species. Indeed, the Animal Welfare Act contains major exemptions and is not applicable to birds, rats and mice used for research, horses not used for research, and any farm animals including, but not limited to, livestock or poultry. Moreover, animal suffering is dealt with in a reactive rather than pre-emptive manner in legislation: there is no provision mandating to provide due care to animals. Inspectors from the APHIS should take action to alleviate the animal's suffering only once a violation of the Act has occurred. Furthermore, the APHIS has less than 100 inspectors for all the industries using animals, such as farming, companion animal breeders, the use of animals in entertainment venues etc. Numerous reports of violations of the Animal Welfare Act have thus come from public reporting. Moreover, APHIS inspectors often recommend how to

²² <https://www.aspc.org/news/top-10-legislative-victories-animals-2014>

²³ <https://www.arlboston.org/legislators-pass-paws-ii-bill-formal-session-ends/>

²⁴ <https://www.theguardian.com/us-news/2018/nov/08/california-animal-welfare-cage-free-eggs-prop-12-passes>

²⁵ David Favre, "Overview of the U.S. Animal Welfare Act", Animal and Legal Historical Centre, 2002 available at: <http://www.animallaw.info/articles/ovusawa.htm>



alleviate an animal's suffering, but rarely take action themselves.

The exclusion of poultry from federal humane slaughter and transport legislation also represents a barrier to improving animal welfare as this means that nine billion of the ten billion land animals killed each year in the US for food have no federal protection from inhumane treatment on farm, during transport and at the slaughterhouse.²⁶

The recent PACT Act adds protection to animals at the federal level. The PACT expanded on the Animal Crush Video Prohibition Act of 2010, which prohibited the making and distribution of such videos, but failed to criminalize the cruelty act perpetrated in the videos. The PACT Act remedies this loophole since it bans the crushing, drowning, suffocating, sexually exploiting, stabbing or burning animals. However, the PACT Act contains wide exemptions, and exempts the animal agricultural and science industries from these anti-cruelty provisions.

The Animal Legal Defense Fund publishes an annual report in which it ranks all states and territories according to the strength of their animal protection laws. Each jurisdiction receives a raw score based on fifteen different categories of animal protection. The categories include general prohibitions, penalties, veterinarian reporting, protective orders, seizures, cross enforcement reporting, sexual assault and fighting. The raw scores of all 56 jurisdictions are then ranked. Other animal protection organisations also invest resources in legislative campaigns at state level, for example, the Humane Society of the United States.²⁷ In 2013 Illinois, Oregon, and California appeared within the top five on both the Animal Legal Defense Fund and Humane Society rankings, and South Dakota appeared within the bottom five on both rankings.²⁸ The latest ranking at the time of writing is for the year 2018.²⁹ In 2018, such three states were still in the top five of both indices^{30,31}

Whilst the past two decades have shown some support for upgrading the seriousness with which the law treats cruelty to animals, an accompanying trend has been for more categories of animals or activities to be excluded from state anti-cruelty provisions.³² The Humane Society's state rankings report of 2013 shows that 34 of the 50 States specifically exclude farm animals from anti-cruelty legal provisions.³³ This number has not changed in 2018.^{34,35}

A state-by-state approach to basic animal protection legislation makes for a long and difficult process to bring legislation into line with current scientific knowledge regarding the needs of animals and/or to introduce more progressive laws, such as ensuring a duty of care for all those with responsibility for

²⁶ <http://www.fsis.usda.gov/wps/portal/fsis/topics/food-safety-education/get-answers/food-safety-fact-sheets/production-and-inspection/key-facts-humane-slaughter/key-facts-humane-slaughter>

²⁷ http://www.humanesociety.org/about/departments/legislation/state_legislation.html

²⁸ <https://blog.humanesociety.org/wp-content/uploads/2018/12/TotalScores-2018-FINAL-1.pdf>

²⁹ <https://aldf.org/project/2018-us-state-rankings/>

³⁰ <https://blog.humanesociety.org/wp-content/uploads/2018/12/TotalScores-2018-FINAL-1.pdf>

³¹ <https://aldf.org/project/2018-us-state-rankings/>

³² Andrew N. Rowan (Editor), Deborah J. Salem (Editor), *The State of the Animals II*, Humane Society Press, 2003

³³ Humane Society of the United States (HSUS), "State Ranking 2013", available at:

<http://www.humanesociety.org/about/state/humane-state-ranking-2013.html>

³⁴ <https://blog.humanesociety.org/wp-content/uploads/2018/12/StateRank-2018-AL-MO-1.pdf>

³⁵ <https://blog.humanesociety.org/wp-content/uploads/2018/12/StateRank-2018-MT-WY-1.pdf>



animals. Some concerns have been expressed about the difficulty of improving state anti-cruelty provisions because of the strength of economic lobbies, for example, agribusiness.³⁶

The websites of federal institutions, the White House, the House of Representatives and the Senate do not contain sections on animal protection, although there is information about the support of individual congressmen and senators for animal protection initiatives. The creation of a Congressional Animal Protection Caucus in 2009 is also a positive step towards improving the welfare of animals across the country.³⁷

The success of some state ballot initiatives introducing a wide variety of animal protection measures including a ban on cock fighting, bear baiting, horse slaughter, canned hunting and intensive farming also demonstrates a certain level of public support for the recognition of animal sentience and protection of animals. Conversely, the failure of some other state ballot initiatives demonstrates that there is still opposition in some areas to increased protection for animals.

There is a very active, well-supported and funded animal protection movement in the country. The iterations of the State index by the Animal Legal Defense Fund shed light on an overall trend of state legislations improving with regards to animal welfare.³⁸

Enforcement mechanisms

All 50 states have included penalties within their anti-cruelty provisions that include fines and prison sentences of varying severity dependent on the type of misdemeanor or felony committed. States define more serious crimes against animals as 'aggravated cruelty' or 'cruelty in the first degree' and award higher penalties for such offences. A sizeable minority of states restrict the more serious penalties to people committing acts against animals such as pets.³⁹

According to the PACT Act 2019, animal cruelty will be punished with fines, felony charges, an up to seven years in prison.

Some states give the judge the ability to order psychiatric counselling for cruelty offenders, to seize abused animals and to prohibit ownership of animals for several years.

Key recommendations

• **There is no general anti-cruelty provision in US federal legislation. At present, the Animal Welfare Act and its associated Animal Welfare Regulations are only applicable to certain species, with the notable exceptions of all birds, farm animals (inclusive of livestock and poultry), mice and rats used for research, and horses not used for research. Similarly, the impact of the Humane Slaughter Act for animal protection is very limited, since poultry and fish are**

³⁶ Corwin R. Kruse, Adding A Bit More Bite: Suggestions For Improving Animal-Protection Laws In Minnesota, William Mitchell Law Review, 2008 available at <http://www.animallaw.info/articles/arus34wmmitchellRev1405.htm>

³⁷ <https://blumenauer.house.gov/congressional-animal-protection-caucus>

³⁸ <https://iheartcats.com/animal-protection-laws-us-state-rank/>

³⁹ Elizabeth R. Springsteen Animal Cruelty Statutes: A State-By-State Analysis, National Agricultural Law Center



excluded from its scope of application. As such, the US Government is urged to remove those exemptions: both pieces of legislation should be applicable to all vertebrates, cephalopods and decapod crustaceans. These animals should also be defined as sentient in the law.

- Anti-cruelty legislation is mainly enacted at the state level in the United States, which creates many discrepancies among state laws. At the state level, all 50 states have animal anti-cruelty legislation, although the extent and scope of the legislation varies between states. Therefore, the US Government is strongly encouraged to amend the Animal Welfare Act to include a legally binding anti-cruelty provision applicable to all animals. Animal sentience should provide the rationale for establishing such anti-cruelty law. In addition, the US Government is encouraged to produce an animal welfare strategy with clear targets, which could serve as a mandatory guideline for states to harmonize their animal welfare legislation.

- Congress should be commended for passing the PACT Act 2019, which makes animal cruelty a federal crime punishable by felony charges. However, this Act exempts from its scope of application the agricultural and scientific research industries. The US Government is strongly encouraged to remove these exemptions from PACT, and to thereafter enact the amended law as soon as possible.

- The federal and state Governments are also encouraged to use the yearly Indices produced by the Animal Legal Defense Fund and the Humane Society of the United States to fill legislative gaps which currently allow animal abuse to occur.

Goal 2: Presence of animal welfare legislation

3. There are laws that apply to animals used in farming including rearing, transport and slaughter

| Analysis of legislation | |
|--|---|
| Ranking | E |
| <p><u>Rearing</u></p> <p>There is no federal legislation to protect farm animals during rearing.⁴⁰ In fact, the Animal Welfare Act explicitly excludes farm animals from its scope of application. There is federal legislation to protect farm animals, with the exception of poultry and fish, during transport and slaughter.</p> <p>Although the general anticruelty legislation in some state legislation applies to this category of animals,</p> | |

⁴⁰ David J. Wolfson, "Beyond the Law: Agribusiness and the Systematic Abuse of Animals Raised for Food or Food Production." *Animal Law* 2, no. 123, 1996.



34 of the 50 states specifically exclude livestock from anti-cruelty provisions.^{41,42} This number has not changed since 2013. Other states have exceptions for practices carried out in accordance with generally accepted husbandry methods.

In response to local advocacy campaigns that highlighted the needs of farm animals, 11 of the 50 states have acted to introduce measures aimed at preventing the use of one or more of the three most egregious confinement systems (crates for veal calves, cages for hens and gestation crates for pigs) with legislation requiring animals to be able to stand up, lie down and turn around.^{43,44}

State initiatives exist with regards to establishing stronger standards for animal welfare. For instance, in 2004, California banned the sale and production of foie gras produced by force-feeding geese and ducks from 2012 (California Health and Safety Code Section 25980-25984). In 2008, California prohibited gestation crates, veal crates and battery cages from 2015 (California Health and Safety Code Section 25990-25994).

Since the API was first published in 2014, Prevent Cruelty California, a coalition of animal welfare organizations, went beyond the 600,000 signatures goal needed to qualify for a farm animal ballot initiative in April 2018.⁴⁵ Proposition 12 was therefore voted on and passed by a large margin of 61% versus 39% on 6 November 2018.⁴⁶ Proposition 12 sets specific minimum space requirements for animals raised for food, thus effectively banning cages for laying hens, sow stalls, and crates for calves. The law also requires that eggs, pork, and veal sold in California meet this same standard. By 2020, breeding sows must be provided with at least 24-square-feet of usable space, calves will have a minimum requirement of 43-square-feet of space in their crates, and egg-laying chickens must be given one square foot of space - with a requirement that chickens must be cage-free by 2022.⁴⁷

Beyond legislation, most livestock production industries have developed and implemented science-based animal care guidelines in response to consumer concerns with regards to animal welfare. Assurances that animals are being raised according to these guidelines are provided through voluntary third-party audits rather than legislation.⁴⁸

Rearing - pigs

There is no ban at the federal level on the use of sow stalls or farrowing crates.

In 2002, Florida introduced the first state law to restrict a production practice on animal welfare grounds by prohibiting gestation crates for pigs from 2008 (Constitution Article X, Section 21). In 2006, Arizona prohibited gestation crates (Arizona Revised Statute Title 13 Chapter 29). Oregon

⁴¹ <https://blog.humanesociety.org/wp-content/uploads/2018/12/State-Rank-2018-AL-MO-1.pdf>

⁴² <https://blog.humanesociety.org/wp-content/uploads/2018/12/State-Rank-2018-MT-WY-1.pdf>

⁴³ Elizabeth R. Rumley, States' Farm Animal Confinement Statutes, National Agricultural Law Center available at <http://nationalaglawcenter.org/state-compilations/farm-animal-welfare/>

⁴⁴ <http://news.softpedia.com/news/The-State-of-Kentucky-in-the-US-Bans-Cruel-Veal-Crates-431637.shtml>

⁴⁵ https://blog.humanesociety.org/2018/04/success-signature-goal-surpassed-in-california-farm-animal-ballot-campaign.html?credit=blog_post_122818_id10283

⁴⁶ <https://preventcrueltyca.com/>

⁴⁷ https://ballotpedia.org/California_Proposition_12,_Farm_Animal_Confinement_Initiative_%282018%29

⁴⁸ <https://www.nal.usda.gov/awic/animal-welfare-audit-and-certification-programs>



prohibited gestation crates from 2012 (Oregon 2007 Laws Chapter 722, 2011 Laws Chapter 436). In 2008, Colorado passed a law to phase out sow stalls over a 10-year period.⁴⁹ In 2009, Michigan prohibited gestation crates (Michigan 2009 House Bill 5127). In 2010, Ohio introduced legislation to phase out the use of gestation crates (Ohio Code 901:12-8-02). Maine prohibited gestation crates from 2011 (Maine Chapter 127 LD 1021). In 2012, Rhode Island prohibited gestation crates (Rhode Island General Laws Title 4 Chapter 4-1.1). Several food companies are also phasing them out voluntarily.⁵⁰

Rearing - broiler chickens

There is no legislation at the federal level limiting stocking density of broiler chickens.

Rearing - egg-laying hens

There is no restriction at the federal level on the confinement of egg-laying hens. Battery cages have been prohibited in Michigan since 2009 (Michigan 2009 House Bill 5127), Oregon since 2012 (Oregon 2007 Laws Chapter 722, 2011 Laws Chapter 436), California since 2015 (California Health and Safety Code Section 25990-25994). In 2010, Ohio introduced legislation imposing a moratorium on the construction of new battery-cage egg facilities (Ohio Code 901:12-9-03). In 2016, Massachusetts residents approved a referendum outlawing battery cages for hens.⁵¹ More recently, Rhode Island and Washington have also banned these cages in 2018 and 2019 respectively.⁵² In Michigan, Senate Bill 0174 passed in November 2019, making it illegal to produce and sell eggs from cage operations after the end of 2024.⁵³ This legislation also requires enrichments vital to the birds' well-being, such as dust-bathing areas, perches and nest boxes.

Rearing - dairy cattle and calves

There is no federal legislation banning veal crates in the US. Arizona prohibited veal crates in 2006 (Arizona Revised Statute Title 13 Chapter 29), Michigan in 2009 (Michigan 2009 House Bill 5127), Ohio in 2010 (Ohio Code 901:12-5-03), Maine in 2011 (Maine Chapter 127 LD 1021), Colorado in 2012 (Colorado Revised Statutes Title 35 Chapter 50). In 2012, Rhode Island prohibited veal crates and the tail-docking of cattle (Rhode Island General Laws Title 4 Chapter 4-1.1). In 2014, Kentucky voted to prohibit veal crates from 2018. More recently, a ban on veal crates and dairy cow tail-docking took effect in 2018 in Ohio.⁵⁴

Transport

In relation to transport, the Twenty-Eight Hour Law of 1906⁵⁵ was amended in 1994 and covers the

⁴⁹ <http://veterinarynews.dvm360.com/colorado-governor-sign-ban-veal-crates-sow-stalls>

⁵⁰ <https://www.civf.com/farmed-animals/pigs/welfare-issues/>

⁵¹ <https://www.ecori.org/government/2017/4/13/one-farm-stands-in-way-of-ban-on-battery-cages>

⁵² https://blog.humanesociety.org/2018/07/victory-rhode-island-bans-battery-cages-for-egg-laying-hens.html?credit=blog_post_122818_id10283

⁵³ <http://www.legislature.mi.gov/documents/2019-2020/publicact/pdf/2019-PA-0132.pdf>

⁵⁴ <https://blog.humanesociety.org/2018/01/ohios-long-awaited-reforms-veal-calves-dairy-cows-kick.html>

⁵⁵ <https://www.govinfo.gov/content/pkg/USCODE-2011-title49/pdf/USCODE-2011-title49-subtitleX-chap805-sec80502.pdf>



interstate transport of animals for sale or slaughter. The law requires resting, feeding and watering periods every 28 hours (US Code Title 48 Subtitle X (80502)).

