

Spring | 20

11th Annual Animal Law Conference

Illinois State Bar Association

424 S. 2nd Street
Springfield, IL 62701-1779
(217) 525-1760
(800) 252-8908

20 S. Clark, Suite 900
Chicago, IL 60603-1802
(312) 726-8775
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Statements or expressions of opinion made by continuing legal education presenters are those of the presenters and not necessarily those of the Illinois State Bar Association or program coordinators. Likewise, materials are provided by the presenters and do not necessarily reflect the opinion of the Association. Legal opinions and analyses provided by presenters, during programs, or in materials are not reviewed by the Association, and are not a substitute for independent legal research.

11th Annual Animal Law Conference

Presented by the ISBA Animal Law Section

Chicago

Friday, March 6, 2020

ISBA Regional Office

20 S. Clark Street, Suite 900

8:10 a.m. – 5:00 p.m.

– or –

Live Webcast

Friday, March 6, 2020

8:10 a.m. – 5:00 p.m.

7.75 hours MCLE credit

Don't miss ISBA's 11th Annual Animal Law Conference, which highlights important animal law updates and examines the advances made in this rapidly-evolving area of practice. Animal law attorneys, general practitioners, environmental/natural resources lawyers, and counsel for municipalities with all levels of practice experience who attend this seminar will better understand:

- The current state of the puppy mill industry in Illinois;
- How civil litigation is being used to help the treatment of farm animals;
- The role of undercover investigations in animal law;
- The ongoing legislative and regulatory reform in the horse racing industry, including the Horseracing Integrity Act;
- The considerations that go into implementing animal protection legislation in Illinois;
- How to apply the "Well-Being of the Companion Animal" in marriage dissolution cases;
- The recent developments in the pet insurance industry;
- How mandatory animal encounter training can help reduce the number of dogs shot by police officers;
- What Lewis & Clark's Aquatic Animal Law Initiative is doing to help aquatic animals; and
- Much more.

Program Coordinator/Moderator:

Jane E. McBride, Illinois Humane, Springfield

The ISBA would like to offer a special thanks to this program's financial supporter – Brooks McCormick Jr. Trust for Animal Rights Law and Policy – for helping to make this opportunity possible.

8:10 – 8:15 a.m. Welcome and Introductions

8:15 – 9:15 a.m. Puppy Mill Update

This presentation offers an update on the continuing prevalence of breeders who profit by maintaining animals in seriously substandard conditions and who sell the animals strictly as a commodity. Topics include: the concentrated locations around Illinois where puppy mills operate; the steps being taken by national, regional, and local non-profits to confront the phenomenon of these breeders; which efforts have been successful in combating the puppy mill problem; how laws are being enforced; and the impact of retail sales being banned in Illinois and across the nation, including legal action to address sham rescue suppliers.

Mindi Callison, Bailing Out Benji, Iowa

Anthony Eliseuson, Senior Staff Attorney, Animal Legal Defense Fund, Chicago

9:15 – 10:30 a.m. Farm Animals and Slaughter: Hidden Cruelty and Killing

Don't miss this opportunity to get a firsthand look at a modern industrial slaughterhouse, including its work and conditions, as well as society's penchant for hiding violent labor practices. A discussion on civil litigation on behalf of farm animals is also included. Additional topics include: the lawyer's role in effecting change for farmed animals; recent case law studies; the role of undercover investigations in animal law; the mistreatment of animals through litigation; comparative impacts of litigation and policy; and the specific areas of law that present opportunities for the growth of litigation on behalf of farmed animals.

Cheryl Leahy, Executive Vice President, Animal Outlook, Washington, D.C.

10:30 – 10:45 a.m. Break (beverages provided)

10:45 – 11:30 a.m. Spotlight on Horse Racing

Horse racing has long been in the scopes of animal welfare organization, but the 2019 Santa Anita racehorse deaths resulted in a nationwide outcry against the sport. In the thick of this scrutiny, Illinois enacted a new gaming bill that bolsters horse racing at the state's three remaining tracks (Fairmont, Hawthorne, and Arlington) by allowing additional gaming at the tracks in an effort to increase race purses, ends the practice of recapture, and paves the way for another harness track in Cook County. Join us for a look at the horse racing industry, a discussion on the Santa Anita racehorse deaths, and an overview of the ongoing legislative and regulatory reform in the industry, including the Horseracing Integrity Act (HR 1754).

Elisabeth Custalow, Manager of Regulatory Affairs, PETA Foundation, Washington, D.C.

11:30 a.m. – 12:00 p.m. Lunch (provided)

12:00 – 1:00 p.m. Illinois' Top Legislation Ranking

This panel presentation features State legislators who have championed recent animal protection measures and provides insight into the legislative process on these matters. Learn how strategy affects the outcome, who the stakeholders are, and the considerations that go into implementing animal protection legislation in Illinois.

Moderator: *Ledy VanKavage, Sr. Legislative Attorney, Best Friends Animal Society, Maryville*

Senator Linda Holmes, 42nd District, Aurora

Rep. Stephanie Kifowit, 84th District, Aurora

Rep. Diane Pappas, 45th District, Bloomington

1:00 – 2:00 p.m. New Law: Application of the "Well-Being of the Companion Animal" in Marriage Dissolution

Don't miss this opportunity to listen as practitioners and judges discuss their impression of the new law, approaches they anticipate to apply it, and the issues they have identified. A discussion on the potential need for a trailer bill that might provide consistent definitions and other clarifications is included.

Moderator/Speaker: *Hon. William E. Holdridge, Third Appellate District, Peoria*
Senator Linda Holmes, 42nd District, Aurora
Hon. Alfred L. Levinson, Retired Associate Judge, Arlington Heights
Angela E. Peters, Buffalo Grove Law Offices, Arlington Heights

2:00 – 2:45 p.m. The Pet Insurance Industry

The U.S. pet insurance industry has been growing 15-20% each year for the past five years. Among this growth, Nationwide and Trupanion have the greatest share in the market, with employee benefit packages being the fastest growing form of distribution. In August 2010, the Illinois Department of Insurance issued a Pet Health Insurance Fact Sheet, while the National Association of Insurance Commissioners (NAIC) completed *A Regulator's Guide to Pet Insurance* in the summer of 2019, with final touches being made on their proposed Pet Insurance Model Act in October 2019. This segment examines the NAIC guide and the Model Act, and also discusses the recent development in the pet insurance industry.

Lynne Hennessey, Director of Compliance, Nationwide Insurance, California
Jules Benson, Veterinary Relations, Nationwide Insurance, California

2:45 – 3:00 p.m. Break (*refreshments provided*)

3:00 – 4:00 p.m. Police Shooting the Household Dog

Over the past decade, Chicago police fired their guns at dogs a total of 700 times, killing an average of two dogs every week throughout one five-year span. A \$750,000 settlement resulted in St. Louis County after the SWAT team raided a house over a missed gas bill and ended up killing the family's dog. Texas saw a 90% decrease in dog shootings after mandatory animal encounter training was implemented. This presentation discusses the American Bar Association's work in urging units of government to require police training in this area, and shows how this type of training has proven to reduce the number of dogs being shot by officers.

Daniel J. Kolde, Kolde Law, St. Louis

Chris Green, Executive Director, Animal Law & Policy Program, Harvard Law School, Massachusetts

4:00 – 5:00 p.m. The Rise of Aquatic Animal Law: Lewis & Clark Launches First Initiative

The program closes with a comprehensive look at aquatic animal law issues – from Canada's recently passed legislation that bans whales, dolphins, and porpoises from being bred or held in captivity, to how National Geographic brought the plight of betta fish into the limelight which inspired a class action lawsuit by a Lewis & Clark graduate that resulted in two of the three pet industry defendants agreeing to no longer sell betta fish in small containers. The Lewis & Clark's Aquatic Animal Law Initiative is also explored throughout this informative segment.

Prof. Kathy Hessler, Clinical Professor of Law and Animal Law Clinic Director, Lewis & Clark Law School, Oregon

Puppy Mill Update

- Mindi Callison
mindi@bailingoutbenji.com
- Anthony Eliseuson
aelseuson@aldf.org

This segment includes all materials received by the course book publication deadline.
Please contact the speaker for any other materials used at the program.