Slaughter

The Humane Slaughter Act 1978 requires cattle, calves, horses, mules, sheep and swine to be handled and slaughtered in a humane way by rendering the animals 'insensible to pain by a single blow or gunshot or an electrical, chemical or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut', with exemptions for religious slaughter (US Code Title 7 Chapter 48). Poultry and fish are not included in this protection.

The Federal Meat Inspection Act 1906⁵⁶ provides for inspection of handling and slaughter methods for cattle, calves, horses, mules, sheep, swine and goats to ensure compliance with the Humane Slaughter Act. The federal Food Safety and Inspection Service carries out inspections.⁵⁷

Domestic horse slaughterhouses ceased operating in 2007 and a move to resume horse slaughtering was blocked by the Obama administration in January 2014.⁵⁸ However, horses can still be slaughtered if they are not for human consumption.⁵⁹ Horses are also transported to Mexico and Canada for slaughter. In 1996, Congress passed the Commercial Transportation of Equines for Slaughter Act⁶⁰ instituting certain welfare measures, for example, ensuring that vehicles used are 'designed, constructed and maintained in a manner to protect the health and well-being' of the animals. The Act has since been amended to prohibit the use of double-deck trailers.

In 2009, the slaughter for food of 'downed' cows, who are too sick, weak or injured to stand, was banned.⁶¹ However, if a cow walks a few steps at the slaughterhouse, they can be slaughtered for human consumption on a case-by-case basis. Legislation has not been introduced to spare the suffering of 'downed' animals of other species.

At the state level, as of 2018, 22 states have humane slaughter legislation.^{62,63}

Analysis

The lack of federal legislation and inconsistent provisions of state legislation to protect the welfare of all farm animals during rearing, transport and slaughter present a barrier to improving animal welfare.

⁵⁶ <https://www.fsis.usda.gov/wps/portal/fsis/topics/rulemaking/federal-meat-inspection-act>

⁵⁷ <http://www.fsis.usda.gov/wps/portal/fsis/topics/food-safety-education/get-answers/food-safety-fact-sheets/production-and-inspection/key-facts-humane-slaughter/key-facts-humane-slaughter>

⁵⁸ http://www.humanesociety.org/news/news_briefs/2014/03/whitehouse-recommends-horse-slaughter-funding-removal-from-budget-030514.html#.UyyBuf1Byf0

⁵⁹ <https://americanwildhorsecampaign.org/media/nj-home-last-horse-slaughterhouse-us>

⁶⁰ <https://www.federalregister.gov/documents/2011/09/07/2011-22762/commercial-transportation-of-equines-to-slaughter>

⁶¹ <https://www.federalregister.gov/articles/2009/03/18/E9-5987/requirements-for-the-disposition-of-cattle-that-become-non-ambulatory-disabled-following-ante-mortem>

⁶² <https://blog.humanesociety.org/wp-content/uploads/2018/12/State-Rank-2018-AL-MO-1.pdf>

⁶³ <https://blog.humanesociety.org/wp-content/uploads/2018/12/State-Rank-2018-MT-WY-1.pdf>



It should be noted that the United States Department of Agriculture confirmed in 2006 that the Twenty-Eight Hour Law was never intended to be applicable to poultry and that it had no intention of changing this.⁶⁴ The enforcement of the Twenty-Eight Hour Law has been described as problematic, as there are no mechanisms under the auspices of either the United States Department of Agriculture or the Department of Justice for monitoring truck transport.⁶⁵ Enforcement of this law does not feature in the Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) Strategic Plan.⁶⁶

As at January 2012, there were approximately 800 slaughter establishments, killing approximately 1.50 million farm animals, inspected by the Food Safety and Inspection Service (FSIS).⁶⁷ The FSIS does not provide any updated number of slaughter establishments as of May 2019.

Poultry are excluded from the Humane Methods of Slaughter Act, and according to the United States Department of Agriculture, in January 2012, there were approximately 300 poultry slaughter establishments slaughtering approximately nine billion birds a year.⁶⁸ Whilst poultry are excluded from the humane slaughter legislation, the Food Safety and Inspection Service advises that is responsible for ensuring compliance with 'poultry good commercial practices' under the Poultry Products Inspection Act.^{69,70}

USDA inspectors in slaughterhouses have the power to stop the slaughtering line on the spot if they observe inhumane practices. The United States Department of Agriculture has come under severe criticism for failures to enforce the Humane Methods of Slaughter Act, for example, in Congressional Hearings that took place in 2008 following an undercover investigation of a slaughterhouse in California that led to the largest meat recall in US history.⁷¹

In 2013, the Food Safety and Inspection Service produced its first Compliance Guide for a Systematic Approach to the Humane Handling of Livestock, containing a sample humane handling plan and assessment tool for slaughterhouses.⁷² Earlier that year, the Service had been petitioned to do more to decrease the suffering of animals at slaughter by the Animal Welfare Institute, that had published a review of 1,000 violations of humane slaughter legislation in slaughterhouses obtained using the

⁶⁴ https://www.beefmagazine.com/28_Hour_Rule

⁶⁵ M.Engebretson, Chapter 9: North America, in *Long Distance Transport and Welfare of Farm Animals*, edited by M.C. Appleby et al, WSPA, 2008.

⁶⁶ https://www.aphis.usda.gov/about_aphis/downloads/aphisstrategic-plan.pdf

⁶⁷ <https://www.fsis.usda.gov/wps/portal/fsis/topics/food-safety-education/get-answers/food-safety-fact-sheets/production-and-inspection/key-facts-humane-slaughter/key-facts-humane-slaughter>

⁶⁸ <http://www.fsis.usda.gov/wps/portal/fsis/topics/food-safety-education/get-answers/food-safety-fact-sheets/production-and-inspection/key-facts-humane-slaughter/key-facts-humane-slaughter>

⁶⁹ <http://www.fsis.usda.gov/wps/portal/fsis/topics/food-safety-education/get-answers/food-safety-fact-sheets/production-and-inspection/key-facts-humane-slaughter/key-facts-humane-slaughter>

⁷⁰ FSIS Compliance Guide for a Systematic Approach to the Humane Handling of Livestock, October 2013 available at: <http://www.fsis.usda.gov/wps/wcm/connect/da6cb63d-5818-4999-84f1-72e6dabb9501/Comp-Guide-Systematic-Approach-Humane-Handling-Livestock.pdf?MOD=AJPERES>

⁷¹ Tadlock Cowan, *Humane Treatment of Farm Animals: Overview and Issues*, Congressional Research Service, May 9, 2011 available at: <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/RS21978.pdf>

⁷² FSIS Compliance Guide for a Systematic Approach to the Humane Handling of Livestock, October 2013 available at: <http://www.fsis.usda.gov/wps/wcm/connect/da6cb63d-5818-4999-84f1-72e6dabb9501/Comp-Guide-Systematic-Approach-Humane-Handling-Livestock.pdf?MOD=AJPERES>



Freedom of Information Act. The review found that since the United States Department of Agriculture's 2004 recommendation that all slaughter establishments take a systematic approach to humane slaughter as the best means of ensuring compliance with legislation, only 35% of federally inspected plants, and very few state-inspected plants, had developed such plans.⁷³

In 2013, an audit by the United States Department of Agriculture's Office of the Inspector General of swine slaughter plants found that "FSIS [Food Safety and Inspection Service] inspectors did not take appropriate enforcement actions at 8 of the 30 swine slaughter plants we visited for violations of the Humane Method of Slaughter Act. We reviewed 158 humane handling noncompliance records (violations) issued to the 30 plants and found 10 instances of egregious violations where inspectors did not issue suspensions. As a result, the plants did not improve their slaughter practices, and FSIS could not ensure humane handling of swine."⁷⁴

Proposition 12 passed in California has been labelled as the 'strongest law in the world to protect animals from extreme confinement'.⁷⁵ Both the campaign by the animal welfare coalition Prevent Cruelty California and the passage of the law contribute to mainstreaming the welfare of farm animals. It is hoped that this legislation will pave the way for similar laws to be passed in other states.

The introduction of farm animal protection during rearing at state-level has led to challenges, both at state and federal level. A state-by-state approach to animal welfare legislation creates disparate standards of welfare, which do not match the demand from consumers for higher welfare products nor international standards on animal welfare. The need for federal leadership and legislation is apparent in this respect.

Another structural barrier to improving animal welfare within slaughterhouses is that whilst federal legislation empowers inspectors to stop the slaughter line if they see inhumane practices, the United States Department of Agriculture inspectors are stationed within slaughterhouses and paid via the slaughterhouse companies in which they are embedded. This might make it difficult for them to take action if they see violations.⁷⁶ Audits and congressional hearings have exposed lax enforcement of the Humane Methods of Slaughter Act by inspectors.⁷⁷

Furthermore, there exist economic barriers to improving welfare standards for farm animals in the US. Agricultural lobbies remain strong in the US and exert influence over political considerations, legislations being debated and consumer information.⁷⁸ For instance, the 'Big Ag' lobby supports the Animal Enterprise Terrorism Act⁷⁹ which may restrict activity of animal protection advocates. At state-

⁷³ <http://www.prnewswire.com/news-releases/animal-welfare-institute-petitions-usda-to-make-slaughter-more-humane-210073401.html>

⁷⁴ <http://www.usda.gov/oig/webdocs/24601-0001-41.pdf>

⁷⁵ <https://preventcrueltyca.com/>

⁷⁶ Andrew N. Rowan and Beth Rosen, Progress in Legislation: Measurement and Assessment in: *The State of the Animals III*, Deborah J. Salem (Editor), Andrew N. Rowan (Editor), Humane Society Press, 2005.

⁷⁷ Tadlock Cowan, Humane Treatment of Farm Animals: Overview and Issues, Congressional Research Service, May 9, 2011 available at: <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/RS21978.pdf>

⁷⁸ <https://www.forbes.com/sites/nancyhuehnergath/2016/05/05/big-ag-bullies-and-lobbies-to-keep-americans-in-the-dark/#1d79f376502c>

⁷⁹ <https://www.govtrack.us/congress/bills/109/s3880/text>



level, so-called ag-gag legislation also presents a barrier to improving animal welfare by preventing exposure of animal cruelty involving farm animals. Undercover investigations have played a major role in the US in highlighting the need for legislation, for example, with respect to the issue of “downed” animals in transport and slaughter.⁸⁰ Ag-gag legislation is being introduced by some states to prevent undercover investigations and whistle blowing, for example, by banning filming or photography of factory farms or concentrated animal feeding operations (intensive farming systems).⁸¹ 2012 saw both Iowa and Utah enacting joining Kansas, Montana and North Dakota.⁸² Moves to introduce such legislation have also been defeated in some states.⁸³—As of March 2019, seven states – Alabama, Arkansas, Iowa, Missouri, Montana, North Carolina, North Dakota – have implemented ag-gag rules, whereby farm whistleblowing is criminalized.⁸⁴ An ag-gag litigation is pending in Kansas. By contrast, ag-gag rules have been ruled unconstitutional in three states – Idaho, Wyoming, Utah. Ag-gag rules have been defeated in several states, such as Texas in 2019.⁸⁵

A development in favor of animal welfare is that, in the absence of high quality comprehensive federal legislation on transport and slaughter, US businesses and industries in some areas have introduced their own standards.⁸⁶ An increasing number of companies and industries have also introduced their own private standards on husbandry; for example, McDonald’s,⁸⁷ United Egg Producers⁸⁸ and Smithfield.⁸⁹ Independent assurance schemes have also been established, for example, Certified Humane,⁹⁰ American Humane Certified,⁹¹ Animal Welfare Approved⁹² and the Global Animal Partnership.⁹³

In several states, farm animal protection legislation was introduced following state ballot initiatives with public votes, showing that there is some public opinion in some areas in support of stronger legislative measures. Proposition 12 in California was for instance passed by a state ballot.

⁸⁰ In 2008 an HSUS investigation of a slaughter plant in Chino, California uncovered severe animal abuse and resulted in the largest meat recall in U.S. history. See: Tadlock Cowan, Humane Treatment of Farm Animals: Overview and Issues, Congressional Research Service, May 9, 2011 available at: <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/RS21978.pdf>

⁸¹ http://www.nytimes.com/2013/04/07/us/taping-of-farm-cruelty-is-becoming-the-crime.html?pagewanted=all&_r=1&

⁸² https://www.huffpost.com/entry/animal-cruelty-laws-2012-aldf_n_2316950

⁸³ <http://www.foodsafetynews.com/2013/07/2013-legislative-season-ends-with-ag-gag-bills-defeated-in-11-states/#.Uy2l5v1Byf0>

⁸⁴ <https://www.aspc.org/animal-protection/public-policy/what-ag-gag-legislation#Ag-Gag%20by%20State>

⁸⁵ <https://aldf.org/article/texas-urges-texas-house-of-representatives-to-oppose-ag-gag-bill/>

⁸⁶ M.Engelbreton, Chapter 9: North America, in *Long Distance Transport and Welfare of Farm Animals*, edited by M.C. Appleby et al, WSPA, 2008.

⁸⁷ Keith Kenny, McDonald’s: Progressing Global Standards in Animal Welfare, in *Animals, Ethics and Trade* edited by Jacky Turner and Joyce D’Silva, Earthscan, 2006

⁸⁸ <http://www.uepcertified.com/pdf/2010-uep-animal-welfare-guidelines.pdf>

⁸⁹ <https://www.smithfieldfoods.com/sustainability/animal-care>

⁹⁰ <http://certifiedhumane.org>

⁹¹ <http://www.humaneheartland.org>

⁹² <http://animalwelfareapproved.org>

⁹³ <http://www.globalanimalpartnership.org>



Enforcement mechanisms

At federal level, there are enforcement mechanisms related to the Humane Methods of Slaughter Act. Slaughterhouses violating the legislation face one or more penalties, including suspension of operations.

The enforcement of the Animal Welfare Act is monitored by inspectors from the Animal Care unit of APHIS. The Food Safety and Inspection Service deals with inspection for meat products, checking whether these products are safe for human consumption.⁹⁴ The United States Department of Agriculture used to publish a quarterly humane handling report however, no report is available past 2013.⁹⁵

There are enforcement mechanisms in those states which have introduced restrictions on the use of extreme confinement rearing systems. For instance, Proposition 12 recently adopted in California includes an enforcement mechanism. The State Department of Food and Agriculture, alongside its Department of Public Health, will now be charged with overseeing the regulations and violators could face misdemeanor charges and fines.

Key recommendations

- **There is limited federal legislation applicable to farm animals, since the Animal Welfare Act does not apply to farm animals. The Humane Slaughter Act does not apply to poultry or fish and covers only transport and slaughter. As such, the US Government is urged to introduce comprehensive federal legislation to protect all farm animals during rearing, transport and slaughter. Moreover, the Humane Slaughter Act should be amended to cover the transport and slaughter of poultry and fish.**

- **The state of California should be commended for having passed Proposition 12, which prohibits the extreme confinement of egg-laying hens, sows and calves. Building upon the example of California, the US Government is urged to ban the worst forms of confinement for farm animals. In particular, the use of farrowing crates, sow stalls, and cages should be banned. The stocking density of broiler chickens should also be reduced to a maximum of 30 kg/m² or lower. Surgical operations, such as piglet mutilations and beak trimming for egg-laying hens, should not be performed except under anesthesia and with analgesics.**

⁹⁴ https://www.fsis.usda.gov/wps/portal/fsis/topics/regulatory-compliance/haccp/haccp-based-inspection-models-project/himp-study-plans-resources/poultry-slaughter-inspection/lut/p/a1/jZBfC4lwEMA_Sx9gbkZIPYoQZamEVLaXWHOpMd3YZICfvkU9RGR593Dc3e_-QgxziFtyqUtiatES_vCxfoBr5DvTEEXIsbpl3MybR4mLxq4F9u9AOnVmFtiu02UYokniDqzvkQD9q48GDBirOlxiCUXFajbk4B5RSiVlwOORLPCJrRk9HE3aETBuAZSibONWVKxuJNCmK65ActlqoIgwNaJMwlyKjht1BZqTrqwMU2-N4A7in_ul3ifw5YFPoP9Dstnkt1Vwyhbl6A7BabEv/?1dmy&urile=wcm%3apath%3a%2FFSIS-Content%2Finternet%2Fmain%2Ftopics%2Finspection

⁹⁵ <http://www.fsis.usda.gov/wps/portal/fsis/topics/regulatory-compliance/regulatory-enforcement/humane-handling-quarterly-reports>

- The US Government is urged to repeal all “agg-gag” rules, currently implemented in seven states, which prevent the recording of farm animal operations, specifically the recording of any animal abuses on farms.
- At present, US legislation still allows the slaughter of non-stunned animals. The US Government is urged to mandate the humane slaughter of all farm animals. Animals should be instantaneously rendered unconscious and insensible to pain and distress prior to slaughter. Animals should be unconscious before being bled, and no further processing should occur until irreversible loss of consciousness is confirmed. No animal should be forced to witness other animals being slaughtered as this is inherently distressing.
- Due to the significant animal welfare concerns associated with long distance transport, the US Government is strongly encouraged to ban the export of live animals for long distances (i.e. over eight hours) and replace it with a meat only trade. Long distance transport is inherently cruel as it involves chronic stress for all animals and, for some species and modes of transport, it may involve overpopulation, exhaustion, excess heat or cold, inadequate ventilation and/or access to food and water, leading to disease, pain, injury or death.

4. There are laws that apply to animals in captivity

| Analysis of the legislation | |
|---|---|
| Ranking | D |
| <p><u>Zoos</u></p> <p>The Animal Welfare Act applies to this category of animals since its aim is ‘to ensure that animals intended [...] for exhibition purposes [...] are provided humane care and treatment’. The Animal Welfare Act regulates the keeping of mammals exhibited to the public and covers zoos, aquariums, circuses and animal dealers. The Act requires exhibitors and dealers of wild animals to be licensed (Section 2133) and to meet minimum standards of care and treatment, including adequate housing, handling, sanitation, nutrition, water, veterinary care, and protection from extreme weather and temperatures (Section 2143). A ‘dealer’ is defined as any person who buys, sells, negotiate the purchase of or transport ‘any dog or other animal whether alive or dead for research, teaching, exhibition or use as a pet’ or ‘any dog for hunting, security or breeding purposes’. There is reference to animals having sufficient space to perform normal postural movements. The license is delivered by the US Secretary of Agriculture or another representative from USDA.</p> <p>The Act and its associated Animal Welfare Regulations contain specific guidelines for the keeping of some species, for example, for non-human primates and marine mammals. With respect to marine mammals, facilities must test the water weekly, provide a minimum tank size dependent on the size and types of animals housed and ensure that animals are kept with a compatible animal of the same</p> | |



or similar species.

Another federal legislation that is relevant for captive wild animals is the 1973 Endangered Species Act (ESA), which protects fish, mammals, birds and plants listed as threatened or endangered in the country.⁹⁶ Originally intended to protect animals living in the wild, the ESA was applied during a 2018 lawsuit to captive animals. In 2014, the Animal Legal Defense Fund successfully brought a lawsuit under the ESA against a roadside zoo, the Cricket Hollow Animal Park located in Manchester, Iowa, that was mistreating protected animals. In 2018, the Eighth Circuit court issued a unanimous decision upholding a district court's 2016 ruling that the roadside zoo violated the ESA by providing substandard care for the four tigers and three lemurs who were the subjects of the lawsuit.⁹⁷

Legislations vary greatly at the state level with regards to the protection of wild animals in captivity. The general anti-cruelty legislation at state level applies to this category of animals in some states, but in others, animals which are kept in zoos and circuses may be excluded.

Private keeping of wild animals

As of May 2016, 18 states have enacted a ban on the private ownership of exotic animals – non-domesticated felines, wolves, bears, reptiles, non-human primates.⁹⁸ Other states only have a partial ban, allowing ownership of some exotic animals. 14 states require the 'owner' of the exotic animal to obtain a license or permit or to register the animal with state or local authorities to privately possess the animal.

At the time of writing, four states (North Carolina, Alabama, Nevada, Wisconsin) still lack legislation with regards to the private possession of dangerous wild animals. The latest state to outlaw the keeping of wild and exotic animals as pets was South Carolina. In 2017, the state banned the possession of big cats, non-native bears and great apes (Chapter 2, Title 47 of 1976 Code of Laws of South Carolina).⁹⁹

As a response, there have been calls for enacting a Big Cat Public Safety Act, which would create a national framework regulating the private possession of dangerous wild animals as well as prohibit public contact with certain species.¹⁰⁰ As of now, the USDA Guidelines states that contact with big cats between eight to 12 weeks of age is allowed, however, any interaction with adults is prohibited.¹⁰¹ In 2014, the state of New York outlawed direct contact between the public and big cats.¹⁰²

Fur farming

⁹⁶ <https://www.fws.gov/endangered/laws/policies/>

⁹⁷ <https://aldf.org/issue/roadside-zoos/>

⁹⁸ <https://www.bornfreeusa.org/campaigns/animals-in-captivity/summary-state-laws-exotic-animals/>

⁹⁹ https://www.scstatehouse.gov/sess122_2017-2018/bills/3531.htm

¹⁰⁰ <https://bigcatrescue.org/big-catact/>

¹⁰¹ <https://www.onegreenplanet.org/animalsandnature/ban-contact-with-captive-big-cats/>

¹⁰² <https://www.onegreenplanet.org/news/new-york-bans-selfies-with-captive-big-cats/>



Animals farmed for fur in the USA fall into a legislative loophole as they are not considered wild animals, nor domestic either. These animals do not benefit from the protections of the Animal Welfare Act nor the Humane Slaughter Act. They are also exempted from most state anti-cruelty laws.¹⁰³ There is no national legislation with regards to how such animals should be housed or cared for. Moreover, most fur farms operate without licensing, thus allowing farms to operate off the radar of both agriculture and wildlife agencies. The only federal legislation directly applicable to animals farmed for fur is the 2011 Truth in Fur Labelling Act,¹⁰⁴ requiring all products containing real fur to be labelled as such.

There are some state-wide initiatives showing progress for the welfare of animals farmed for fur. In 2008, the state of New York banned the practice of anal and genital electrocution for fur.¹⁰⁵ However, there is no state or federal oversight. Furthermore, several Californian cities have banned the sale of fur. In 2019, Los Angeles became the largest city in the country to prohibit the sale of fur, following San Francisco and Berkeley – though these ordinances exempt fur obtained lawfully under a state trapping license.¹⁰⁶ In March 2019, a local law was introduced to amend the administrative code of the city of New York to prohibit the sale of fur apparel.¹⁰⁷ In October 2019, California became the first state to ban the sale of fur products, with a ban entering into force on 1 January 2023.¹⁰⁸

Analysis

The Animal Welfare Act is limited since it does not cover many animals commonly found in zoos, for example, it excludes all birds and cold-blooded animals. The Act also does not cover collections of animals that are not exhibited to the public, for example, private collections of wild animals who are widespread in the country or privately-owned wild animals kept as pets.

Furthermore, the minimum requirements of the Animal Welfare Act are insufficient to provide for the physiological and ethological needs of many wild animals kept in captivity and are out of step with modern animal welfare science. The very basic requirements of the Animal Welfare Act pay no regard to species-specific requirements identified by animal welfare science. Notably, the Animal Welfare Act does not provide for environmental enhancement of housing to promote psychological well-being of animals other than non-human primates. The Act only requires that enclosures for mammals other than dogs, cats, rabbits, hamsters, guinea pigs, non-human primates and marine mammals 'shall be constructed and maintained so as to provide sufficient space to allow each animal to make normal postural and social adjustments with adequate freedom of movement', advising that inadequate space may be indicated by evidence of malnutrition, poor condition, debility, stress, or abnormal behavior patterns. Thus, in accordance with the Act, a bottlenose dolphin can be legally confined to a space measuring no more than 24 x 24 feet with a depth of 6 feet, whereas in the wild this mammal might swim up to 40 miles a day. The reference to 'sufficient space to perform normal postural movements'

¹⁰³ <https://www.care2.com/causes/why-are-u-s-fur-farms-escaping-scrutiny.html>

¹⁰⁴ <https://www.govtrack.us/congress/bills/111/hr2480>

¹⁰⁵ <https://www.peta.org/blog/new-york-bans-anal-electrocution/>

¹⁰⁶ <https://aldf.org/project/banning-the-sale-of-fur-in-new-york-city/>

¹⁰⁷ <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3903503&GUID=EBE55293-8737-4620-945A-308ADC3A23DC&Options=ID|Text|&Search=1476>

¹⁰⁸ <https://edition.cnn.com/2019/10/13/us/california-bans-fur-products-trnd/index.html>



is very vague: for instance, it still allows for tigers to be kept in cages just larger than their body length so that they can lie down and stand.

There are also criticisms as to the enforceability of the Animal Welfare Act. For example, under the 1985 amendments, all facilities were required to provide housing conditions taking into account the psychological well-being of non-human primates; but as the federal agency did not establish what these conditions should be, the facilities were left to make their own arrangements, leading to legal challenges by those concerned for animal welfare.¹⁰⁹ Only 14 years later, in 1999, the United States Department of Agriculture's Animal and Plant Health Inspection Service produced a proposed policy.¹¹⁰ The Animal Welfare Act has granted licenses to approximately 10,300 facilities, which makes inspections of all these facilities challenging.¹¹¹

Wild animals in private collections or kept as pets do not have any federal protection to promote their welfare or to prevent cruelty, abuse and neglect. Although some state anti-cruelty provisions provide some protection, these provisions would tend not to provide for fulfilment of behavioral needs to promote psychological well-being. In fact, many roadside zoos have been described as presenting terrible conditions for animals – where animals live in uncleaned and tiny enclosures, lack enrichment, are fed an inadequate diet and are denied medical care.¹¹² Roadside zoos may also encourage dangerous interactions between animals and visitors, such as bottle-feeding tiger cubs. As of 2016, 77 facilities allow human interaction with endangered wildlife.¹¹³ The current licensing system under the Animal Welfare Act makes it relatively easy for facilities that are violating the Act to remain licensed.¹¹⁴ As such, the Animal Legal Defense Fund is encouraging the public to document potential animal welfare violations occurring at roadside zoos.¹¹⁵

In 2012, a coalition of animal protection organizations – the Humane Society of the United States, the World Wildlife Fund, Detroit Zoological Society, the International Fund for Animal Welfare, Born Free USA, Big Cat Rescue, Fund for Animals and Global Federation of Animal Sanctuaries – filed a legal petition with the US Government to prohibit public contact with big cats, bears and non-human primates.¹¹⁶ The USDA responded in 2016 and explicitly stated that exhibitors violate the Animal Welfare Act by allowing members of the public to handle or feed infant exotic cats such as tigers, lions, cheetahs, jaguars or leopards.¹¹⁷ However, such a document offers guidance only, rather than legally binding provisions.

The Big Cat Public Safety Act appears necessary, especially as human-wildlife conflicts continue to occur in facilities where dangerous wild animals are privately owned in non-accredited facilities. For

¹⁰⁹ David Favre, "Overview of the U.S. Animal Welfare Act", Animal and Legal Historical Centre, 2002 available at: <http://www.animallaw.info/articles/ovusawa.htm>

¹¹⁰ <https://www.animallaw.info/article/overview-us-animal-welfare-act>

¹¹¹ https://www.aphis.usda.gov/animal_welfare/downloads/List-of-Active-Licensees-and-Registrants.pdf

¹¹² <https://aldf.org/issue/roadside-zoos/>

¹¹³ <https://www.theguardian.com/sustainable-business/2016/nov/27/roadside-zoos-america-animal-cruelty-welfare>

¹¹⁴ https://aldf.org/focus_area/captive-animals/

¹¹⁵ <https://aldf.org/wp-content/uploads/2018/07/Roadside-Zoo-ChecklistWorksheet.pdf>

¹¹⁶ <https://www.humanesociety.org/news/united-states-department-agriculture-cracks-down-abuse-tiger-cubs-roadside-menageries>

¹¹⁷ https://www.aphis.usda.gov/publications/animal_welfare/2016/tech-neonatal-nondomestic-cats.pdf



instance, a 22-year old intern was killed by a lion in North Carolina in January 2019.¹¹⁸ Since 1990, 24 people have been killed by captive big cats in the United States.¹¹⁹

With regards to fur farming, the lack of federal legislation with regards to the treatment of animals exploited for fur makes it legal for the worst conditions of production to be used. 100 million animals are killed for fur each year, among whom 85% come from factory farms, with the rest being trapped in the wild.¹²⁰

Enforcement mechanisms

The United States Department of Agriculture has delegated responsibility for enforcing the Animal Welfare Act to the Animal and Plant Health Inspection Service (APHIS), under the US Department of Agriculture. The APHIS has two divisions, the Animal Care and the Veterinary Services. Animal Care establishes standards of humane care and treatment and monitors compliance with the Act through inspections, education and cooperative efforts. The Service issues licenses to commercial animal breeders, dealers, brokers, transportation companies and exhibitors once compliance with all standards and regulations is demonstrated. To ensure continued compliance, inspectors regularly make unannounced inspections. If deficiencies are found, they are documented, and the facility is instructed to correct the issues within a given timeframe. Legal action is taken if the issues are not resolved. Penalties include cease-and-desist orders, fines, and license suspensions or revocations.¹²¹

The Animal Welfare Act also lacks a citizen suit provision that would enable any concerned citizen to challenge the conditions under which animals are kept in captivity, although individuals and animal protection organizations have attempted to introduce this.¹²²

However, since there is no federal legislation applicable to ensuring welfare standards for animals raised for fur, there are no enforcement mechanisms associated with this category of animals.

Key recommendations

• **The main federal piece of legislation addressing the welfare of captive wild animals is the Animal Welfare Act. However, this Act is very limited in its applicability, since it does not cover many animals commonly found in zoos. Notably, it excludes birds and cold-blooded animals. In addition, the Act does not cover private collections of wild animals not exhibited to the public, or privately-owned wild animals kept as pets. At present, there is significant disparity across state legislation with regards to the private ownership of wild animals. Moreover, for animals covered by legislation, the Animal Welfare Act only offers basic provisions and minimum**

¹¹⁸ https://blog.humanesociety.org/2019/01/north-carolina-lion-attacks-woman-no-laws-private-ownership-dangerous-wild-animals.html?credit=blog_post_010319_id10314

¹¹⁹ https://blog.humanesociety.org/2019/01/north-carolina-lion-attacks-woman-no-laws-private-ownership-dangerous-wild-animals.html?credit=blog_post_010319_id10314

¹²⁰ <https://www.humanesociety.org/all-our-fights/going-fur-free>

¹²¹ http://www.aphis.usda.gov/publications/animal_welfare/2012/animal_welfare_act_english.pdf

¹²² Kali S. Grech, Detailed Discussion of the Laws Affecting Zoos, Michigan State University College of Law, 2004, available at: <http://www.animallaw.info/articles/dduszoo.htm>

enforceable standards with regards to the care and treatment of wild animals. As such, the US Government is encouraged to expand the scope of application of the Animal Welfare Act to all wild animals kept in captivity, including animals in zoos and privately-owned animals. Moreover, the US Government is strongly encouraged to adopt additional Animal Welfare Regulations addressing species-specific welfare needs for all species held in captivity.