Bailing Out Benji

Presenter: Mindi Callison mindi@bailingoutbenji.com






Established 2011

www.bailingoutbenji.com

maps.bailingoutbenji.com

1

Mindi Callison

Founder and Executive Director




- Featured in the puppy mill documentary- Dog by Dog
- Received the 2016 "Advocate We Love" award from the HSUS
- Featured in January 2017 issue of Rolling Stone magazine and 2017 Huffington Post article
- Bailing Out Benji named on of top 5 Puppy Mill fighting organizations in the United States
- Passed 3 retail bans in Iowa, and helped with many more across the country- including Naperville
- Received the 2018 Iowa Adult Citizen of Character Award and the 2018 Outstanding Young Iowan Award
- Named the 2019 "Person to Watch" By the Des Moines Register
- Bailing Out Benji was awarded the 2019 "Professional Choice Award" for our animated PSA
- Featured on three episodes of "Amanda to the Rescue" on Animal Planet



2



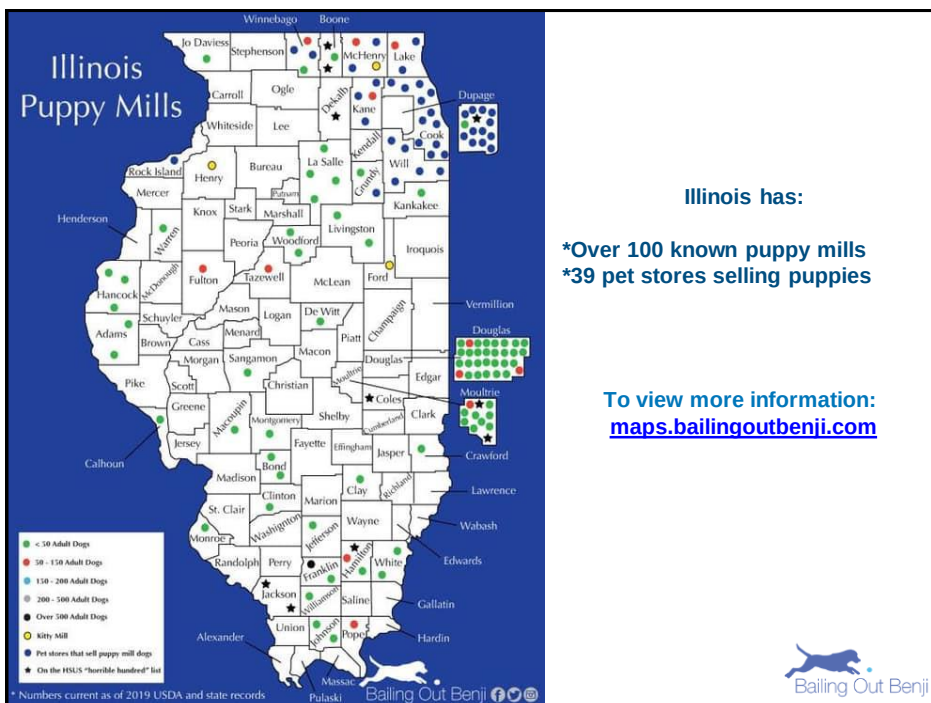
What do we do?

Bailing Out Benji provides the most current and accurate data on the puppy mill industry, while giving citizens the tools they need to combat puppy mills locally

Our volunteers:

- Protest
- Host Tabling Events
- Speak at city council meetings
- Research the puppy mill and pet store industry in order to educate the public and pass local/state laws

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United States Department of Agriculture
Animal and Plant Health Inspection Service

201608256799360 map_id

Inspection Report

Prior to February 2017

A.G. Beukelman
3338 430th Street
Orange City, IA 51041

Customer ID: 8911
Certificate: 42-A-1054
Site: 001
A.G. BEUKELMAN

Type: ROUTINE INSPECTION
Date: 12-OCT-2016

2.40(b)(2)

ATTENDING VETERINARIAN AND ADEQUATE VETERINARY CARE (DEALERS AND EXHIBITORS).

A female bulldog, (Emily, ID# 0A02130565) had problems with her right eye. In the center area of the eye (cornea) there was an area about 1/8 inch wide that was slightly raised and the tissue surrounding it was pale/cloudy in color. The area around the eyeball was brighter red indicating active irritation. The attending veterinarian was present at the inspection and said that employees had not reported this dog's problem and that it had not been noticed prior to inspection. The attending veterinarian reported that he would begin treatment on this dog's eye. Eye problems can be painful, can have many different causes and if left untreated can get worse. The facility must ensure that eye problems needing treatment are promptly noticed and treated.

To be corrected by, 16-October-2016.



United States Department of Agriculture
Animal and Plant Health Inspection Service

Inspection Report

RWAGNER

ORANGE CITY, IA

Customer ID: [REDACTED]
Certificate: [REDACTED]
Site: 001
[REDACTED]

Type: ROUTINE INSPECTION
Date: 12-OCT-2016

2.40(b)(2)

ATTENDING VETERINARIAN AND ADEQUATE VETERINARY CARE (DEALERS AND EXHIBITORS).

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To be corrected by, 16-October-2016.

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Pet Store Data:
<https://bailingoutbenji.com/puppy-mill-maps/cvi-data/>



Bailing Out Benji Working to end puppy mills through advocacy, education and research

Illinois Pet Store/Puppy Mill Connection

©Bailing Out Benji 2018
 All research and information was done by the volunteer teams at Bailing Out Benji and [Safe Pets For Joliet](#) and must be cited as such when shared or quoted.

"We don't buy from puppy mills."

"All of our puppies come from small, local breeders."

"We visit every breeder we buy from."

We have all heard these sentences come from the mouths of pet store owners and their employees. They paint this beautiful picture of puppies running by a pond and parents frolicking in the fresh, green grass... Sadly, 99% of the time that is a bold faced lie. The pet store owners know it, the employees might know it- but the customer is completely in the dark.

This is why we are here.

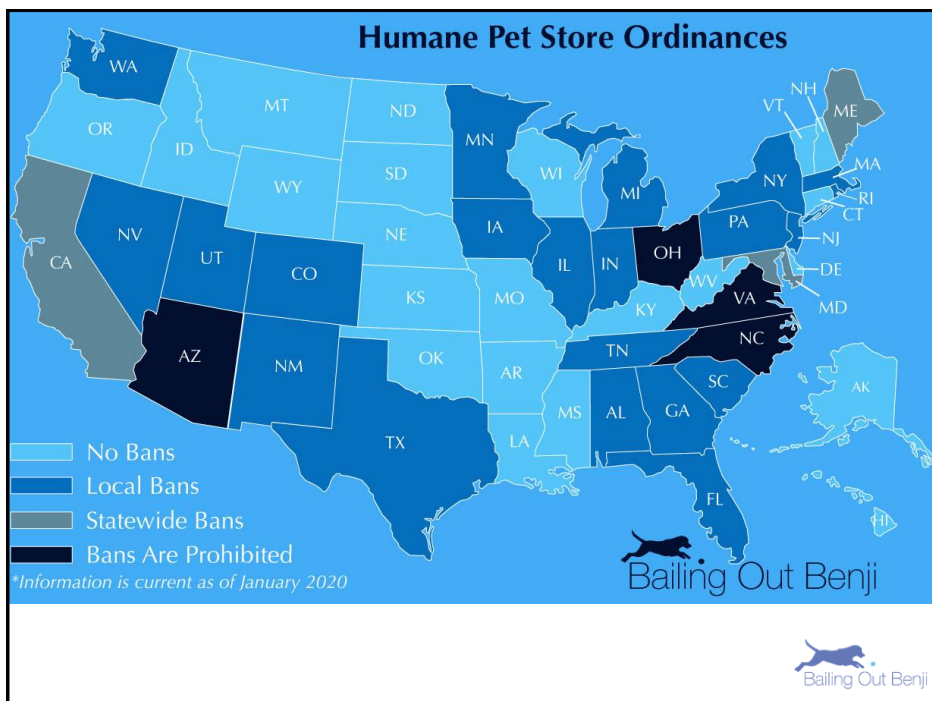
Illinois Puppy Mill Map





Bailing Out Benji

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1 - Copy To Accounting Department
1 - Copy To Veterinarian File
2 - Copies State Veterinarian

Intervenor Shipment ☒
Exhibition ☐
Sale ☒

Exam Date: 1/31/2019
Permit #: 132456-WTH1640
Invoice: IN150911

STATE OF IOWA
DEPARTMENT OF AGRICULTURE
AND LAND STEWARDSHIP
Bureau of Animal Industry
Official Health Certificate
For Cats and Dogs

Certificate No. 3023-350911
Date Of Issue: 2/4/2019

Transmitted By:
Cat ☐ Rail ☐
Air ☐ Truck ☒

CONSIGNOR: Hobo K9 Rescue
Address: Hobo K9 Rescue
26 Main Ave. S.
Boon, IA - 50423, US
319-239-4455 USDA# 42-0-0308

CONSIGNEE: Pet Lov Pet Center
Address: Pet Lov
8057 S Cicero Ave
Chicago, IL - 60652, US
773-581-7387

BREED/COLOR & MARKINGS	D.O.B	SEX	U.S.D.A. NO.	VACCINATIONS / WORKINGS	SPECIES
Napolean Masiff M brd, wh mkg. 99100100188095	11/23/2018	M	1954-01	PRAN 12/10/12 01:00, Marquis 12/29/12 01:28, Neopar 12/29/12 02:00, Panacea 12/29/12 02:01, INTRA TRAC 3 01/27, 5 Febricide Suspension x 4 Days 01/31, 5 Ivermectin 01/31, 5 Marquis 01/31, 5 Neopar 01/31	canine
BICHYOCHON shd, wh mkg. 99100100188061	11/30/2018	M	1955-01	Marquis 12/10/12 01:00, PRAN 12/29/12 01:28, Neopar 12/29/12 02:00, Panacea 12/29/12 02:01, INTRA TRAC 3 01/27, 5 Febricide Suspension x 4 Days 01/31, 5 Ivermectin 01/31, 5 Marquis 01/31, 5 Neopar 01/31	canine
Siberian Husky rd & wh, 99100100188089	11/30/2018	M	1956-01	Neopar 01/07/01, PYRAN 01/07/01, Neovac (DA2) 01/14/01, INTRA TRAC 3 01/27, 5 Febricide Suspension x 4 Days 01/31, 5 Ivermectin 01/31, 5 Marquis 01/31, 5 Neopar 01/31	canine
Bulldog rd & wh, 99100100188151	12/02/2018	F	1957-01	Marquis 12/10/12 01:00, PRAN 12/29/12 01:28, Neopar 12/29/12 02:00, Panacea 12/29/12 02:01, INTRA TRAC 3 01/27, 5 Febricide Suspension x 4 Days 01/31, 5 Ivermectin 01/31, 5 Marquis 01/31, 5 Neopar 01/31	canine
German Shepherd blk & in, 99100100188076	11/28/2018	M	1958-01	PYRAN 12/12/12 01:00, PRAN 12/29/12 01:28, Neopar 12/29/12 02:00, Panacea 12/29/12 02:01, INTRA TRAC 3 01/27, 5 Febricide Suspension x 4 Days 01/31, 5 Ivermectin 01/31, 5 Marquis 01/31, 5 Neopar 01/31	canine
German Shepherd blk & in, 99100100188172	11/28/2018	M	1958-02	PYRAN 12/12/12 01:00, PRAN 12/29/12 01:28, Neopar 12/29/12 02:00, Panacea 12/29/12 02:01, INTRA TRAC 3 01/27, 5 Febricide Suspension x 4 Days 01/31, 5 Ivermectin 01/31, 5 Marquis 01/31, 5 Neopar 01/31	canine
German Shepherd blk & in, 99100100188165	11/28/2018	M	1958-03	PYRAN 12/12/12 01:00, PRAN 12/29/12 01:28, Neopar 12/29/12 02:00, Panacea 12/29/12 02:01, INTRA TRAC 3 01/27, 5 Febricide Suspension x 4 Days 01/31, 5 Ivermectin 01/31, 5 Marquis 01/31, 5 Neopar 01/31	canine
Golden Ret gldn, 99100100188147	11/30/2018	M	1959-01	PYRAN 12/14/01 01:00, Neopar 01/03/01, Neovac (DA2) 01/10/01, INTRA TRAC 3 01/10, 5 Febricide Suspension x 4 Days 01/31, 5 Ivermectin 01/31, 5 Marquis 01/31, 5 Neopar 01/31	canine

OTHER REMARKS: Clinic Name: Family Vet Clinic
Print Name: Joe Griffin
Signature of Veterinarian: [Signature]
P.O. Box 264, 101 W. Main St., Klemme, IA - 50449, US641-587-2340
Veterinarian Address

Total Animals: 18
Vet Code #

Date: 2/4/2019 Time: 3:00 A.M.
Signature: [Signature]
1A 18 101 07 21 2096

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1 - Copy To Accounting Department
1 - Copy To Veterinarian File
2 - Copies State Veterinarian

Intervenor Shipment ☒
Exhibition ☐
Sale ☒

Exam Date: 11/30/2018
Permit #:
Invoice: IN345842

STATE OF IOWA
DEPARTMENT OF AGRICULTURE
AND LAND STEWARDSHIP
Bureau of Animal Industry
Official Health Certificate
For Cats and Dogs

Certificate No. 3420-345842
Date Of Issue: 11/30/2018

Transmitted By:
Cat ☐ Rail ☐
Air ☐ Truck ☒

CONSIGNOR: Rescue Pets Iowa
Address: Rescue Pets Iowa
1671 South Village St.
Ottumwa, IA - 52501, US
641-226-7877

CONSIGNEE: Bark Adoptions
Address: Stephanie Vaughn
33120 Nancy Lane
Menifee, CA - 92584, US
951-442-6935

BREED/COLOR & MARKINGS	D.O.B	SEX	U.S.D.A. NO.	VACCINATIONS / WORKINGS	SPECIES
Shih Tzu gld & wh, 991001001866261	09/28/2018	M	1810-01	PYRAN 10/12/10 01:00, PRAN 10/26/10 01:28, Neopar 10/26/10 02:00, Panacea 10/26/10 02:01, INTRA TRAC 3 11/05, 5 Febricide Suspension x 4 Days 11/29, 5 Ivermectin 11/29, 5 Marquis 11/29, 5 Neopar 11/29	canine
Bulldog fr, wh mkg. 99100100186654	09/30/2018	F	182-01	Neopar 10/12/10 01:00, PRAN 10/26/10 01:28, Neopar 10/26/10 02:00, Panacea 10/26/10 02:01, INTRA TRAC 3 11/05, 5 Febricide Suspension x 4 Days 11/29, 5 Ivermectin 11/29, 5 Marquis 11/29, 5 Neopar 11/29	canine
Bulldog fr, wh mkg. 99100100186678	9/28/2018	M	183-01	Neopar 10/12/10 01:00, PRAN 10/26/10 01:28, Neopar 10/26/10 02:00, Panacea 10/26/10 02:01, INTRA TRAC 3 11/05, 5 Febricide Suspension x 4 Days 11/29, 5 Ivermectin 11/29, 5 Marquis 11/29, 5 Neopar 11/29	canine
CKC/CKR blckn, 991001001866337	10/1/2018	F	184-01	Neopar 10/28/10 01:00, PRAN 11/05/10 01:28, Neopar 11/05/10 02:00, Panacea 11/05/10 02:01, INTRA TRAC 3 11/12, 5 Febricide Suspension x 4 Days 11/29, 5 Ivermectin 11/29, 5 Marquis 11/29, 5 Neopar 11/29	canine
Pembroke Welsh Corgi blk & in, wh mkg. 99100100186662	09/26/2018	M	185-01	Neopar 10/12/10 01:00, PRAN 10/26/10 01:28, Neopar 10/26/10 02:00, Panacea 10/26/10 02:01, INTRA TRAC 3 11/05, 5 Febricide Suspension x 4 Days 11/29, 5 Ivermectin 11/29, 5 Marquis 11/29, 5 Neopar 11/29	canine
Shiba Inu blk & in, wh mkg. 991001001866726	9/30/2018	M	186-01	Neopar 10/12/10 01:00, PRAN 10/26/10 01:28, Neopar 10/26/10 02:00, Panacea 10/26/10 02:01, INTRA TRAC 3 11/05, 5 Febricide Suspension x 4 Days 11/29, 5 Ivermectin 11/29, 5 Marquis 11/29, 5 Neopar 11/29	canine
Lab chlt, 991001001867090	09/28/2018	F	187-01	Ivermectin 10/31/10 01:00, Neopar 11/04/10 01:28, Intra-Trac II 11/04, Neovac (DA2) 11/11/10, 5 Febricide Suspension x 4 Days 11/29, 5 Ivermectin 11/29, 5 Marquis 11/29, 5 Neopar 11/29	canine
Dachshund rd, 991001001866344	09/26/2018	F	188-01	Neopar 10/12/10 01:00, PRAN 10/26/10 01:28, Neopar 10/26/10 02:00, Panacea 10/26/10 02:01, INTRA TRAC 3 11/05, 5 Febricide Suspension x 4 Days 11/29, 5 Ivermectin 11/29, 5 Marquis 11/29, 5 Neopar 11/29	canine