- It is positive for animal welfare that all exhibitors and dealers of wild animals must be registered and licensed by the USDA. However, such licenses are not species-specific, and not all dangerous species are regulated. USDA licenses are automatically renewed every year, even when a licensee has had serious and/or repeated violations of the Animal Welfare Act. Therefore, the US Government is urged to stop the automatic renewal of licenses, and instead require all facilities, exhibitors and dealers to re-apply for their license each year, provided that they meet adequate animal welfare standards. Moreover, the USDA is strongly encouraged to make the records of all inspections of zoo and captive facilities publicly available.
- The US Government is encouraged to undertake a review of the exotic pet trade, including the welfare of wild animals kept as exotic pets in domestic environments and in their supply chains from source to marketplace. This review should consider the implementation of a Positive List, specifying which species are deemed suitable to be kept as pets, based on clear criteria including animal welfare and other relevant concerns.
- In addition, the US Government is highly encouraged to adopt the Big Cat Public Safety Act, which prohibits the ownership of dangerous big cats and makes it illegal for exhibitors to allow public contact with their cubs.
- Building upon recent legislative changes which have restricted the sale of fur, with California being the first state to fully outlaw the sale of fur products, the US Government is strongly encouraged to enact a federal ban on fur farming for all animals. Fur farming is inherently cruel and causes pain, distress and suffering to animals.

5. There are laws that apply to companion animals

| Analysis of the legislation | |
|--|---|
| Ranking | F |
| <p>Care of companion animals</p> <p>The Animal Welfare Act and its regulations apply to some issues concerning the commercial use of companion animal. The provisions of the Act do not extend to private pet owners. Breeders, dealers and exhibitors are covered by the Act.</p> | |



The Animal Welfare Act requires a USDA license for anyone who (for compensation or for profit) buys, sells (including adoptions), or negotiates the sale of dogs for research, exhibition, or use as a pet; or for hunting, breeding, or security purposes at the wholesale level. Additionally, the Animal Welfare Act restricts the import of dogs for purposes of resale, prohibits dog-fighting ventures, and provides protections to prevent the theft of pet dogs.

However, this Act does not extend to small retail breeders and pet shops selling domestic animals to the public. Notably, when the buyer, seller and the dogs are physically in the same place, retail sales (including adoptions) do not require a USDA license. Similarly, a commercial breeder (retail or wholesale) with up to five breeding females can sell the offspring of pets for exhibitions.¹²³

In 2013, the scope of the Animal Welfare Act was extended to include breeders selling pets online.¹²⁴ Dog, cat and rabbit breeders with more than four breeding females selling animals online, by phone or by mail need to apply for a USDA permit, pay an annual licensing fee and agree to random inspections.¹²⁵

The Animal Welfare Act requires government bodies, state or municipal pounds or shelters, private shelters, and federal research facilities to hold dogs or cats for not less than five days to enable owners to reclaim their lost pets or to allow shelters an opportunity to adopt out individual animals before selling a dog or cat to a dealer. Dealers are prohibited from selling a dog or cat on within five business days after they acquire it.

The Dog and Cat Protection Act of 2000¹²⁶ makes it unlawful to import into, or export from, the US any dog or cat fur product, or to engage in interstate commerce in any dog or cat fur product.

In 2006, in the wake of Hurricane Katrina, the Pets Evacuation and Transportation Standards Act¹²⁷ was introduced to authorize federal disaster assistance in the 'rescue, care, shelter and essential needs' of 'household pets and service animals.' The Act includes authorization for the Director of the Federal Emergency Management Service (FEMA) to develop plans that take into account the needs of individuals with pets and service animals and to provide funding to States and local authorities for animal emergency preparedness purposes.

There is no federal law relating to the treatment of pets by their owners or others. Most companion animal protection laws are enacted at the state level. State anti-cruelty laws vary as to whether or not they cover retail breeders and pet stores and some states have also enacted legislation regulating the trade in pet animals. Additionally, more than half of the states have laws allowing pets to be included in domestic violence protective orders.¹²⁸

¹²³ https://www.aphis.usda.gov/animal_welfare/downloads/breeders/dogs/Dog-Breeder-Resource-Guide.pdf

¹²⁴ <https://www.federalregister.gov/articles/2013/09/18/2013-22616/animal-welfare-retail-pet-stores-and-licensing-exemptions>

¹²⁵ <http://www.usnews.com/news/articles/2013/09/10/usda-preempts-congress-enacts-online-pet-dealing-rules>

¹²⁶ http://wflendangeredstreamlive.org/Dog_Cat_Protection_Act.pdf

¹²⁷ <https://www.govinfo.gov/content/pkg/BILLS-109hr3858enr/pdf/BILLS-109hr3858enr.pdf>

¹²⁸ https://aldf.org/focus_area/companion-animals/



Since the API was first published, California passed Assembly Bill 425¹²⁹ in 2017, which prohibits retail establishments such as pet stores to sell cats, dogs and rabbits from commercial breeders. Such animals can be sold only if sourced from shelters and rescue groups. Maryland passed a similar state-wide retail pet sale ban in 2018.¹³⁰ Further measures to protect companion animals are enacted and enforced at the local level. For instance, hundreds of cities have bans prohibiting pet store to source their animals from commercial breeders, similar to the legislations passed by California and Maryland. In addition, in states without anti-tethering laws, cities and counties often pass their own such laws. Finally, many cities have banned declawing cats.¹³¹ On 22 July 2019, New York became the first state to ban declawing of cats.¹³²

Stray animals

There is no federal law relating to stray control and no federal programs to promote responsible pet ownership.

Analysis

The narrow scope of the Animal Welfare Act and its lack of applicability to the majority of those who are responsible for the welfare of companion animals, such as ordinary pet owners, represent a structural barrier to improving animal welfare.

Though there were an estimated 89.7 million dogs and 94.2 million cats kept as companion animals in 2017-2018 in the US, there is no federal duty of care for the animals.¹³³ At the state level, anti-cruelty provisions usually provide for higher penalties for cruelty and neglect of companion animals. There is also no federal law promoting responsible pet ownership. As such, according to the ASPCA statistics, approximately 6.5 million companion animals enter animal shelters nationwide every year; and 1.5 million of those are euthanized.¹³⁴

Moreover, the minimal standards in the Animal Welfare Act allow for the creation of 'puppy mills', which usually refer to a large-scale commercial dog breeding operation where profit is given priority over the well-being of the dogs.¹³⁵ There is no federal definition of 'puppy mills', and state definitions vary. For instance, the Animal Welfare Act contains no limitation to the number of dogs on the premises nor any requirement on the number of staff members who must be available to care for the dogs. Breeding females at the first heat cycle and every heat cycle is permissible, and unwanted animals may be killed or auctioned off. Overall, the Animal Welfare Act leaves significant discretion in the hands of puppy mills owners to decide what constitute an adequate level of care for the dogs with respect to their living environment, cleanliness and sanitation, feeding, veterinary care, housing structure and comfort.

¹²⁹ https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB485

¹³⁰ <https://nhes.org/maryland-passes-anti-puppy-mill-bill/>

¹³¹ <https://www.thesprucepets.com/states-where-declawing-is-illegal-554735>

¹³² <https://www.nytimes.com/2019/07/22/nyregion/new-york-declaw-ban.html>

¹³³ <https://www.statista.com/statistics/198095/pets-in-the-united-states-by-type-in-2008/>

¹³⁴ <https://www.asPCA.org/animal-homelessness/shelter-intake-and-surrender/pet-statistics>

¹³⁵ <https://definitions.uslegal.com/p/puppy-mill/>



It is estimated that there are over 10,000 'puppy mills', and this number conflicts with the number of registered dealers under the Animal Welfare Act.¹³⁶ In January 2019, the Humane Society of the United States estimated that 2.4 million puppies sold annually originated from puppy mills.¹³⁷ Moreover, the USDA has limited human capacity to inspect thousands of facilities. The same inspectors from the Animal Care unit of APHIS are supposed to inspect commercial dog breeding facilities, as well as research facilities and animal transporters. Furthermore, inspections are infrequent, and facilities deemed lower risks may be inspected once every few years.

Since the 2010 audit of the USDA inspections, which highlighted the lack of enforcement of the Animal Welfare Act, there does not appear to have been more audits of the work by the Animal Care unit in charge of inspecting commercial breeding facilities.¹³⁸ This might signal a lack of political willingness to invest time and efforts into ensuring the protection of companion animals.

In 2013, the Department of Agriculture estimated that there were between 8,400 to 15,000 dog breeders market puppies online.¹³⁹ A 2013 rule change has brought between 2,600 and 4,640 of these dog breeders with five or more breeding females under the auspices of the Act, as well as around 75 rabbit breeders and 325 cat dealers.¹⁴⁰ Breeders with fewer than five breeding females will continue to be exempt, as will breeders producing dogs for hunting and security purposes and as breeding animals. Breeders with fewer than five breeding females and who breed non-pet animals may be covered in some states by anti-cruelty provisions or by specific state legislation relating to the issue.

With regards to stray animals, it is regrettable that there is no legislation at the federal level which mandates the humane treatment of stray animals. In conjunction, the US Government should promote responsible pet ownership. In March 2019, the USDA Animal Care unit published a Dog Breeder Resource Guide, which illustrates some political willingness in educating dog breeders about the legislation and improving the protection of companion animals.¹⁴¹

Enforcement mechanisms

There are enforcement mechanisms under the Animal Welfare Act. In addition to civil penalties of up to US\$10,000 per infraction, criminal sanctions for breeders can include a jail sentence of up to one year and/or a fine of up to US\$2,500.

The Dog and Cat Protection Act of 2000 also includes penalties in case of violations, amounting to at least US\$3,000 for each separate negligent violation.

¹³⁶ <https://www.humanesociety.org/all-our-fights/stopping-puppy-mills>

¹³⁷ <https://www.humanesociety.org/sites/default/files/docs/Puppy%20Mills%20Facts%20and%20Figures%20January%202019.pdf>

¹³⁸ <http://www.usda.gov/oig/webdocs/33002-4-SF.pdf>

¹³⁹ <https://www.federalregister.gov/articles/2013/09/18/2013-22616/animal-welfare-retail-pet-stores-and-licensing-exemptions>

¹⁴⁰ <https://www.federalregister.gov/articles/2013/09/18/2013-22616/animal-welfare-retail-pet-stores-and-licensing-exemptions>

¹⁴¹ https://www.aphis.usda.gov/animal_welfare/downloads/breeders/dogs/Dog-Breeder-Resource-Guide.pdf

However, since no legislation has been found on stray animals, there are no enforcement mechanisms associated with this category of animals.

Key recommendations

- The Animal Welfare Act only partially protects companion animals. In fact, it does not apply to private pet owners nor to small retail breeders. Furthermore, minimal standards of care prescribed by the Act are too general and allow puppy mills to operate throughout the country. The US Government is therefore urged to extend the scope of application of this Act to all pet owners and retail breeders. All breeders and animal owners should have a duty of care towards their animals to fulfil the animals' Five Freedoms.
- In order to provide improved protection for companion animals and prevent the spread of puppy mills, the US Government is strongly encouraged to enact a ban on the third-party sale of puppies and kittens under twelve weeks.
- The US Government is urged to allocate more human and financial resources to USDA inspectors from the Animal Care unit of the Animal and Plant Health Inspection Service in charge of verifying whether dog breeders, dealers and exhibitors abide by the Animal Welfare Act. Regular audits of such inspections should be carried out and their results should be made available to the public as it was done in 2010.
- The US Government is strongly encouraged to promote humane dog population management, which relies on promoting responsible ownership, mass dog vaccinations and reproduction control programs. Culling is unnecessary, cruel and has been proven to be ineffective.
- The US Government is encouraged to engage with the International Companion Animal Management (ICAM) coalition to learn about and implement their dog population management methodology. This methodology consists of a full cycle of action, addressing the root causes of conflict between roaming dog and communities. The document is helpful to governments to manage dogs humanely as well as to help communities to live in harmony with dogs.
- The US Government is furthermore encouraged to promote responsible pet ownership, including promoting the adoption of companion animals over the purchase of commercially bred animals.

6. There are laws that apply to animals used for draught or recreational purposes

Analysis of the legislation



| Ranking | D |
|--|---|
| <p data-bbox="204 347 576 383"><u>Animals used for entertainment</u></p> <p data-bbox="204 421 1417 611">The Animal Welfare Act applies to animals used for entertainment purposes, since the Act defines ‘exhibitor’ as ‘any 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’.</p> <p data-bbox="204 649 1417 801">The Animal Welfare Act prohibits staged dogfights, bear or raccoon baiting, cockfighting, and similar animal fighting ventures (Section 2156). Since 2008, it has been a federal felony punishable by imprisonment for up to five years and a fine of \$250,000 to sponsor, exhibit, buy, sell, deliver, possess, train or transport an animal for participation in an animal fighting venture.</p> <p data-bbox="204 840 1417 954">The Animal Fighting Spectator Prohibition Act of 2013 also makes it a felony to knowingly bring a child under the age of 16 to an animal fight and a misdemeanor to knowingly attend an animal fight. In addition, all 50 states have introduced penalties for dog and cock fighting.¹⁴²</p> <p data-bbox="204 992 1417 1182">In 2010, federal legislation was introduced banning the creation, sale and possession with intent to sell of animal crushing or stomping films.¹⁴³ The Animal Crush Video Prohibition Act¹⁴⁴ of 2010 bans the creation and distribution of obscene animal torture videos that show the intentional crushing, burning, drowning, suffocating and impaling of puppies, kittens and other live animals for the titillation of viewers.</p> <p data-bbox="204 1220 1417 1373">Some individual cities (for example, Fort Wayne, Indiana and St. Petersburg, Florida) have banned rodeos and several other cities and states have effectively banned or reduced rodeo activity by prohibiting the use of some cruel methods commonly used in rodeos.¹⁴⁵ For example, Pittsburgh, Pennsylvania and Leestown, Virginia have banned the use of electric prods and ‘bucking straps’.</p> <p data-bbox="204 1411 1417 1641">With regards to marine mammals kept in captivity, the state of South Carolina has had a ban on keeping cetaceans in captivity since 1992 (South Carolina Code Ann. s50-17-05). Since the API was first published in 2014, California passed Bill SB839 that came into effect in January 2017 and prohibits corporations and individuals from breeding orcas in captivity. This law particularly affected the marine park SeaWorld, which had opposed the bill proposed for the first time in 2014 but withdrew its active opposition in 2016.¹⁴⁶</p> <p data-bbox="204 1680 1417 1715">Bills similar to the California legislation were introduced in New York (Senate Bill S6613A¹⁴⁷) and</p> | |

¹⁴² <https://www.aspc.org/animal-cruelty/other-animal-issues/cockfighting>

¹⁴³ <http://edition.cnn.com/2010/POLITICS/12/10/animal.cruelty/>

¹⁴⁴ <https://www.congress.gov/bill/111th-congress/house-bill/5566>

¹⁴⁵ <https://www.sharkonline.org/index.php/animal-cruelty/rodeo-cruelty/755-locations-with-prohibitions-or-restrictions-on-rodeos-or-rodeo-events>

¹⁴⁶ <https://www.wsj.com/articles/california-governor-approves-bill-requiring-seaworld-to-stop-orca-program-1473802270>

¹⁴⁷ <https://www.nysenate.gov/legislation/bills/2013/s6613/>



Washington State (Senate Bill 5666¹⁴⁸ and House Bill 2115¹⁴⁹). At the time of writing, California is the only state which has passed such a legislation. Florida also introduced its Orca Protection Act in 2018 (HB 1305¹⁵⁰). The Bill did not pass in March 2018. In addition, a piece of federal legislation, the Orca Responsibility and Care Advancement (ORCA) Act was introduced in 2015 as bill HR 4019 and co-sponsored by Congressmen Adam Schiff and Jared Huffman from California.¹⁵¹ The bill did not progress but was reintroduced (as b HR 1584) in March 2017¹⁵² and failed to pass again.

With regards to using animals in circuses, the Traveling Exotic Animal and Public Safety Protection Act¹⁵³ (H.R. 2863) was introduced to the House of Representatives on 21 May 2019.¹⁵⁴ The Bill would have amended the Animal Welfare Act to prohibit traveling circuses from holding exotic animals such as lions, tigers and elephants. At the time of writing, the legislation has not been passed.

The use of animals for circuses is regulated at the municipal level. As of January 2018, 79 municipalities (67 cities and 13 counties) in 35 states have partial or full restrictions on animals used in circuses and travelling shows.¹⁵⁵ Restrictions include public contact with wild/exotic animals, use of bull hooks and methods that cause pain, and use of certain/all performing wild and exotic species. Some restrictions are enshrined in legislation and some come through agency regulation. There are also 10 state-wide bans on public contact with wild/exotic animals, though some bans exempt certain species. For instance, Delaware, Maine, Massachusetts, Mississippi, Pennsylvania and Tennessee allow for public contact with elephants. Hawaii and New Jersey represent an example for other states to follow since it bans all performances done by wild animals.

In May 2019, Senate Bill 313 in California was unanimously passed by the Senate, which includes a ban on the use of all wild animals to be used in circuses.¹⁵⁶ The Circus Cruelty Prevention Act 2019¹⁵⁷ bans the use of any animal in a circus who is not a 'domestic dog, domestic cat or domesticated horse' (Section 2209). The Act defines 'circus' as 'a performance before a live audience in which entertainment consisting of a variety of acts, such as acrobats, aerialists, clowns, jugglers, or stunts, is the primary attraction or principal business' (Section 2208). The Act explicitly excludes rodeos from being part of the definition of a circus. On 12 October 2019, the Act was approved by the California Governor.

[Draught animals](#)

¹⁴⁸ <http://lawfilesexternal.wa.gov/biennium/2015-16/Pdf/Bill%20Reports/Senate/5666%20SBA%20NRP%2015.pdf>

¹⁴⁹ <http://lawfilesexternal.wa.gov/biennium/2015-16/Pdf/Bills/House%20Bills/2115.pdf>

¹⁵⁰ <http://www.flsenate.gov/Session/Bill/2018/1305>

¹⁵¹ <https://www.govtrack.us/congress/bills/114/hr4019>

¹⁵² <https://www.congress.gov/bill/115th-congress/housebill/1584>

¹⁵³ <https://www.congress.gov/bill/116th-congress/house-bill/2863?q=%7B%22search%22%3A%5B%22traveling+exotic+animal+and+public+safety+protection+act%22%5D%7D&s=2&r=1>

¹⁵⁴ <https://grijalva.house.gov/pressreleases/rep-grijalva-and-schweikert-introduce-the-traveling-exotic-animal-and-public-safety-protection-act/>

¹⁵⁵ http://www.pawsweb.org/documents/PAWS_bans_exotic_animals_1_17_2018.pdf

¹⁵⁶ <https://www.sacbee.com/news/politics-government/capitol-alert/article230632279.html>

¹⁵⁷ http://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB313



There is limited federal protection for draught animals, applicable to exhibition horses and horses and mules. The Horse Protection Act¹⁵⁸ of 1970 makes it a crime to exhibit or transport for the purpose of exhibition any 'sore' horse, whose feet have been injured to alter the horse's gait.

The Disposition of Unfit Horses and Mules Act¹⁵⁹ of 2002 provides for horses and mules belonging to the federal government that have become unfit for service to be destroyed or put out to pasture, either on pasture belonging to the Government or those belonging to financially sound and reputable humane organizations. The Federal Law Enforcement Animal Protection Act of 2000 makes it an offence to 'wilfully and maliciously' harm a dog or a horse used by a federal agency in law enforcement.

Analysis

For the most part, animals used for draught or recreational purposes are reliant on either state anti-cruelty or state-specific laws for protection. With regards to animals used for draught purposes, legislation is limited since it only applies to horses and mules. Moreover, there is no provision in the Disposition of Unfit Horses and Mules Act specifying humane treatment for the destruction of animals deemed 'unfit'.

Although the Horse Protection Act was introduced in 1970, a 2010 audit by the United States Department of Agriculture's Inspector General found that 40 years later, some trainers in the industry were evading the law rather than adopting the use of humane training methods, particularly as the law allowed the industry to police itself.¹⁶⁰ The Inspector General recommended stricter penalties and an end to self-policing and increased funding for Department of Agriculture enforcement of the law. The APHIS provides on its website reports from the inspections of facilities.¹⁶¹ In 2018, out of the 68 events inspected, the USDA veterinary medical officers reported 31 cases of either horses being sore or other cases of non-compliance with the Horse Protection Act.¹⁶²

It is positive that the Animal Welfare Act applies to all animals used for entertainment – even though the Animal Welfare Act does not apply to all species. However, the provisions of the Act only provide minimal standards for keeping animals for exhibitions. Notably, the Act prohibits subjecting animals to 'trauma, overheating, excessive cooling, behavioral stress, physical harm, or unnecessary discomfort' (Section 2131). However, such terms, especially the critical formulation of 'unnecessary discomfort', are not further defined in the Act.

It is positive that animal fighting has been prohibited at the federal level by the Animal Welfare Act. The federal government has been active in trying to outlaw animal fighting and is engaging animal protection organizations in its efforts. For example, in 2013, The Humane Society of the United States and the American Society for the Prevention of Cruelty to Animals were requested by the United States

¹⁵⁸ https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/hpa/ct_hpa_reg_sections

¹⁵⁹ <https://corpuslegalis.com/us/code/title40/disposition-of-unfit-horses-and-mules>

¹⁶⁰ US Department of Agriculture, Office of Inspector General. (September 2010). Animal and Plant Health Inspection Service Administration of the Horse Protection Program and the Slaughter Horse Transport Program (Audit Report 33601-2-KC). Washington, D., available at: <http://www.usda.gov/oig/webdocs/33601-02-KC.pdf>

¹⁶¹ <https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/hpa/activity-and-show-reports>

¹⁶² https://www.aphis.usda.gov/animal_welfare/downloads/hp/FY2018-HorseProgram-Activity-Report.pdf



Attorney's Office and the Federal Bureau of Investigation to assist in seizing 367 dogs in coordinated raids across Alabama, Mississippi and Georgia.¹⁶³ Since the API was first published in 2014, eight defendants received sentences, ranging from six months to eight years, which is the longest prison term ever handed down in a federal dog fighting case. In 2015, the Alabama court ordered the dog fighters to pay nearly US\$2 million to animal welfare groups.¹⁶⁴ However, it is reported that dog fighting continues as an underground activity: after declining in the 1990s, it appears to have rebounded in recent years, since it has become easy for dogfighters to exchange information about animals and fights.¹⁶⁵

However, it is regrettable that the Animal Welfare Act exempts several establishments and organized events involving animals from its provisions, including the care and treatment of animals in state and county fairs, rodeos, livestock shows, purebred cat and dog shows and fairs or exhibitions intended to advance agricultural sciences or the arts.

In this vein, it is positive that some politicians support various state and a federal bill banning the breeding of cetaceans in captivity, thus effectively making the current generation the 'last' of marine mammals in captivity. However, there are economic barriers to the passage of such bills with industry groups such as SeaWorld exerting much influence over the passage of legislation. For instance, in California, SeaWorld withdrew its opposition to the bill in March 2016, which contributed to the bill's passage in September 2016.¹⁶⁶ Similarly in Florida, SeaWorld and the Florida Attractions Association likely prevented the bill from being scheduled for a hearing and a vote in the House of Natural Resources and Public Lands Subcommittee.¹⁶⁷

However, the circus industry demonstrates that sustained concerns voiced by animal protection organizations and the public can counteract economic and industry pressures to keep exploiting animals for entertainment. In fact, since the API was first published in 2014, Ringling Bros. and Barnum & Bailey Circuses closed down in 2017.¹⁶⁸ Various animal rights organizations have been documenting animal abuse at the circus for decades. The recent Circus Cruelty Prevention Act 2019 passed in California is to be commended for outlawing the use of all wild animals in circuses. However, there remains a loophole in the law since it explicitly excludes rodeos from the scope of application of the law.

Enforcement mechanisms

There are enforcement mechanisms under the Animal Welfare Act, the Horse Protection Act and the other federal statutes relevant to this category of animals, as well as under state legislation on animal fighting and rodeos.

¹⁶³ http://www.humanesociety.org/news/press_releases/2013/08/alabama-georgia-mississippi-dogfighting-082613.html

¹⁶⁴ <https://www.humanesociety.org/news/multi-state-dogfighting-raid-saves-367-dogs>

¹⁶⁵ <https://www.asPCA.org/animal-cruelty/dogfighting/closer-look-dogfighting>

¹⁶⁶ <https://www.wsj.com/articles/california-governor-approves-bill-requiring-seaworld-to-stop-orca-program-1473802270>

¹⁶⁷ <https://uk.whales.org/2018/02/01/florida-orca-protection-act-stalls-in-florida-legislature/>

¹⁶⁸ <https://edition.cnn.com/2017/01/17/opinions/circus-isnt-dead-davis-opinion/index.html>



The Animal Fighting Spectator Prohibition Act of 2013 makes it a felony to knowingly bring a child under the age of 16 to an animal fight and a misdemeanor to knowingly attend an animal fight. The offences are punishable by up to three years in prison and a \$250,000 fine, and by up to one year in prison and a \$100,000 fine respectively.

Offences under the Animal Crush Video Prohibition Act can incur penalties of up to seven years in prison.

With regards to marine mammals kept in captivity, California passed Bill SB839 that came into effect in January 2017 and prohibits corporations and individuals from breeding orcas in captivity. Those breaching the law can be fined up to US\$100,000

Key recommendations

- The main federal piece of legislation addressing the welfare of animals used for entertainment purposes is the Animal Welfare Act. It is positive that the Act forbids the organisation of animal fights at the federal level; it should also be highlighted that all 50 states have state-wide bans on dog and cock fighting. However, the Animal Welfare Act is very limited in its applicability since it does not cover birds nor cold-blooded animals. Moreover, for the animals covered in the Act, the Animal Welfare Act only offers basic provisions and minimum enforceable standards with regards to the care and treatment of wild animals. As such, the US Government is encouraged to expand the scope of application of the Animal Welfare Act to all wild animals kept in captivity for entertainment purposes. Moreover, the US Government is strongly encouraged to enact additional animal welfare regulations addressing specific welfare needs for all species held in captivity.
- At present, there is great disparity among state and municipal laws with regards to the use of animals for entertainment, notably for circuses and rodeos. Building upon the example of the federal ban on animal fights, the US Government is urged to ban the organisation of and attendance to entertainment events causing animal suffering. Such a prohibition should cover circuses, rodeos, animal fights, animal races, rides on wild animals and all other forms of entertainment. Notably, the Government is strongly encouraged to ban the use of all animals in circuses. Phasing out of animals for entertainment purposes could start with a ban on the use of wild animals for such performances.
- Furthermore, building upon the example of California's Bill SB839 that came into effect in January 2017 and prohibits the breeding of orcas in captivity, the US Government is urged to reintroduce and pass the Orca Responsibility and Care Advancement (ORCA) Act, which will ban the keeping, display and breeding of orcas in captivity. Furthermore, recognizing that the physiological and behavioral needs of marine mammals cannot be met in captivity, the US Government is strongly encouraged to ban the breeding, keeping and training of all marine mammals (not only orcas) in captivity, so that these animals constitute the last generation in captivity in the country. These animals should be retired to large seaside sanctuaries, which

allow for an increased range of natural behaviors.

- With regards to animals used for draught, there is limited federal legislation which only applies to horses and mules. Therefore, the US Government is strongly encouraged to adopt specific legislation to address the welfare of working animals, including working equids, following the requirements of the OIE’s animal welfare standards. Working animals must be treated with consideration and must be given adequate shelter, exercise, care, food and water appropriate to their physiological and behavioral needs. Any condition that may impair their welfare must be treated promptly and, affected animals must not be worked again until they are fit. They must not be overworked or overloaded, nor must they be forced to work through ill-treatment.

7. There are laws that apply to animals used for scientific research

| Analysis of the legislation | |
|--|---|
| Ranking | C |
| <p>Federal legislation applies to the use of animals in scientific research: the two main legislations applicable to this category of animals are the Animal Welfare Act and the Health Research Extension Act¹⁶⁹ of 1985.</p> <p>The Animal Welfare Act covers warm-blooded vertebrate animals used for research, with the exception of rats of the genus <i>Rattus</i> and mice of the genus <i>Mus</i> who are bred for use in research. The Animal Welfare Act requires all research facilities to register with the United States Department of Agriculture for a license. The APHIS is responsible for ensuring facilities comply with the Act. Facilities are required to file an annual report listing the species and numbers of animals used in research, reporting the number of animals who experience pain and/or distress, and justifying the research methodology. The Act sets minimum standards for housing and transportation and requires each institution to have an attending veterinarian. Although the Act includes provisions for environmental enrichment for non-human primates and exercise requirements for dogs, facilities do not need to provide these if justification relating to the research being conducted is given at the beginning of the research process.</p> <p>The Animal Welfare Regulations, associated with the Animal Welfare Act, require each institution to establish an Institutional Animal Care and Use Committee (IACUC) to review and approve all uses of animals in research. The Act also requires the IACUC to investigate complaints and reports any non-compliance with the Act. Each IACUC must include at a minimum three people: an experienced scientist, a veterinarian, and an individual who is not affiliated with the institution.</p> <p>The Health Research Extension Act applies to all vertebrate animals used in research funded by the</p> | |

¹⁶⁹ <https://olaw.nih.gov/policies/laws/hrea-1985.htm>



National Institutes of Health, which funds the majority of medical research in the country. Unlike the Animal Welfare Act, therefore, the protection of the Health Research Extension Act includes rats and mice. The Act calls for the proper care and treatment of animals and the organisation of animal care and use committees with minimum of five members including the attending veterinarian, a scientist, a non-scientist, and a member not affiliated with the institution. To receive National Institutes of Health funding, institutions must attest that they comply with the Public Health Service Policy on Humane Care and Use of Laboratory Animals.¹⁷⁰

The use of animals in research is also guided by policies of various federal agencies involved in research, for example, the Food and Drug Administration. Under the Public Health Service Policy, the National Academy of Sciences produces a Guide for the Care and Use of Laboratory Animals that includes advice and the latest scientific research on how to care for various species of animals and offers guidelines for animal care to comply with the Public Health Service Policy.¹⁷¹ The Three Rs principles are outlined in the Guide for the Care and Use of Laboratory Animals.¹⁷² Research facilities applying for National Institutes of Health funding must file an assurance with the Office of Laboratory Animal Welfare of the National Institutes of Health that they will comply with the Guide. Non-compliance may lead to disqualification of the facility from receiving federal research funds, and to withdrawal of funding.