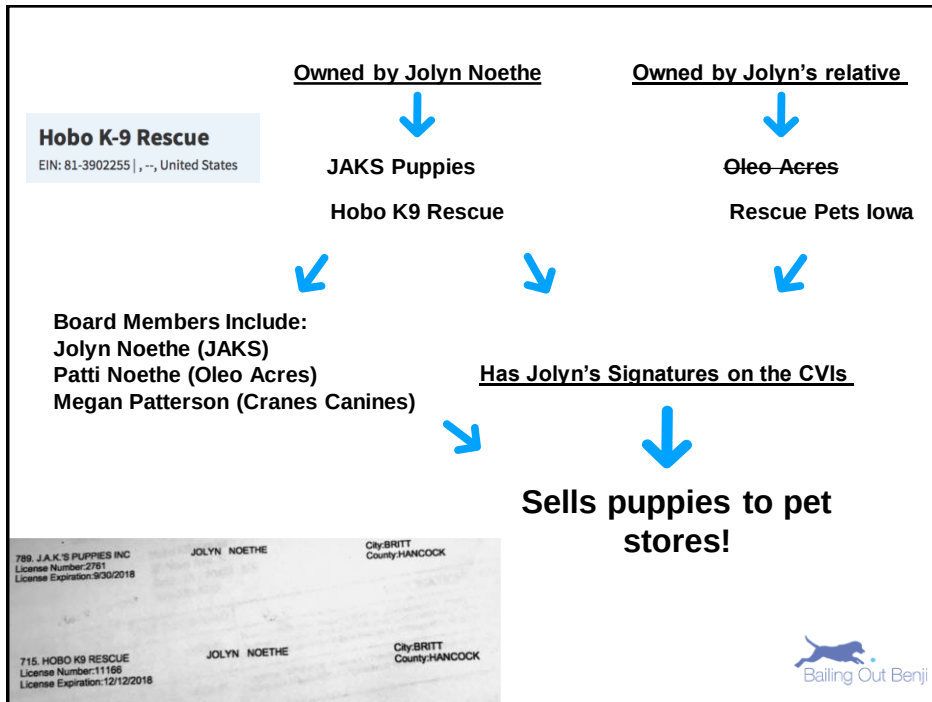
OTHER REMARKS: Clinic Name: Avenue Vet Clinic
Print Name: Arnold Beaulieu DVM
Signature of Veterinarian: [Signature]
249 N Main Ave, Sioux Center, IA - 51250, US 712-723-2522
Veterinarian Address

Total Animals: 9
Vet Code # 4547

Date: 11/30/2018 Time: 3:00 A.M.
Signature: [Signature]
1A 18 101 07 21 2096

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Sham Rescues, Fake Nonprofits and Puppy Mills

Companion Animals | Cases

“Puppy Laundering” Scheme Violates California Law

Volar Society v. Barks Adoptions

Share

The Animal Legal Defense Fund filed a lawsuit against the Animal Kingdom pet store and purported rescue group Bark Adoptions for unlawfully circumventing the California law that bans the retail sale of dogs.

Buyer Beware: Hobo K9 “Rescue”

Bailing Out Benji May 18, 2018 2 Comments

Buyer Beware: Pet Connect Rescue

Bailing Out Benji March 24, 2019 1 Comment

Buyer Beware- “Rescue” Pets Iowa

Bailing Out Benji March 4, 2019 1 Comment

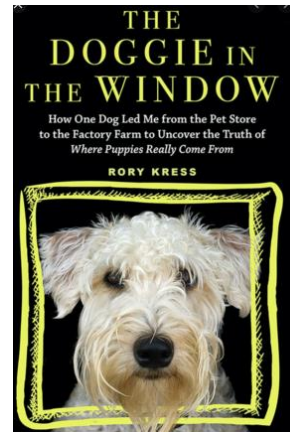
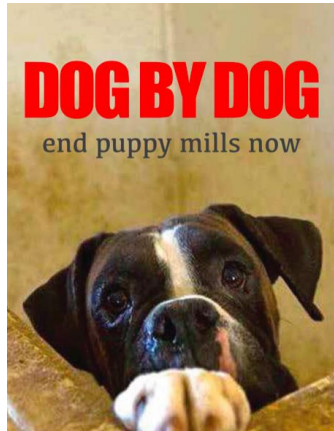
Questions to ask:

- Does the rescue have a website?
- Are dogs of all ages and breeds available for adoption?
- Does the rescue host adoption events in addition to partnering with stores?
- Google the rescue. Do they have a presence online? In their community? On [petfinder.com](https://www.petfinder.com)?
- EMAIL US!

Bailing Out Benji

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For more information on the puppy mill industry:
 Documentary: Dog By Dog
 Exposé: The Doggie in the Window




 Bailing Out Benji

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Bailing Out Benji

Presenter: Mindi Callison mindi@bailingoutbenji.com



Established 2011

www.bailingoutbenji.com

maps.bailingoutbenji.com

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WHEREAS, Most puppies and kittens sold in pet stores come from large-scale, commercial breeding facilities where the health and welfare of the animals is disregarded in order to maximize profits (“puppy mills” and “kitten mills,” respectively). According to The Humane Society of the United States, an estimated 10,000 puppy mills produce more than 2 million puppies per year in the United States.

WHEREAS, The documented abuses endemic to puppy and kitten mills include over-breeding; inbreeding; minimal veterinary care; lack of adequate food, water and shelter; lack of socialization, exercise and enrichment; lack of sanitation.

WHEREAS, Pet store puppies are often sick and have behavioral problems because of the substandard conditions they were likely born into; they were taken from their mothers at a very young age; they were transported in trucks filled with other young puppies; they were placed in a pet store cage with or near other puppies who are often sick.

WHEREAS, Pet stores often mislead consumers as to where the puppies and kittens in the stores came from and make false health and behavior guarantees. Many consumers end up paying hundreds or thousands of dollars in veterinary bills and suffer the heartbreak of having their new pet suffer, and in some cases pass away.

WHEREAS, According to the U.S. Centers for Disease Control and Prevention, pet store puppies pose a health risk to consumers, as over one hundred Americans have contracted an antibiotic-resistant *Campylobacter* infection from contact with pet store puppies.

WHEREAS, Current federal and state regulations do not adequately address the animal welfare and consumer protection problems that the sale of puppy and kitten mill dogs and cats in pet stores pose. Federal oversight of the commercial breeding industry is severely lacking.

WHEREAS, Prohibiting pet stores from selling dogs and cats is likely to decrease the demand for puppies and kittens bred in puppy and kitten mills and decrease the burden that pet store puppies and kittens that end up in animal shelters place on local agencies and taxpayers.

WHEREAS, The huge majority of pet stores, both large chains and small, family-owned shops, are already in compliance with the proposed [legislation/ordinance] as they already do not sell dogs and cats but rather profit from selling products, offering services, and in some cases, collaborating with local animal shelters and rescues to host adoption events.

WHEREAS, This [legislation/ordinance] will not affect a consumer’s ability to obtain a dog or cat of his or her choice from an animal rescue, shelter, or breeder who sells directly to the public.

WHEREAS, The [legislature/council] believes it is in the best interest of [state/city] to adopt reasonable regulations to reduce costs to the [state/city] and its residents, protect citizens who may purchase cats or dogs from a pet store, help prevent inhumane breeding conditions, promote community awareness of animal welfare, and foster a more humane environment in the [City].