In 2000, the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) was formally established by the ICCVAM Authorization Act¹⁷³ (42 U.S.C. 285f-3). Its purpose is 'to establish, wherever feasible, guidelines, recommendations, and regulations that promote the regulatory acceptance of new or revised scientifically valid toxicological tests that protect human and animal health and the environment while reducing, refining, or replacing animal tests and ensuring human safety and product effectiveness'.¹⁷⁴ The Coordinating Committee comprises representatives from 16 US federal regulatory and research agencies involved with toxicological and safety testing, and collaborates internationally on the development of alternatives to animals as a member of International Cooperation on Alternative Test Methods.¹⁷⁵

Recently, the US Government introduced a sanctuary system to provide for the lifetime care of chimpanzees not needed for research who have been used, or were bred or purchased for use, in research conducted or supported by the National Institutes of Health, the Food and Drug Administration, or other agencies of the Federal Government.¹⁷⁶ This followed a 2011 report by the National Academies Institute of Medicine that found that the use of chimpanzees in biomedical research is largely unnecessary.¹⁷⁷

Additionally, at the time of writing nine states have passed the 'Beagle Freedom Bill', which requires all adoptable animals used in experiments, such as dogs and cats, to be given the chance to be re-

¹⁷⁰ <http://grants.nih.gov/grants/olaw/references/phspol.htm>

¹⁷¹ <http://grants.nih.gov/grants/olaw/Guide-for-the-care-and-use-of-laboratory-animals.pdf>

¹⁷² <https://grants.nih.gov/grants/olaw/guide-for-the-care-and-use-of-laboratory-animals.pdf>

¹⁷³ <https://www.congress.gov/106/plaws/publ545/PLAW-106publ545.pdf>

¹⁷⁴ <https://ntp.niehs.nih.gov/pubhealth/evalatm/iccvam/index.html>

¹⁷⁵ <https://ntp.niehs.nih.gov/pubhealth/evalatm/iccvam/international-partnerships/icatm/index.html>

¹⁷⁶ <http://www.animallaw.info/statutes/stusfd42usca283m.htm>

¹⁷⁷ <http://www8.nationalacademies.org/onpinews/newsitem.aspx?RecordID=13257>



homed instead of euthanized after the experiment ends. Minnesota became the first state to pass such a legislation in 2014. Following this example, the states of California, Connecticut, Delaware, Illinois, Maryland, Nevada, New York and Rhode Island have passed similar legislations. In 2019, similar Bills have been proposed in the states of Massachusetts, Oregon, Texas, Virginia and Washington.

On 22 May 2019, Congress members Brendan Boyle and Jackie Walorski introduced the bi-partisan Animal Freedom from Testing, Experimentation and Research (AFTER) Act,¹⁷⁸ which would require all federal agencies to establish a policy outlining how and where to retired animals used in testing for federal agencies.¹⁷⁹ The Bill covers animals already protected by the Animal Welfare Act, such as monkeys, dogs, cats, rabbits and guinea pigs.

With regards to animal testing for cosmetics, the federal draft bill of the Humane Cosmetics Act¹⁸⁰ (HR4148) was introduced in March 2014. This Bill intended to phase out cosmetic animal testing and the sale of cosmetics tested on animals. The Bill did not pass.¹⁸¹ At the state level, California passed the California Cruelty-Free Cosmetics Act¹⁸² (SB-1249) in 2018, which largely prohibits the sale of cosmetic products and ingredients that have been tested on animals. The Act will enter into force on 1 January 2020. Animal-tested products may still be sold in the state after the start of 2020, as long as the testing on them did not occur after that date.

Analysis

It is positive that the Animal Welfare Act requires all facilities using animals for scientific research to be licensed and registered. However, the Animal Welfare Act is limited since rats and mice are excluded from its scope of application, though these animals are largely used for research.

The requirement under the Animal Welfare Act and the Health Research Extension Act for the establishment of Institutional Animal Care and Use Committees (IACUC) has the potential to influence animal welfare and to encourage scientists to use reduce, replace and refine the number of animals used in research. However, these Three Rs principles - Replacement, Reduction, Refinement - do not appear in the legislation.

In addition, because the Animal Welfare Act excludes from its scope of application rats and mice specifically bred for use in research, there is no number available with regards to how many animals of these species are used. In 2016, over 800,000 animals were used for research in the US, excluding rats and mice.¹⁸³

The commitment of the federal Government to advancing the use of alternatives to animals in research has been demonstrated internationally with representatives promoting alternatives to animal use at key fora. These activities may be attributed to the US National Academy of Sciences producing a landmark

¹⁷⁸ <https://www.congress.gov/bill/116th-congress/house-bill/2897/text?q=%7B%22search%22%3A%5B%22AFTER+Act%22%5D%7D&r=1&s=1>

¹⁷⁹ <https://boyle.house.gov/media-center/press-releases/boyle-walorski-introduce-bill-retire-animals-government-labs>

¹⁸⁰ <https://www.govtrack.us/congress/bills/113/hr4148/text>

¹⁸¹ <https://www.govtrack.us/congress/bills/113/hr4148>

¹⁸² https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1249

¹⁸³ <https://animal-testing.procon.org/number-of-animals-used-for-testing-by-species/>



2007 report *Toxicity Testing in the 21st Century: A Vision and a Strategy*.¹⁸⁴ The report established the scientific case for a non-animal approach to safety testing based on a robust understanding of human 'biological pathways' which, when interrupted, lead to various types of toxicity and disease. The analysis and recommendations in the report were based not on ethical or policy drivers such as the Three Rs but rather on published literature documenting the limitations of animal-based safety tests. Following publication of its vision for 21st Century toxicity testing a government-sponsored collaboration group called Tox21 was established between the Environmental Protection Agency, the Food and Drug Administration and the National Institute for Environmental Sciences. Tox21 aims to act as a catalyst for global, coordinated implementation of pathway-based toxicology.¹⁸⁵ The US Government is to be congratulated for providing a large amount of funding for developing alternatives to the use of animals in research. The Environmental Protection Agency also provided some \$15 million in 2009 for the Tox21 collaboration.¹⁸⁶ There appears to be political willingness to reduce the use of animals for research through the creation of the Interagency Coordinating Committee on the Validation of Alternative Methods. The fact that the Committee comprises representatives from 16 federal regulatory and research agencies reflects that the US Government invest resources in developing non-animal testing methods.

The AFTER Act, introduced in May 2019 to Congress, is a positive development for animal welfare, encouraging the adoption of animals who are no longer used for research. However, the Act could be improved by covering animals who are not currently protected under the Animal Welfare Act, such as rats and mice.

However, it is negative for animals that the US Government has still not banned the testing of cosmetics on animals, despite an international trend towards the banning of this practice. In fact, animal testing for cosmetics is being phased out in over 30 countries including Norway, Switzerland, India and European Union countries. With regards to cosmetics testing, California represents a progressive example for other states to follow. However, even the California law presents several loopholes to ensuring consistent animal welfare. In fact, the California Cruelty-Free Cosmetics Act (SB-1249) does not prevent companies to fund animal testing for products and ingredients sold in countries where such testing measures are required by law. Furthermore, animal testing may still take place if two conditions apply: non-animal alternative methods of testing do not exist, and the need to conduct animal tests is 'justified and is supported by a detailed research protocol proposed as the basis for evaluation'. At the national level, the US Food and Drug Administration, which regulates cosmetics safety but does not have the mandate to approve new products, does not require animal testing but asks manufacturers to 'employ whatever testing is appropriate and effective' to ensure safety.¹⁸⁷ Therefore, there might be circumstances under which animal testing still occurs in California.

Enforcement mechanisms

There are enforcement mechanisms under the Animal Welfare Act. APHIS is in charge of implementing

¹⁸⁴ <http://dels.nas.edu/Materials/ReportIn-Brief/4640-Toxicity-Testing>

¹⁸⁵ <http://epa.gov/ncct/Tox21/>

¹⁸⁶ http://www.epa.gov/ncct/download_files/basic_information/CTRP2_Implementation_Plan_FY09_12.pdf

¹⁸⁷ <https://www.fda.gov/cosmetics/product-testing-cosmetics/animal-testing-cosmetics>



the Animal Welfare Act and conducts yearly inspections. The IACUC conducts inspections only for laboratory animals and must inspect facilities every six months.¹⁸⁸

The Public Health Service Policy on Humane Care and Use of Laboratory Animals incorporates the Three Rs principles, and the concept is outlined in the Guide for the Care and Use of Laboratory Animals. However, this Guide contains voluntary provisions and is therefore not legally binding.

The Office of Laboratory Animal Welfare in the National Institutes of Health has oversight of all National Institutes of Health funded research relating to the Health Research Extension Act. The Institutes may conduct unannounced visits to facilities to ensure compliance with its regulations, but the system is largely based on self-reporting via the animal care and use committees. However, the self-policing of compliance with the Public Health Service Policy is a potential barrier to the reduction, replacement and refinement of the use of animals in research.

At the state level, violations of the Cruelty-Free Cosmetics Act¹⁸⁹ (SB-1249) will be punished with an initial fine of US\$5,000 and an additional US\$1,000 for each day the violation continues.

Key recommendations

- **The applicability of the Animal Welfare Act is limited, since the Act only applies to warm-blooded animals and excludes rats of the genus *Rattus* and mice of the genus *Mus* who are bred for use in research. Therefore, the US Government is strongly encouraged to amend the Animal Welfare Act to include all animals used for research in its scope of application.**
- **The US Government is urged to amend the Health Research Extension Act to enshrine the Three Rs principles – Replacement, Reduction, Refinement. In accordance with the principle of Refinement, the legislation should mandate that animals used in research should be protected from unnecessary pain and suffering. At present, these principles are laid out in the Guide for the Care and Use of Laboratory Animals, yet this Guide only provides non-binding recommendations.**
- **The creation of the Interagency Coordinating Committee on the Validation of Alternative Methods should be commended. ICCVAM is encouraged to engage with animal welfare organizations in order to promote alternatives to animal experiments. The US Government is also encouraged to continue allocating funding to the development of alternatives to animal use in research.**
- **It is positive for animal welfare that all institutions using animals for research must be licensed and regularly inspected by the APHIS. The US Government is strongly encouraged to publish and distribute the reports from such inspections. Moreover, the US Government is strongly encouraged to increase the human and financial resources available to make such inspections**

¹⁸⁸ https://research.unc.edu/files/2012/11/CCM3_024437.pdf

¹⁸⁹ https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1249

thorough.

- The US Government is strongly encouraged to pass the Animal Freedom from Testing, Experimentation and Research (AFTER) Act 2019, which would mandate all federal agencies to maintain a policy on the adoption of animals no longer needed for research. The scope of application of the AFTER Act should be expanded to include all animals used in research, including rats and mice.
- The US Government is urged to ban the testing of cosmetic products and their ingredients on animals. Building upon the California Cruelty-Free Cosmetics Act, the US Government is also encouraged to ban the import and sale of cosmetic products tested on animals. As such, the US Government is strongly encouraged to support the re-introduction and enactment of the Humane Cosmetics Act.

8. There are laws that apply to wild animals

| Analysis of the legislation | |
|--|---|
| Ranking | E |
| <p>There are several federal legislations that apply to wild animals. The Bald and Golden Eagle Protection Act 1940¹⁹⁰ makes it illegal to take or possess bald eagles or golden eagles, their eggs or nests, without a permit issued by the Secretary of Interior.</p> <p>The Fur Seal Act 1966¹⁹¹ prohibits, except under specified conditions, the taking, including transportation, importing or possession, of fur seals and sea otters. Exceptions are authorized for Indians, Aleuts, and Eskimos who dwell on the coasts of the North Pacific Ocean, who are permitted to take fur seals and dispose of their skins. The Act also authorizes the Secretary of Commerce to conduct scientific research on the fur seal resources of the North Pacific Ocean.</p> <p>Some animal welfare aspects are addressed in the Wild Horses and Burros Act 1971,¹⁹² which protects wild horses living on federally owned public land from various forms of cruelty. The Bureau of Land Management is in charge of implementing this Act.¹⁹³</p> <p>The Airborne Hunting Act of 1971¹⁹⁴ prohibits shooting or attempting to shoot or harassing any bird, fish, or other animal from aircraft except for certain specified reasons, including protection of wildlife, livestock, and human life under a permit or license provided at federal or state level.</p> | |

¹⁹⁰ <http://www.fao.org/faolex/results/details/en/c/LEX-FAOC143371>

¹⁹¹ <http://extwprlegs1.fao.org/docs/pdf/usa143826.pdf>

¹⁹² <https://www.animallaw.info/statute/us-horse-wild-horses-and-burros-act>

¹⁹³ <https://www.blm.gov/programs/wild-horse-and-burro>

¹⁹⁴ <http://extwprlegs1.fao.org/docs/pdf/usa143301.pdf>



The Marine Mammal Protection Act 1972¹⁹⁵ (MMPA) establishes a moratorium on the taking and importation of marine mammals as well as products taken from them (Section 101) and creates procedures for waiving the moratorium and transferring management responsibility to the states. However, exceptions to this moratorium exist. Notably, the Secretary may issue permits for the capture and importation of marine mammals for 'scientific research, public display, photography for education or commercial purposes, or enhancing the survival or recovery of a species or stock, or for importation of polar bear parts (other than internal organs) taken in sport hunts in Canada'. Traditional hunting by indigenous people is also exempted from the ban on killing marine mammals. The responsibility to conserve marine mammals is vested in the Department of Interior and the Department of Commerce.

The key piece of legislation in that regard is the Endangered Species Act 1973 (ESA).¹⁹⁶ The purpose of this Act is to protect and promote the recovery of animals and plants that are in danger of becoming extinct due to the activities of people. As such, the Act lists all species that are endangered or threatened throughout all or a significant portion of their range (Section 4). The Act requires federal agencies, in consultation with the US Fish and Wildlife Service and/or the National Oceanic and Atmospheric Administration (NOAA) Fisheries Service, to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat of such species. The Act also prohibits any action that causes a 'taking' of any listed species of endangered fish or wildlife. Finally, the import, export, interstate, and foreign commerce of listed species are all generally prohibited. The ESA implements the Convention on International Trade in Endangered Species (CITES) and the US Department of Interior is responsible for protecting listed species from hunting, killing, taking and injuring.

The African Elephant Conservation Act 1988¹⁹⁷ establishes a special fund to provide assistance to African governments for elephant research and conservation. The Secretary of the Interior reviews existing elephant conservation programs in Africa and criteria are established for declaring and removing moratoria on ivory imports from source countries and from intermediary countries based upon the results of these reviews. Exports of raw ivory from African countries to the US are prohibited. However, the import into the US of sport-hunted African elephant trophies is allowed.

The Wild Bird Conservation Act 1992¹⁹⁸ establishes a federal system to limit or prohibit US imports of exotic bird species. The Act imposes a moratorium on the importation of certain exotic bird species identified by the Convention on International Trade in Endangered Species (CITES) and requires the secretary to publish a list of exotic bird species for which trade is allowed.

The Great Apes Conservation Act of 2000¹⁹⁹ provides financial resources for the conservation programs of countries within the range of great apes.

The Lacey Act 2001²⁰⁰ regulates the import of any species protected by international or domestic law

¹⁹⁵ <https://legcounsel.house.gov/Comps/Marine%20Mammal%20Protection%20Act%20Of%201972.pdf>

¹⁹⁶ <http://extwprlegs1.fao.org/docs/pdf/usa142963.pdf>

¹⁹⁷ <http://extwprlegs1.fao.org/docs/pdf/usa143299.pdf>

¹⁹⁸ <http://extwprlegs1.fao.org/docs/pdf/usa144314.pdf>

¹⁹⁹ <https://www.animallaw.info/statute/us-apes-great-apes-conservation-act-2000>

²⁰⁰ <http://extwprlegs1.fao.org/docs/pdf/usa153636.pdf>



and prevents the spread of invasive, or non-native, species.

Since the API was first published, President Obama introduced a ban in 2014 on all elephant trophies imports into the US. In November 2017, the US Fish and Wildlife Service lifted the ban on importing such elephant trophies coming from Zimbabwe or Zambia.²⁰¹ However, two days later, President Trump tweeted that the ban would remain in place.²⁰² On 1 March 2018, the US Fish and Wildlife Service issued a memo explaining that applications to import trophies will now be considered on a 'case-by-case basis'.²⁰³ Each application must ensure that the program is 'promoting the conservation of species'.

Another development since the API was first published is that the federal legislation entitled the Eliminate, Neutralize, and Disrupt (END) Wildlife Trafficking Act²⁰⁴ was passed in October 2016. This bipartisan legislation is aimed at curbing the illegal wildlife trade, through facilitating partnerships between the US Government and other countries fighting terrorist organizations and international crime syndicates that profit from wildlife trafficking. The END Act allows prosecutors to treat smuggling or selling endangered species as a predicate offense under money laundering statutes.

Moreover, the Endangered Salmon Predation Prevention Act²⁰⁵ was passed in December 2018, which eases protection contained in the MMPA for the California and Steller sea lions in the Columbia and Willamette rivers and their estuaries. It authorizes the NOAA to issue permits allowing Native American tribes to kill sea lions, on the grounds that the seals eat too much endangered salmon. However, this new law does not require state officials to identify sea lions by their markings or document the animals feeding on salmon. The new law also expands the area on which sea lions can be legally removed.

Hunting is mostly regulated at the state level. In most cases, an individual must have a hunting license from the state where the hunt occurs and comply with the state fish and game department requirements associated with that license. Hunting licenses can generally be purchased at any retail outlet that deals in hunting and fishing equipment, such as sporting goods stores.²⁰⁶

At the state level, a majority of states have introduced partial or full bans on 'canned hunting' and on shooting animals remotely via the internet, and have introduced measures on some other welfare-negative activities including prohibiting the trapping of bears.²⁰⁷ However, a sizeable minority of states continues to permit activities such as bear and cougar hunting with dogs and the hunting of bears over bait.

²⁰¹ <https://www.forbes.com/sites/trevornace/2017/11/16/trump-to-reverse-ban-on-elephant-trophies-from-africa/#14ae77832e56>

²⁰² <https://twitter.com/realDonaldTrump/status/931685146415255552>

²⁰³ <https://www.forbes.com/sites/trevornace/2017/11/16/trump-to-reverse-ban-on-elephant-trophies-from-africa/#14ae77832e56>

²⁰⁴ <https://www.congress.gov/bill/114th-congress/house-bill/2494?q=%7B%22search%22%3A%5B%22HR+280%22%5D%7D&s=1&r=49>

²⁰⁵ <https://www.congress.gov/bill/115th-congress/senate-bill/3119>

²⁰⁶ <https://www.fws.gov/hunting/statelicense.html>

²⁰⁷ <https://blog.humanesociety.org/2013/01/humane-state-ranking-animal-welfare.html>



Since the API was first published in 2014, Alaska has repealed a law which prohibited hunters from using aggressive tactics such as shooting or trapping wolves while at their dens with cubs, spotting grizzly bears from aircraft, killing hibernating bears, trapping bears with wire snares and luring bears with food.²⁰⁸

Analysis

Federal legislation covering wildlife within the country is aimed for the most part at conserving groups of animals rather than protecting the welfare of individual animals. For example, the Endangered Species Act (ESA) implements the provisions of CITES and the US Department of the Interior is responsible for protecting listed species from hunting, killing, taking and injuring. However, the ESA does not prevent individual ownership of endangered species and does not prevent the hunting in some states of privately-owned endangered species in so-called 'canned' or captive hunts.²⁰⁹

Other than the Airborne Hunting Act, there is no federal legislation addressing the treatment of individual wild animals during hunting, trapping and fishing. There is also no basic federal legislation to protect wild animals from acts of cruelty and/or abuse and no federal legislation which mandates humane hunting provisions.

With regards to the Wild Horses of Burros Act, it has been reported that the Bureau of Land Management (BLM), in charge of implementing the Act, has sent 1,794 protected horses to a Colorado rancher between 2009 and 2012, who sent them for slaughter.²¹⁰

At the state level, there is some protection of the welfare of individual animals during hunting activities, but this is limited and varies between states. A wide range of cruel activities involving wildlife takes place in the country without legal prohibition, including the hunting of animals with dogs, the hunting of animals with bows, the use of the steel-jawed leghold trap and other traps (for example: fur trapping) and 'canned hunting'. In fact, the federal Animal Welfare Act does not apply to game preserves, hunting preserves, and captive hunts. The Humane Society of the United States estimates that there are more than a thousand captive hunting operations across the U.S, among which 500 are conducted in Texas alone.²¹¹

With regards to marine mammals, the Marine Mammal Protection Act is not effective at protecting the welfare of animals, since the Act allows for a permit to be issued to capture wild animals for a wide variety of reasons, among which are public display and accidental captures by fishermen. This last provision allows for the deaths of millions of dolphins in the nets of the commercial fishing industry.²¹²

There are political barriers to improving the welfare of wild animals. This is reflected by the fact that the US Fish and Wildlife Service actively promotes hunting as a conservation tool, highlighting that 'by

²⁰⁸ <https://www.congress.gov/bill/115th-congress/house-joint-resolution/69/text>

²⁰⁹ http://www.humanesociety.org/issues/captive_hunts/facts/captive_hunt_fact_sheet.html

²¹⁰ <https://americanwildhorsecampaign.org/media/blm-illegally-sold-thousands-wild-horses-slaughter-report>

²¹¹ <https://www.humanesociety.org/resources/captive-hunts-fact-sheet>

²¹² <https://www.worldanimalprotection.us/our-work/animals-wild/marine-animals-captivity/us-dolphin-regulations>



respecting seasons and limits', the 'wildlife populations are sustainable'.²¹³ There is no mention of educating hunters to what 'sustainable' population levels are.

Moreover, although the Endangered Species Act (ESA) protects animals listed as endangered or threatened, the US Fish and Wildlife Service issues permits for certain listed species to be killed on captive hunts. This creates a market for endangered species' 'trophies' and can encourage illegal poaching of the animals in their native habitat. Issuing permits to shoot endangered species contradicts the basic purposes of the ESA, which is to conserve endangered and threatened wildlife - not to kill them.

The lack of political willingness from the US Fish and Wildlife Service to improve animal welfare was reflected when the agency lifted the ban on elephant 'trophies' from Zimbabwe and Zambia in 2017. President Trump thereafter announced a renewal of the ban, though his family practicing such 'trophy' hunts may present a barrier to significantly improving the protection of wild animals.²¹⁴ Although it is positive that some states have taken measures to ban and regulate canned hunting, the practice is still allowed at the federal level.

There are also social barriers to improving the protection of wild animals, reflected in the fact that trophy hunters are willing to pay significant amounts of money to obtain their 'trophies' out of captive hunts, where the animal has no chance of escaping death.²¹⁵

The strength of the hunting, trapping and shooting lobby presents another barrier to progress. The lack of progress on issues such as the prohibition of the steel-jawed leghold trap is a matter of international concern. In 2017, the powerful hunting lobby group Safari Club International auctioned the lives of 280 South African animals to raise funds to lobby the Trump administration against measures protecting threatened species.²¹⁶

Furthermore, President Trump has repealed various wildlife protection laws dating back from the previous Obama administration, which suggests that the current political leadership does not consider wild animal protection a priority.²¹⁷

Having said that, the current US administration is pursuing a hard stance on wildlife trafficking. In fact, anti-poaching efforts received crucial backing during President Obama's second term. President Obama signed an Executive Order that established an inter-agency task force to coordinate the US Government's response across all sectors of wildlife counter-trafficking.^{218,219} The Order provided an immediate US\$10 million in anti-poaching training and technical assistance to countries in Sub-

²¹³ <https://www.fws.gov/hunting>

²¹⁴ <https://www.news.com.au/technology/science/animals/donald-trump-to-allow-hunters-like-his-sons-eric-and-donald-jr-to-import-elephant-trophies/news-story/bf892c2ea7f0ba0f317bcb8f93a14e97>

²¹⁵ <https://eu.usatoday.com/story/news/nation/2013/01/25/exotic-game-hunts-costs/1864667/>

²¹⁶ <http://ens-newswire.com/2017/02/01/u-s-hunters-auction-african-hunts-for-to-lobby-trump/>

²¹⁷ <https://www.independent.co.uk/news/world/americas/donald-trump-hibernating-bears-legal-repeal-obama-ban-hunting-alaska-ronald-young-environmental-a7673686.html>

²¹⁸ <https://obamawhitehouse.archives.gov/the-press-office/2013/07/01/executive-order-combating-wildlife-trafficking>

²¹⁹ <https://obamawhitehouse.archives.gov/blog/2013/09/09/announcing-advisory-council-presidents-taskforce-wildlife-trafficking>



Saharan Africa.²²⁰ The Obama administration also issued a comprehensive National Strategy for Combatting Wildlife Trafficking in February 2014.²²¹ One of the first Executive Orders that President Trump signed ordered swift action against transnational illicit organizations and transboundary trafficking. Illegal smuggling in wildlife was included among the threats listed, together with drugs, arms, and human trafficking. In addition, President Trump's 2018 National Security Strategy calls on military and security partnerships in Africa to counter the illegal trade in natural resources, which encompasses wildlife trafficking.²²²

Enforcement mechanisms

There are enforcement mechanisms relating to the relevant legislation on the conservation of endangered species and protection of specified animals, and regulatory authorities are designated in each of the Acts alongside penalties.

Key recommendations

- The United States lacks federal legislation prohibiting cruelty acts towards wild animals. Moreover, hunting regulations differ at state and territory levels. In order to improve harmonization across state laws, as well as to raise nationwide animal welfare standards, the US Government is highly encouraged to ban any form of hunting that does not directly support subsistence i.e. for feeding oneself and one's family and not for commercial gain. Subsistence hunting operations must employ the least cruel methods of hunting and slaughter, and that all possible efforts should be made to reduce the time to death of animals killed in these hunts. At a minimum, the Government is strongly encouraged to forbid the use of the cruelest hunting methods.
- The US Government is urged to amend the Endangered Species Act to prevent the hunting in some states of privately-owned endangered species in so-called 'canned' or captive hunts.
- Furthermore, the US Government is strongly encouraged to amend the Marine Mammal Protection Act 1972 (MMPA) and to repeal the possibility by the National Marine Fisheries Service to grant permits for the capture of marine mammals for public display and under the circumstances of 'accidental captures'.

Goal 3: Establishment of supportive government bodies

²²⁰ <https://fas.org/sgp/crs/misc/RL34395.pdf>

²²¹ <https://obamawhitehouse.archives.gov/sites/default/files/docs/nationalstrategywildlifetrafficking.pdf>

²²² <https://www.whitehouse.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905.pdf>



9. The Government has assigned responsibility and accountability for improving animal protection at a high government level and has provided resources

| Analysis of the legislation | |
|---|---|
| Ranking | D |
| <p>The US Department of Agriculture has been granted authority by Congress to promulgate legally binding regulations pertaining to animal welfare on a limited number of issues. This authority derives from several statutes, among which the Animal Welfare Act. The Secretary of Agriculture, a member of the Administration’s Cabinet, is the head of the Department of Agriculture.²²³</p> <p>The Secretary of Agriculture delegates his responsibility for the Animal Welfare Act, and other federal acts that are the responsibility of the Department of Agriculture, to the Department’s subsidiary the Animal and Plant Health Inspection Service.²²⁴ The Animal Care unit of the Service provides leadership in determining standards for the humane care and treatment of animals.²²⁵ The Veterinary Services unit concentrates in particular on issues concerning livestock. The Wildlife Services unit is involved in managing problems caused by wildlife that threaten human health or safety.²²⁶ The Department of Agriculture’s employees strategically located through the 50 states and territories enforce the federal legislation under supervision from the APHIS. These employees are either veterinary medical officers or Animal Care inspectors.</p> <p>In 2010, the APHIS established a Center for Animal Welfare to give guidance and best practice advice on animal welfare issues to stakeholders and industry partners. The Service advises that the Center works in collaboration with a diverse network of partners and experts to serve as the national resource for policy development and analysis, education and outreach, science and technology in support of the Animal Welfare Act and the Horse Protection Act, and to provide leadership on the safety and well-being of animals during emergency preparedness and response.²²⁷</p> <p>The 2010-2015 Strategic Plan produced by the APHIS includes the objective to protect and promote animal welfare.²²⁸ The plan advises that strategies and means to achieve the objective relate to the Animal Welfare Act and the Horse Protection Act, carrying out training, outreach, education and other non-regulatory activities via its Center for Animal Welfare, assisting local communities during natural disasters and evaluating ‘new and existing technology, such as thermal and digital imaging, that can be used to evaluate physical and environmental conditions to assess and improve the well-being of</p> | |

²²³ <http://www.whitehouse.gov/administration/cabinet>

²²⁴ <https://www.aphis.usda.gov/aphis/home/>

²²⁵ <https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/usda-animal-care-overview>

²²⁶ https://www.aphis.usda.gov/aphis/ourfocus/wildlifedamage/SA_Program_Overview

²²⁷ <https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/caw/caw-program-info>

²²⁸ <https://www.emwh.org/issues/brucellosis/APHIS/APHIS%20Strategic%20Plan%202015.pdf>



animals'.²²⁹ According to this Strategic Plan, the APHIS ranks its animal protection objective as a component of a wider aim of supporting rural communities.

This Strategic Plan was renewed in 2015 for the period 2015-2019. This new Plan also featured as one of its objectives to 'improve the welfare of animals covered under the Animal Welfare Act'. More specifically, APHIS is in charge of enforcing the Animal Welfare Act 1966, the Horse Protection Act 1970 and the Commercial Transport of Equines to Slaughter Act 2001,²³⁰ to ensure the humane care and treatment of millions of animals.

Some responsibility for animal protection relating to research also sits with the Department of Health and Human Services responsible for the National Institutes of Health, which has an Office of Laboratory Animal Welfare. The Secretary of the Department of Health and Human Services is a member of the Cabinet.

Issues concerning wild animals not covered by the Animal Welfare Act are the responsibility of the States Fish and Wildlife Service, under the Department of the Interior.²³¹ The Secretary of the Department of the Interior is a member of the Cabinet. The APHIS also has objectives relating to reducing agricultural pest and wildlife damage within its strategic plan.²³²

Resources are provided by the Federal Government for animal protection under the Animal Welfare Act. APHIS Animal Care inspectors conduct routine, unannounced inspections of all entities licensed/registered under the Animal Welfare Act. Inspectors conduct three types of inspections:

- 1) pre-licensing inspections, to make sure the applicant can meet the federal standards prior to being licensed/registered;
- 2) routine, unannounced compliance inspections of all entities to make sure they are adhering to the federal standards and regulations;
- 3) focused inspections based upon public complaints or allegations of unlicensed activities. During routine inspections, USDA reviews the premises, records, husbandry practices, program of veterinary care and animal handling procedures to ensure the animals are receiving humane care. The frequency of inspections is based on several factors, including an entity's compliance history. USDA inspects research facilities that use regulated animals at least once a year.²³³ The criteria used by Animal Care personnel to inspect a USDA-licensed and registered facilities are publicly available.²³⁴ Such inspection guides contain species-specific criteria to determine the welfare and health status of an animal for cats, cougar, dog, elephant, leopard, lion, tiger and tiger cubs.