Section 1. Definitions

Animal care facility means an animal control center or animal shelter, maintained by or under contract with any state, county, or municipality, whose mission and practice is, in whole, or significant part, the rescue and placement of animals in permanent homes or rescue organizations.

Animal rescue organization means any not-for-profit organization which has tax-exempt status under Section

501(c)(3) of the United States Internal Revenue Code, whose mission and practice is, in whole or in significant part, the rescue and placement of animals in permanent homes. This term does not include an entity that is a breeder or broker or one that obtains animals from a breeder or broker for profit or compensation.

Breeder means a person that maintains a dog or cat for the purpose of breeding and selling their offspring.

Broker means a person that transfers a dog or cat from a breeder for resale by another person.

Cat means a member of the species of domestic cat, *Felis catus*.

Dog means a member of the species of domestic dog, *Canis familiaris*.

Offer for sale means to sell, offer for sale or adoption, advertise for the sale of, barter, auction, give away or otherwise dispose of a dog or cat.

Pet store means a retail establishment where dogs or cats are sold, exchanged, bartered or offered for sale as pet animals to the general public at retail. Such definition shall not include an animal care facility or animal rescue organization, as defined.

Section 2. Restrictions on the Sale of Animals

No pet store shall sell, deliver, offer for sale, barter, auction, give away, or otherwise transfer or dispose of cats or dogs. Nothing in this section shall prohibit pet stores from collaborating with animal care facilities or animal rescue organizations to offer space for such entities to showcase adoptable dogs or cats provided the pet store shall not have any ownership interest in the animals offered for adoption and shall not receive a fee for providing space for the adoption of any of these animals.

Section 3. Penalty.

A pet store that violates this section shall be subject to a civil penalty of \$500, and each dog or cat offered for sale in violation of this section shall constitute a separate violation.

Section 4. Severability.

If any section, subsection, paragraph, sentence, clause or phrase of this Ordinance shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this Ordinance which shall continue in full force and effect, and to this end the provisions of this Ordinance are hereby declared to be severable.

Section 5. Effective Date.

This ordinance shall become effective 90 days after passage.

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

**STATE OF IOWA *ex rel.*
THOMAS J. MILLER,
ATTORNEY GENERAL OF IOWA**

Plaintiff,

v.

HOBO K9 RESCUE, an Iowa non-profit corporation; **RESCUE PETS IOWA CORP.**, an Iowa non-profit corporation; **J.A.K.'S PUPPIES, INC.**, an Iowa for-profit corporation; **JOLYN K. NOETHE**, **KIMBERLY K. DOLPHIN**, **MEGAN PETERSON**, and **RUSSELL KIRK**,

Defendants.

EQUITY NO.

PETITION IN EQUITY

COMES NOW the State of Iowa ex rel. Attorney General of Iowa, Thomas J. Miller, by Assistant Attorneys General J. Andrew Cederdahl and William R. Pearson, pursuant to the provisions of the Revised Iowa Nonprofit Corporation Act, Iowa Code § 504 and Iowa Code § 714.16, commonly referred to as the Iowa Consumer Fraud Act, and submits this Petition in Equity as follows:

PARTIES

1. Defendant Hobo K9 Rescue ("Hobo K9") is an Iowa non-profit corporation with a home office address at 174 Main Ave. N., Britt, Iowa 50423.
2. Defendant Rescue Pets Iowa Corp. ("Rescue Pets Iowa") is an Iowa non-profit corporation with a principal office address at 1617 S. Milner, Ottumwa, Iowa 52501.
3. Defendant J.A.K.'s Puppies, Inc. ("JAK's Puppies") is an Iowa for-profit corporation with a home office address at 2685 Grant Ave., Britt, Iowa 50423.

4. Defendant Jolyn K. Noethe (“Noethe”) is, and was at all times material hereto, President of Hobo K9, as well as Co-President, Secretary and Director of JAK’s Puppies.

5. Defendant Noethe resides at 2366 Lake Cir., Britt, Iowa 50423.

6. Defendant Kimberly Dolphin (“Dolphin”) is, and was at all times material hereto, Treasurer of Hobo K9, as well as Co-President, Secretary and Director of JAK’s Puppies.

7. Defendant Dolphin resides at 541 6th Ave. SE, Britt, Iowa 50423.

8. Defendant Megan Peterson (“Peterson”) is, upon information and belief, a manager with Defendant JAK’s Puppies and was at all times material hereto Secretary of Defendant Hobo K9 Rescue, and is associated with Crane Canines, LLC.

9. Crane Canines, LLC was administratively dissolved on August 14, 2017 due to its failure to file its required biennial report.

10. Crane Canines, LLC’s owner, before its administrative dissolution, was Jared Peterson, who is Defendant Peterson’s husband upon information and belief.

11. Defendant Peterson resides at 2655 Crane Ave., Wesley, IA 50483.

12. Defendant Russell Kirk (“Kirk”) is, and was at all times material hereto, President, Secretary, Treasurer and Director of Rescue Pets Iowa.

13. Defendant Kirk resides at 1617 S. Milner, Ottumwa, Iowa 52501.

VENUE

14. Venue is proper in Polk County, Iowa pursuant to Section 504.1432(1) of the Iowa Code, which states “Venue for a proceeding brought by the attorney general to dissolve a corporation lies in Polk county.”

15. Furthermore, “Any number of Defendants may be joined in one action which asserts against them, jointly, severally or in the alternative, any right to relief in respect of, or arising out

of the same transaction, occurrence, or series of transactions or occurrences, when any question of law or fact common to all of them is presented or involved.” Iowa R. Civ. P. 1.233.

BACKGROUND

Many consumers shopping for puppies are concerned with the source of puppies they buy. Many consumers choose not to buy puppies originating from large-scale, for-profit breeders, commonly referred to as “puppy mills.” Some consumers may not wish to subsidize the for-profit puppy mill industry for ethical reasons. Additionally, consumers who purchase expensive puppies bred within a puppy mill are less assured that the dogs will live average lifespans, since puppy mill breeding operations often result in illnesses that reduce the quality and length of puppies’ lives.

Some state and local governments are banning the sale of puppy mill dogs to address consumer concerns. For example, California recently enacted the first state-wide ban on the commercial sale of cats, dogs and bunnies bred outside of public animal controls agencies and shelters, humane societies, or rescues.¹ Additionally, Chicago enacted a local ordinance in March 2014 providing that retailers may “offer for sale only those dogs . . . that the retailer has obtained from: (1) an animal control center, animal care facility, kennel, pound or training facility operated by any subdivision of local, state or federal government; or (2) a humane society or rescue organization.”² The ordinance defines “rescue organization” as “any not-for-profit

¹ “A pet store operator shall not sell a live dog, cat, or rabbit in a pet store unless the animal was obtained from a public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group that is in a cooperative agreement with at least one private or public shelter pursuant to Section 31108, 31752, or 31753 of the Food and Agricultural Code.” CAL. HEALTH & SAFETY CODE § 122354.5 (West) (effective January 1, 2019). By plainly designating said law, the State hereby pleads and proves it and requests this Court to take judicial notice of it pursuant to Iowa R. Civ. P. 1.415.

² CHI, ILL., LOCAL ORDINANCES CH. 4 § 384-015(b) Retail Sale of Dogs, Cats and Rabbits (effective March 5, 2014). By plainly designating said ordinance, the State hereby pleads and proves it and requests this Court to take judicial notice of it pursuant to Iowa R. Civ. P. 1.415.

organization that has tax-exempt status under Section 501(c)(3) of the United States Internal Revenue Code, whose mission and practice is, in whole or in significant part, the rescue and placement of dogs, cats or rabbits.”³ Such initiatives remove the for-profit incentive behind puppy mill breeding.

Some are creatively attempting to thwart anti-puppy mill initiatives and consumer protection laws by engaging in the practice of “puppy laundering.” Puppy laundering is the purposeful masking of the genuine source of merchandise puppies from consumers and law enforcement. Actors may obscure the source of puppies by transferring them from different persons and entities at least once, prior to final transfer to the entity that ultimately sells them to consumers. Obscuring the source of merchandise puppies deceptively preempts consumers’ concerns about buying dogs bred within puppy mills. Puppy laundering therefore inherently entails uninformed purchases by consumers, and unavoidable injuries stemming from lying to consumers - overtly or by deliberate omission - about the source of puppy merchandise.

Puppy laundering also entails the unfair, fraudulent usage of non-profit entities to circumvent local and state laws. For-profit entities and actors may create a non-profit “puppy rescue” in name alone, to which for-profit breeders transfer puppies to broker. Such transfers can occur across state lines and involved parties may characterize the transfers as a “rescue,” frustrating government and law enforcement efforts to combat consumer and charity fraud. The non-profit “rescues” may thereafter broker puppy merchandise to retailers in areas wherein puppy merchandise sold must be sourced from a “rescue.” Even in areas wherein puppies need not be sourced from “rescues,” puppy laundering obscures the identity of breeders who may have

³ CHI, ILL., LOCAL ORDINANCES CH. 4 § 384-015(a) Retail Sale of Dogs, Cats and Rabbits (effective March 5, 2014). By plainly designating said ordinance, the State hereby pleads and proves it and requests this Court to take judicial notice of it pursuant to Iowa R. Civ. P. 1.415.

USDA animal welfare violations or other unwanted attention they wish to keep hidden from consumers contemplating purchasing puppy merchandise.

COMMON FACTS

16. The Defendants are integral actors of a national puppy laundering ring emanating from within Iowa.

17. Defendant Hobo K9 Rescue alleged in response to the Attorney General's July 6, 2018 subpoena that its mission is the following:

Our mission is to help unwanted or undesirable canines and/or felines find their forever homes. We will work with breeders and other pet professional members in re-homing any animal this is flawed, unwanted, or not needed in their breeding programs or homes. They will contact us with the animal that is in need of a new home and we will work with our contacts in placing them. We will then make sure that all of its veterinarian needs are met (vaccinations/worming, spaying/neutering depending on age or need, grooming/dentals, etc.). We believe that every animal is a good addition to the right person's family.

18. Hobo K9 Rescue further alleged in response to the Attorney General's July 6, 2018 subpoena the following:

We do not solicit donations from individual members of the Iowa general public. All activities are funded by a \$25.00 rehoming donation for each animal placed through the rescue. We have not received any donations from individual members of the Iowa public None of the[] Iowa businesses/persons [with whom we work] have made any rehoming donations Being that we are a private rescue that only works with other members of the professional pet industry and J.A.K.'s Puppies, Inc., we do not advertise to the general public, nor solicit donations.

19. Defendants Noethe and Dolphin are and were both, at all times material hereto, Co-Presidents, Secretaries and Directors of Defendant JAK's Puppies.

20. Defendant Noethe is and was, at all times material hereto, President of Defendant Hobo K9 Rescue.

21. Defendant Dolphin is and was, at all times material hereto, Treasurer of Defendant Hobo K9 Rescue.

22. Defendant Peterson is and was, at all times material hereto, manager at Defendant JAK's Puppies, Secretary of Defendant Hobo K9 Rescue, and an associate of Crane Canines, LLC.

23. Upon information and belief, Defendants Hobo K9 Rescue and JAK's Puppies largely broker dogs bred elsewhere.

24. Upon information and belief, a majority, if not all, of dogs Defendants Hobo K9 Rescue and JAK's Puppies broker were bred from outside of the state of Iowa.

25. Hobo K9 Rescue, from its incorporation on September 1, 2016 until July 9, 2018, exported at least 1,290 dogs outside of Iowa.

26. Upon information and belief, Hobo K9 Rescue and the Defendants, in one combination or another, continued to export dogs in large quantities from Iowa after July 9, 2018.

27. Upon information and belief, all of the 1,290 dogs Hobo K9 Rescue exported outside of Iowa on or before July 9, 2018, were puppies - not older dogs that typically comprise the vast majority of legitimate rescues.

28. All 1,290 puppies Hobo K9 Rescue exported from Iowa on or before July 9, 2018 were transferred to eight different entities in four different states, including California, Illinois, Florida and New Jersey.

29. Upon information and belief, none of the 1,290 puppies Hobo K9 Rescue exported on or before July 9, 2018 were "re-homed" within Iowa.

30. Hobo K9 Rescue fraudulently touts itself as a non-profit "rescue" based out of rural Iowa, while exporting puppies for-profit and as far away as California.

31. Iowa Department of Agriculture and Land Stewardship (IDALS) certificates of veterinary inspection for puppies Hobo K9 Rescue exported from Iowa reveal that all were pure and "designer" breeds typically found in for-profit shops, including Pomeranians, Shar-Peis, Shih

Tzus, Alaskan Malamutes, Bichons, Shibu Inus, Miniature Schnauzers, Yorkie-Poodles, Poodle-miniature Schnauzers, etc.

32. Hobo K9 Rescue included a “pedigree” fee for hundreds of the 1,290 puppies it “re-homed” outside of Iowa.

33. Hobo K9 Rescue, upon information and belief, did not spay or neuter every puppy prior to shipping them outside of Iowa, increasing the chances some puppies it purported to “rescue” would again be bred for profit.

34. Hobo K9 Rescue alleged in response to the Attorney General’s July 27, 2018 subpoena that “total sales” of the 1,290 puppies it exported outside of Iowa on or before July 9, 2018 amounted to \$714,510.00.

35. Records obtained from one Chicago consignee called Pet Luv in response to the Attorney General’s October 19, 2018 subpoena, to whom Hobo K9 Rescue exported hundreds of its “rescue” pure and designer puppies, represented to consumers that the source of its puppies was “Hobo K9 Rescue,” not the true breeder source of said puppies.

36. Said Chicago consignee essentially sold hundreds of “Hobo K9 Rescue” puppies to consumers for thousands of dollars.

37. Another Chicago consignee called Park Pet Shop to whom Hobo K9 Rescue exported its “rescue” animals, in response to the Attorney General’s October 19, 2018 subpoena, allegedly “adopted” a Goldendoodle puppy to a consumer for \$3,599.99.

38. No legitimate charitable rescue’s associated fees to “adopt” or “re-home” a dog would ever even approach such an extravagant, for-profit sum as \$3,599.99.

39. Defendant Hobo K9 Rescue wrote large checks to for-profit Defendant JAK’s Puppies.

40. The Defendants' funneling of money between non-profit and for-profit entities further underscores the inherently for-profit nature of their fraudulent puppy laundering operations.

41. It appears that Defendant non-profit Hobo K9 Rescue transferred money via checks to Defendant JAK's Puppies (via Defendants Noethe and Dolphin) to cover procurement fees for puppies laundered through the State of Iowa as "rescue" puppies.

42. Because Defendants Noethe, Dolphin and Peterson are officers in both Defendant Hobo K9 Rescue and Defendant JAK's Puppies, it appears they must claim to "rescue" puppies from themselves - or from the for-profit puppy mill industry in which they participate.

43. Filed contemporaneously herewith is an affidavit by Chief Executive Officer of the Animal Rescue League of Iowa Tom Colvin.

CAUSES OF ACTION

I. ABUSE OF AUTHORITY CONFERRED UPON IOWA NON-PROFIT CORPORATIONS

44. The State re-alleges and incorporates Paragraphs 1 through 43 as if fully set forth herein.

45. The District Court may dissolve a corporation in a proceeding brought by the Attorney General if "(1) the corporation obtained its articles of incorporation through fraud [or] (2) the corporation has continued to exceed or abuse the authority conferred upon it by law." Iowa Code section 504.1431(1)(a)(1)-(2).

46. Defendants Hobo K9 Rescue and Rescue Pets Iowa continually abuse the authority conferred upon them by the State of Iowa, and this Court should permanently dissolve them.

II. DECEPTIVE AND UNFAIR PRACTICES VIOLATING THE IOWA CONSUMER FRAUD ACT

47. The State re-alleges and incorporates Paragraphs 1 through 46 as if fully set forth herein.

48. Iowa Code sections 714.16(2)(a), (1)(f) and (1)(n) of the Iowa Consumer Fraud Act provide that:

The act, use or employment by a person of an unfair practice, deception, fraud, false pretense, false promise, or misrepresentation, or the concealment, suppression, or omission of a material fact with intent that others rely upon the concealment, suppression, or omission, in connection with the lease, sale, or advertisement of any merchandise or the solicitation of contributions for charitable purposes, whether or not a person has in fact been misled, deceived, or damaged, is an unlawful practice.