However, since the API was first published, the USDA has removed public access to thousands of reports documenting the numbers of animals kept by research laboratories, companies, zoos, circuses and animal transporters, and whether those animals are being treated humanely in accordance with

²²⁹ <https://www.emwh.org/issues/brucellosis/APHIS/APHIS%20Strategic%20Plan%202015.pdf>

²³⁰ https://www.aphis.usda.gov/animal_health/animal_dis_spec/horses/downloads/cfr9_01-9.pdf

²³¹ <http://www.fws.gov>

²³² <https://www.emwh.org/issues/brucellosis/APHIS/APHIS%20Strategic%20Plan%202015.pdf>

²³³ https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/sa_awa/AWA-Inspection-and-Annual-Reports

²³⁴ https://www.aphis.usda.gov/animal_welfare/downloads/Animal-Care-Inspection-Guide.pdf



the Animal Welfare Act.²³⁵ Since 3 February 2017, anyone wishing to access such information needs to file a Freedom of Information Act request, which can take months to be processed. The same measure was adopted for inspection reports under the Horse Protection Act, which prohibits injuring horses' hooves or legs for show. The USDA justified its decision 'based on our commitment to being transparent... and maintaining the privacy rights of individuals'.²³⁶

Following the massive removal of information, on 13 February 2017, 18 Senators have written to the acting deputy secretary of agriculture urging him to reinstate public access to the scrubbed inspection reports and other documents.²³⁷ Moreover, 101 members of the US House of Representatives wrote to President Donald Trump requesting the same action.²³⁸ On 17 February 2017, APHIS reposted only a fraction of the animal welfare records it had deleted, explaining that the agency 'reposted certain inspection reports and research facility annual reports that were determined to be appropriate for reposting'.²³⁹ In August 2018, the USDA announced that a 'refined' searchable database that provides access to federal Animal Welfare Act compliance records.²⁴⁰

In its 2015-2019 Strategic Plan, APHIS still promotes 'improving the welfare of animals covered under the Animal Welfare Act' (Objective 2.1). The APHIS outlines its intention to supplement the traditional inspection process with extensive consultation for struggling facilities. However, APHIS also intends to 'partner with states or accredited professional or industry organizations including the Association of Zoos and Aquariums and the Association for Assessment and Accreditation of Laboratory Animal Care International to reduce inspection frequency, within legal requirements, for facilities that have implemented and documented strong animal care and welfare program'. APHIS emphasizes it will be 'more effective with available resources', which will involve 'a rigorous and transparent priority-setting and decision-making process based on strong and timely analysis of data'. The APHIS also notes that 'the Federal Government is experiencing remarkable budget cutbacks'.

Analysis

Although government bodies are given responsibility for animal protection, the remit of this responsibility does not extend to all categories and species of animals and to all activities connected with animals.

Whilst members of the Cabinet (for example, the Secretary of Agriculture) have responsibility for issues that affect animal protection, no individual overall responsibility has been assigned by the Government for coordinating the improvement of animal welfare across agencies and throughout the country, as is the case with, for example, the environment. There is no one Ministry or Department responsible for animal welfare as a whole.

Liability for harm to animals or harm caused by animals and anti-cruelty laws have in general been the

²³⁵ https://www.washingtonpost.com/news/animalia/wp/2017/02/03/the-usda-abruptly-removes-animal-welfare-information-from-its-website/?noredirect=on&utm_term=.52ac710d986c

²³⁶ <https://www.sciencemag.org/news/2017/02/usda-blacks-out-animal-welfare-information>

²³⁷ <https://www.wyden.senate.gov/imo/media/doc/20170213%20Letter%20to%20USDA%20re%20website%20info%20on%20animal%20abuse.pdf>

²³⁸ <https://www.peta.org/blog/leading-animal-protection-groups-others-sue-usda-website-blackout/>

²³⁹ https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/sa_awa/AWA-Inspection-and-Annual-Reports

²⁴⁰ <https://www.peta.org/blog/leading-animal-protection-groups-others-sue-usda-website-blackout/>



prerogative of the individual states and have not been addressed by the federal government except in circumstances or issues considered to be of national importance, for example, with respect to animal fighting and issues involving multi-states such as animal transport. Federal laws relating to animals have also been instituted for reasons of public health and in response to public outcry, as occurred in the aftermath of Hurricane Katrina. The legislative structure of the US, whereby animals are not mentioned in the US Constitution, means that animal protection has been left for the most part to individual states. This is a structural barrier to harmonizing and improving animal welfare at the national level.^{241,242}

However, the fact that the Federal Government has acted on some issues involving animal welfare in the past demonstrates that it should be possible for the Government to extend its actions to key animal welfare issues, for example, with respect to its international commitments to implement OIE standards. An active program concerning most of the animal protection issues addressed by the Federal Government, for example, is visible on the website of the APHIS with respect to enforcement of the Animal Welfare Act, the Horse Protection Act and the Animal Care Emergency Program.

The placement of enforcers throughout the country should promote animal welfare; however, audits have found significant issues with respect to enforcement. For example, in 2013, an audit by the United States Department of Agriculture's Office of the Inspector General of pig slaughter plants found that "FSIS [Food Safety and Inspection Service] inspectors did not take appropriate enforcement actions at 8 of the 30 swine slaughter plants we visited for violations of the Humane Method of Slaughter Act. We reviewed 158 humane handling noncompliance records (violations) issued to the 30 plants and found 10 instances of egregious violations where inspectors did not issue suspensions. As a result, the plants did not improve their slaughter practices, and FSIS could not ensure humane handling of swine."²⁴³ Plus, following the decision in February 2017 by the US Department of Agriculture (USDA) to remove from the public domain thousands of documents reporting animal welfare violations, the information on Animal Care Inspections provided on the APHIS website is incomplete.²⁴⁴

The requirement for each institution engaged in using animals in research to have an Institutional Animal Care and Use Committee has the potential to mainstream animal welfare, as does the promotion by the National Institutes of Health of alternatives to the use of animals in research and the Public Health Service.

Since the API was first published in 2014, Donald J. Trump was elected president in November 2016.²⁴⁵ In January 2017, President Trump instructed officials at the Environmental Protection Agency (EPA) to freeze grants supporting climate research,²⁴⁶ followed by other environmental rollbacks.²⁴⁷ In

²⁴¹ David J. Wolfson, "Beyond the Law: Agribusiness and the Systematic Abuse of Animals Raised for Food or Food Production." *Animal Law* 2, no. 123, 1996.

²⁴² M.Engelbreton, Chapter 9: North America, in *Long Distance Transport and Welfare of Farm Animals*, edited by M.C. Appleby et al, WSPA, 2008.

²⁴³ <http://www.usda.gov/oig/webdocs/24601-0001-41.pdf>

²⁴⁴ https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/sa_awa/AWAInspection-and-Annual-Reports

²⁴⁵ <https://www.nytimes.com/2016/11/09/us/politics/hillary-clinton-donald-trump-president.html>

²⁴⁶ https://www.washingtonpost.com/news/energy-environment/wp/2017/01/23/trump-administration-tell-sepa-to-freeze-all-grants-contracts/?utm_term=.1f036b4800c4

²⁴⁷ <https://www.theguardian.com/environment/2017/jul/04/trump-environmental-rollback-epa-scrap-regulations>



2018, the White House announced a US\$2.5 million cut from the annual budget of the EPA.²⁴⁸ This suggests that there is little political will, if any, to significantly improve environmental protection in the country, including biodiversity conservation.

Enforcement mechanisms

Those responsible for animal welfare within the administration receive authority and funding via legal mechanisms, for example, via the Farm Bill. However, no Ministry has direct responsibility for animal welfare.

Key recommendations

- The United States allocates some governmental and financial resources to improve animal welfare at the national level, through the Animal and Plant Health Inspection Services (APHIS), which employs Animal Care inspectors, under the supervision of the US Department of Agriculture (USDA). However, although government bodies are given responsibility for animal protection, the remit of this responsibility does not extend to all categories and species of animals and to all activities connected with animals. The US Government is therefore encouraged to establish more visible leadership for the issue of improving animal welfare across the country. To do so, the US Government is strongly encouraged to allocate responsibility for animal welfare to a specific Ministry.
- Furthermore, the US Government is highly encouraged to create a multi-stakeholder committee, which effectively engages all actors involved in maintaining the well-being of animals to find solutions for welfare concerns. At present, APHIS liaises with external stakeholders but such stakeholders – such as animal welfare organizations, experts etc. – should be part of a decision-making body at the federal level. Such a governmental body dedicated to animal welfare could take inspiration from the Council on Environmental Quality, which coordinates federal environmental efforts and works closely with agencies and other White House offices in the development of environmental policies and initiatives.²⁴⁹ The Council was established within the Executive Office of the President by Congress as part of the National Environmental Policy Act of 1969. This could provide a good model for coordination of improving animal welfare throughout the US, particularly in light of the range of widely supported initiatives at the state level. Another model for a federal animal welfare body could be to establish a presidential taskforce or advisory council on animal protection, as has been established for the issue of wildlife trafficking.²⁵⁰
- Moreover, as highlighted in APHIS's Strategic Plan running from 2015 to 2019, APHIS may be limited by inconsistent funding. Thus, the US Government is strongly encouraged to allocate

²⁴⁸ https://www.washingtonpost.com/news/energy-environment/wp/2018/02/12/trump-budget-seeks-23-percent-cut-at-epa-would-eliminate-dozens-of-programs/?utm_term=.f57ad5a4d08c

²⁴⁹ <https://www.usa.gov/federal-agencies/council-on-environmental-quality>

²⁵⁰ <http://www.whitehouse.gov/blog/2013/09/09/announcing-advisory-council-presidents-taskforce-wildlife-trafficking>



sufficient annual funding to APHIS in order to ensure the effective implementation and enforcement of animal welfare standards.

- Furthermore, APHIS is urged to make all reports of its inspections publicly available on its website. This would demonstrate that the US Government is taking its responsibility seriously to ensure consistent animal welfare standards.

Goal 4: Support for international animal welfare standards

10. The Government has incorporated the OIE’s guiding principles for animal welfare and its animal welfare standards into policy and legislation

| Analysis of the legislation | |
|---|---|
| Ranking | D |
| <p>The OIE Animal Welfare Standards focus on transport, slaughter, production systems (beef cattle, broiler chickens, dairy cattle), stray dog population control, the use of animals in research and education, and working equids.²⁵¹</p> <p>The United States has been a member of the OIE since 1976 and recognizes the OIE’s role as the international forum for setting animal health standards, reporting global animal health events and disease status.</p> <p>A 2011 APHIS factsheet ‘Collaborating with the World Organization for Animal Health (OIE)’ explains how Veterinary Services works to facilitate the domestic and international marketability of US animals and animal products through its National Centre for Import and Export. The factsheet advises that the US is required to base its policies on the international standards set by OIE as part of World Trade Organization obligations.²⁵² The 2010-2015 Strategic Plan of APHIS includes objectives relating to international standard setting and effective management of sanitary and phytosanitary issues and development of plans to deal with disease risk issues.²⁵³ In its 2019-2023 Strategic Plan, APHIS states that it will provide ‘leadership and scientific expertise to OIE, IPPC, and regional plant protection organizations to promote science-based standards for animal and plant health and welfare.²⁵⁴</p> <p>Chapter 7 of the OIE’s Terrestrial Animal Health Code contains guiding principles for animal welfare and 11 animal welfare standards that have been agreed by the OIE’s 182 member countries, including the US. However, the US has incorporated only some elements of the guiding principles</p> | |

²⁵¹ <http://www.oie.int/infographic/StandardsAW/index.html>

²⁵² <https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/nvap/NVAP-ReferenceGuide/AnimalHealth-Emergency-Management/OIE-and-International-Standards>

²⁵³ <https://www.emwh.org/issues/brucellosis/APHIS/APHIS%20Strategic%20Plan%202015.pdf>

²⁵⁴ https://www.aphis.usda.gov/about_aphis/downloads/aphisstrategic-plan.pdf



and the animal welfare standards within federal legislation. For instance, the Animal Welfare Act does not encompass the basic concept of the Five Freedoms as it does not recognize the importance of animals having the freedom to perform normal behaviors or to be in a state of psychological well-being, with the exception of non-human primates.

Furthermore, the US does not have federal legislation in place in several areas, including on humane slaughter of poultry, humane transport of poultry, standards for all research facilities that encompass OIE obligations to animals such as rats, mice and birds, and animal welfare in beef cattle production systems. There is also a lack of federal legislation and oversight on stray dog population control, although this is addressed at state level.

With respect to the use of animals in scientific research, the Public Health Service Policy on Humane Care and Use of Laboratory Animals incorporates the Three Rs and the concept is outlined in the Guide for the Care and Use of Laboratory Animals. The US advances the Three Rs approach internationally, for example via the body International Collaboration on Alternative Test Methods.

Analysis

In relation to the use of animals for scientific research, the US has provided leadership in international fora and has achieved progress for 21st Century non-animal approaches via its funding. However, the exclusion of rats, mice and birds bred for research from the protection of the Animal Welfare Act is not considered to be in line with obligations under the OIE Terrestrial Animal Health Code.

The US has also invested resources with the aim of improving the welfare of many animals during slaughter. However, nine billion poultry a year are slaughtered in the country without the benefit of any federal legislative protection as they are excluded from the provisions of the Humane Methods of Slaughter Act.²⁵⁵ In 2012, the National Chicken Council introduced its own guidelines for humane treatment of chickens at slaughter, which it updated in 2014, but analysis by the Animal Welfare Institute found that the guidelines did not meet the minimum standards set by the OIE, such as permitted injury rates, maximum lairage times, and minimum electric current for stunning.²⁵⁶

The current arrangements for dealing with some animal protection issues at federal level and others at state level appears to be insufficient for national incorporation within legislation of the OIE's guiding principles on animal welfare and minimum animal welfare standards.

Enforcement mechanisms

There are enforcement mechanisms relating to those aspects of the OIE standards that have been included in federal legislation.

Key recommendations

²⁵⁵ <http://www.fsis.usda.gov/wps/portal/fsis/topics/food-safety-education/getanswers/food-safety-fact-sheets/production-and-inspection/key-facts-humane-slaughter/key-facts-humane-slaughter>

²⁵⁶ <https://awionline.org/content/awi-criticizes-chicken-industrys-revised-animal-care-standards>



- At present, mice and rats used for research, as well as poultry used for food, do not have any legislative protection within US law. Moreover, there is a lack of federal legislation protecting stray dog populations. The US Government is strongly encouraged to fully incorporate the OIE animal welfare standards within federal legislation, which would also help to harmonize state legislation.

11. The Government has pledged in principle support for the Universal Declaration on Animal Welfare (UDAW)

| Analysis of the legislation |
|--|
| <p>The US Government was an observer at an Intergovernmental Conference on Animal Welfare organized in Manila in 2003 to agree the draft text for a UDAW.²⁵⁷ In 2008, the United States Department of Agriculture advised the World Society for the Protection of Animals (WSPA), which has now become World Animal Protection, of its support in principle for the UDAW.</p> <p><u>Note:</u> The UDAW is a proposed formal international acknowledgement of a set of principles giving animal welfare due recognition among governments and the international community. An expression of support for the UDAW demonstrates a government’s commitment to working with the international community to improve animal welfare.</p> <p><i>Analysis</i></p> <p><i>The Department of Agriculture has provided government support to the UDAW, which is an important step to promote animal welfare in the country. The support of the Department of Agriculture for the UDAW does not appear to have been publicized, although it was followed by support being given by the American Veterinary Medical Association.</i></p> |
| Enforcement mechanisms |
| <p>There are no enforcement mechanisms relevant to this indicator.</p> |
| Key recommendations |
| <ul style="list-style-type: none">• The United States has provided government support to UDAW, through a statement of support from the Department of Agriculture. The United States should act as an example for other countries to pledge support in principle to UDAW. |

Last edited: 13 December 2019

²⁵⁷ Miah Gibson, “The Universal Declaration on Animal Welfare”, *Deakin Law Review*, Volume 16, No 2, 2011



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