It is deceptive advertising within the meaning of this section for a person to represent in connection with the lease, sale, or advertisement of any merchandise that the advertised merchandise has certain performance characteristics, accessories, uses, or benefits or that certain services are performed on behalf of clients or customers of that person if, at the time of the representation, no reasonable basis for the claim existed. The burden is on the person making the representation to demonstrate that a reasonable basis for the claim existed.

...

(f) "Deception" means an act or practice which has the tendency or capacity to mislead a substantial number of consumers as to a material fact or facts

...

(n) "Unfair practice" means an act or practice which causes substantial, unavoidable injury to consumers that is not outweighed by any consumer or competitive benefits which the practice produces.

49. Iowa Code section 714.16(1)(j) of the Iowa Consumer Fraud Act defines "person" to include "any natural person or the person's legal representative, partnership, corporation (domestic and foreign), company, trust, business entity or association, and any agent, employee, salesperson, partner, officer, director, member, stockholder, associate, trustee or cestui que trust thereof."

50. Iowa Code section 714.16(1)(i) of the Iowa Consumer Fraud Act defines "merchandise" to "include[] any objects, wares, goods, commodities, intangibles, securities, bonds, debentures, stocks, real estate or services."

51. A civil action pursuant to the Iowa Consumer Fraud Act is in equity. Iowa Code section 714.16(7).

52. Iowa Code section 714.16(7) provides that the Attorney General may request several remedies from this Court against persons who violate the Iowa Consumer Fraud Act, including:

- a. permanent injunctive relief prohibiting the persons from continuing the practice, engaging in the practice or doing an act in furtherance of the practice;
- b. orders or judgments as necessary to prevent the use or employment by a person of any prohibited practices;
- c. disgorgement of moneys or property acquired by persons who acquired moneys or property by any means declared to be unlawful by the Iowa Consumer Fraud Act;
- d. civil penalties not to exceed forty thousand dollars per violation against a person found by the court to have engaged in a method, act, or practice declared unlawful by the Iowa Consumer Fraud Act; and
- e. imposing a civil penalty of not more than five thousand dollars for each day of intentional violation of a temporary restraining order, preliminary injunction, or permanent injunction issued under authority of the Iowa Consumer Fraud Act.

53. "In an action brought under this section, the attorney general is entitled to recover costs of the court action and any investigation which may have been conducted, including reasonable attorneys' fees, for the use of this state." Iowa Code section 714.16(11).

54. The Attorney General contends that the Defendants' activities are both unfair and deceptive.⁴

55. The Defendants' puppy laundering activities have a tendency or capacity to mislead a substantial number of consumers as to a material fact or facts.

56. The Defendants' puppy laundering activities cause substantial, unavoidable injury to consumers that are not outweighed by any consumer or competitive benefits which the practice may allegedly produce.

57. Additionally, the Defendants' puppy laundering activities are unfair practices because both the design and impact of the Defendants' scheme is to exploit non-profit legal status conferred by the State of Iowa to frustrate and circumvent laws protecting consumers – for profit.⁵

III. ONGOING CONSUMER FRAUD JUSTIFYING PRELIMINARY INJUNCTIVE RELIEF

58. The State re-alleges and incorporates Paragraphs 1 through 57 as if fully set forth herein.

59. "If it appears to the Attorney General that a person has engaged in, is engaging in, or is about to engage in a practice declared to be unlawful" by the Act, the Attorney General may seek and obtain in an action in the district court a temporary restraining order, preliminary injunction or a permanent injunction prohibiting any "person"⁶ from continuing or engaging in the unlawful

⁴ "[D]eceptive and unfair practices are distinct lines of inquiry.... [W]hile a practice may be both deceptive and unfair, it may be unfair without being deceptive." State ex rel. Miller v. Vertrue, Inc., 834 N.W.2d 12, 30 (Iowa 2013).

⁵ "[S]tatutes that prohibit 'unfair practices' are designed to infuse flexible equitable principles into consumer protection law so that it may respond to the myriad of unscrupulous business practices modern consumers face." Id. at 34.

⁶ "Person" is defined under the Consumer Fraud Act to include any natural person, any form of business entity, and any agent, employee, salesperson, member or associate thereof. Iowa Code section 714.16.1(j) (2017).

practice or doing an act in furtherance of the practice. The Court may make such orders or judgments as necessary to prevent the use or employment by a person of any prohibited practice. Iowa Code section 714.16(7) (2017).

60. Pursuant to Iowa R. Civ. P. 1.1502 (1), a temporary injunction may be entered in any case specially authorized by statute and may be supported by affidavit. When, as here, an injunction is specially authorized by statute, the usual requirements for injunctive relief do not apply, and it is sufficient to meet the statutory conditions.⁷ See Iowa R. Civ. P.1.1502 (3). *See also State ex rel. Turner v. Limbrecht*, 246 N.W.2d 330, 334 (Iowa 1976) (overruled on other grounds by *State ex rel. Miller v. Hydro Mag, Ltd.*, 436 N.W.2d 616, 622 (Iowa 1989)).

61. Upon information and belief, the Defendants are attempting to obscure ongoing fraudulent activities the Attorney General has been investigating since June 2018 by creating a brand-new sham charity called Rescue Pets Iowa Corp. in December 2018.

62. Defendant Rescue Pets Iowa also purports to be a non-profit dog “rescue.”

63. Defendant Russell Kirk’s personal address is also the “office” address of Defendant Rescue Pets Iowa.

64. Certificates of veterinary inspections the Attorney General recently obtained from IDALS reflect that Defendant Rescue Pets Iowa appears to be brokering and exporting bunches of pure and designer breeds to entities outside of Iowa, including one as far away as California – apparently replicating the same puppy laundering activities as Defendant Hobo K9 Rescue.

⁷ In an action for an injunction under the Consumer Fraud Act it is not necessary to allege or to prove reliance, damages, intent to deceive, or that the person who engaged in the unlawful act had knowledge of the falsity of the claim or ignorance of the truth. Iowa Code section 714.16(7).

65. Defendant Rescue Pets Iowa's certificates of veterinary inspection also reflect that Defendant Noethe signed on behalf of consignor Rescue Pets Iowa for puppies exported outside of Iowa.

66. Defendant Ms. Noethe, upon information and belief, also continues to maintain leadership positions in both JAK's Puppies and Hobo K9 Rescue.

67. There is no legitimate reason for Defendant Noethe to begin associating with a new non-profit dog "rescue" engaged in the same sort of activities as Defendant Hobo K9 Rescue, particularly in light of the Attorney General's ongoing investigation of Defendant Noethe and her associates.

68. It appears that Defendant Noethe has continued to engage in the same unfair and deceptive acts that the Attorney General is actively investigating, in a manner designed to obscure her ongoing activities.

69. Defendant Noethe has, by her recent actions, demonstrated a pattern of creating or associating with new sham entities to obscure her continuing fraud.

70. This Court is justified in Ordering Respondent Noethe to cease all of her relevant business and "non-profit" activities pending conclusion of this action.

71. The Attorney General subpoenaed Defendant Rescue Pets Iowa on March 1, 2019 and is waiting for its responses to the State's investigation of the Defendants' business activities.

72. JAK's Puppies has yet to comply with the Attorney General's October 24, 2018 civil investigative demand requesting more information and documentation from it – while Defendant Noethe apparently continued and continues her puppy laundering activities and associated with the latest sham entity known as Rescue Pets Iowa.

73. Defendant JAK's Puppies failure to comply with the Attorney General's investigation has now spanned over four months.

74. Defendant Noethe has provided no legitimate reason for her failure to comply with the Attorney General's consumer fraud investigation

75. California's state-wide ban on the sale of puppy mills dogs went into effect January 1, 2019 – yet Defendants continue to ship their “rescue” dogs to California using sham entities.

76. Defendant Noethe should not be permitted to obstruct the Attorney General's investigation while continuing to launder puppies, which continues to defraud consumers.

77. To any extent Defendant Noethe continues her fraudulent puppy laundering operations under the newest name of “Rescue Pets Iowa” while also obstructing the Attorney General's investigation, this Court is justified in Ordering her to cease all sales, transfers and “rescues” of dogs, individually and in combination with any other entity or person, pending conclusion of this matter.

78. Even assuming Defendant Noethe had not assisted Rescue Pets Iowa's apparent puppy laundering activities, Rescue Pets Iowa appears to be engaged in the same sort of unfair, deceptive and fraudulent puppy laundering practices as Defendant Hobo K9 Rescue.

79. None of the Defendants should be permitted to engage in unfair and deceptive puppy laundering activities pending conclusion of this action.

80. Accordingly, this Court is justified in ordering Defendant Rescue Pets Iowa to temporarily cease all of its activities pending the conclusion of the State's action.

PRAYER

1. The State alleges that Defendants Hobo K9 Rescue and Rescue Pets Iowa have abused, and are abusing, the authority and “charitable” status conferred upon them by the State

of Iowa.

2. It is the State's contention that its Petition, attached Affidavit and other evidentiary documents establish that the Defendants are using unlawful business practices, including but not limited to unfair practices, deception, fraud, false pretenses, false promises and misrepresentations against Consumers, all in violation of Iowa Code section 714.16, such that preliminary injunctive relief is necessary to stop these unlawful practices pending conclusion of the action.
3. No bond is required, as Iowa R. Civ. P. 1.207 provides that in an action by the state, no security shall be required of the state.
4. The State certifies, pursuant to I.R.Civ.P. 1.1504, that no prior petition seeking a temporary injunction or injunctive relief against these parties has been previously presented to the Court.
5. The Plaintiff, State of Iowa, requests pursuant to I.R.Civ.P. 1.1507 that the Court set this Petition in Equity for an immediate hearing, and send notice to the Defendants of the time and place of hearing.
6. Plaintiff, the State of Iowa requests the Court allow the State to submit a proposed Order following the hearing on the State's Petition in Equity.

WHEREFORE, the Attorney General of the State of Iowa respectfully requests that the Court grant the following relief:

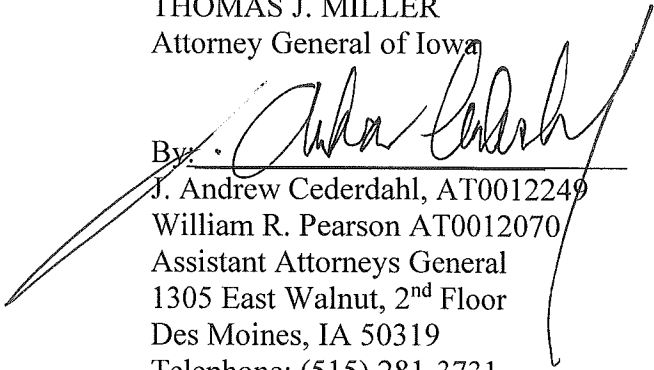
- A. Pursuant to the Revised Iowa Nonprofit Corporation Act, Iowa Code § 504, permanently dissolve Defendants Hobo K9 Rescue and Rescue Pets Iowa Corp., and direct the assets of the corporations be distributed according to the relevant provisions of the Act;

- B. Pursuant to Iowa Code § 714.16(7), and upon further request by the State addressed to the Court via motion, enter a **TEMPORARY INJUNCTION restraining all Defendants** (and each Defendant's agents, employees, independent contractors, salespersons, servants, representatives, officers and directors, principals, partners, members, affiliates, predecessors, successors, assigns, merged or acquired predecessors, parent or controlling entities and all other persons, corporations, and business entities acting in concert or participating with the Defendant(s) who have actual or constructive notice of the Court's injunction), individually, in conjunction with others, or directing others to do on their behalf, from creating, incorporating, filing, employing, or using any for-profit or non-profit corporation and any other form of corporate entity, for the purpose of conducting any business or charitable activities involving the transfer of animals.
- C. Pursuant to Iowa Code § 714.16(7) and after trial on the merits, enter a **PERMANENT INJUNCTION restraining all Defendants**, and each Defendant's agents, employees, independent contractors, salespersons, servants, representatives, officers and directors, principals, partners, members, affiliates, predecessors, successors, assigns, merged or acquired predecessors, parent or controlling entities and all other persons, corporation, and business entities acting in concert or participating with Defendant(s) who have actual or constructive notice of the Court's injunction, from engaging in the deceptive, misleading, unfair, unlawful acts, practices and statements alleged in this Petition or otherwise violation of the Iowa Consumer Fraud Act;
- D. Enter judgment against all of the Defendants, jointly and severally, for amounts necessary to restore to consumers all money acquired by means of acts or practices that violate the Consumer Fraud Act, Iowa Code § 714.16;

- E. Enter judgment against all of the Defendants, jointly and severally, for funds as are necessary to ensure complete disgorgement of all ill-gotten gains traceable to the unlawful practices alleged herein, pursuant to Iowa Code § 714.16(7);
- F. Enter judgment against all of the Defendants, jointly and severally, for up to \$40,000 for each separate violation of the Iowa Consumer Fraud Act, by each Defendant, pursuant to Iowa Code § 714.16(7);
- G. Award the State interest as permitted by law;
- H. Enter judgment against all of the Defendants, jointly and severally, for mandatory attorney fees, state's costs, and court costs, pursuant to Iowa Code § 714.16(11);
- I. Grant such additional relief as the Court deems just and equitable.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

By: 

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ATTORNEYS FOR THE STATE

TAB 2

Farm Animals and Slaughter: Hidden Cruelty and Killing

- Cheryl Leahy

This segment includes all materials received by the course book publication deadline.
Please contact the speaker for any other materials used at the program.

NOTES

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TAB 3

Spotlight on Horse Racing

- Elisabeth Custalow
ElisabethC@petaf.org

This segment includes all materials received by the course book publication deadline.
Please contact the speaker for any other materials used at the program.

Spotlight on Horse Racing

Elisabeth Custalow

Manager of Regulatory Affairs, Legal and Corporate Affairs Department
PETA Foundation

1

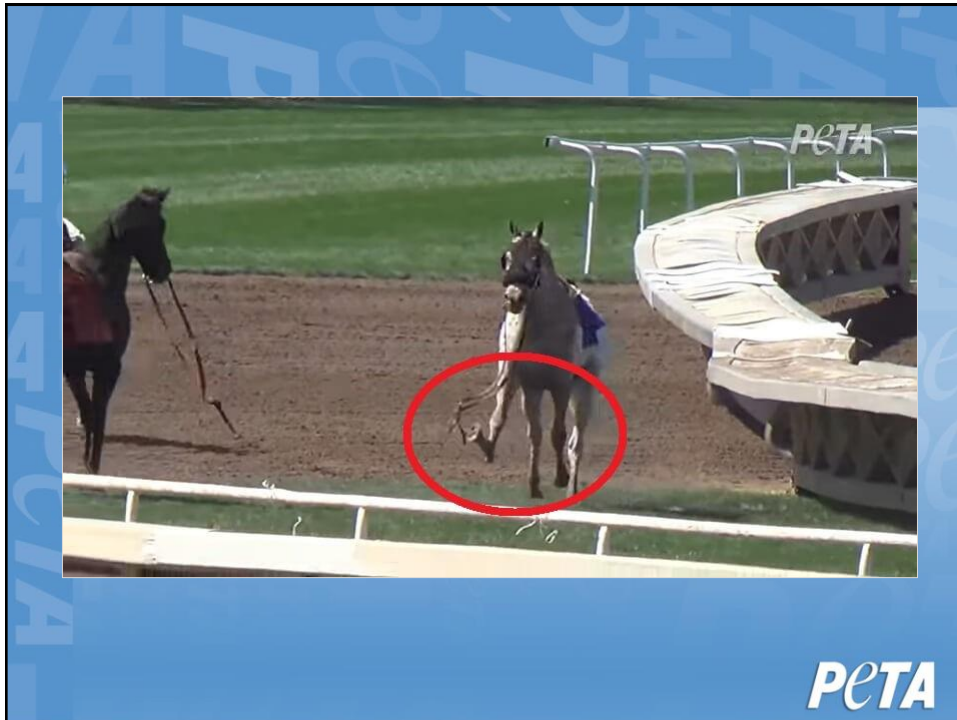
Los Angeles Times

SPORTS

Why are horses dying at Santa Anita? Horse racing comes under scrutiny

PETA

2



3

Horse Deaths in Training and Racing on California Tracks*

Fiscal Year	Deaths
2008-09	320
2009-10	287
2010-11	265
2011-12	278
2012-13	209
2013-14	199
2014-15	187
2015-16	205
2016-17	206
2017-18	138
2008-2018	2,294 horses

*Source: California Horse Racing Board

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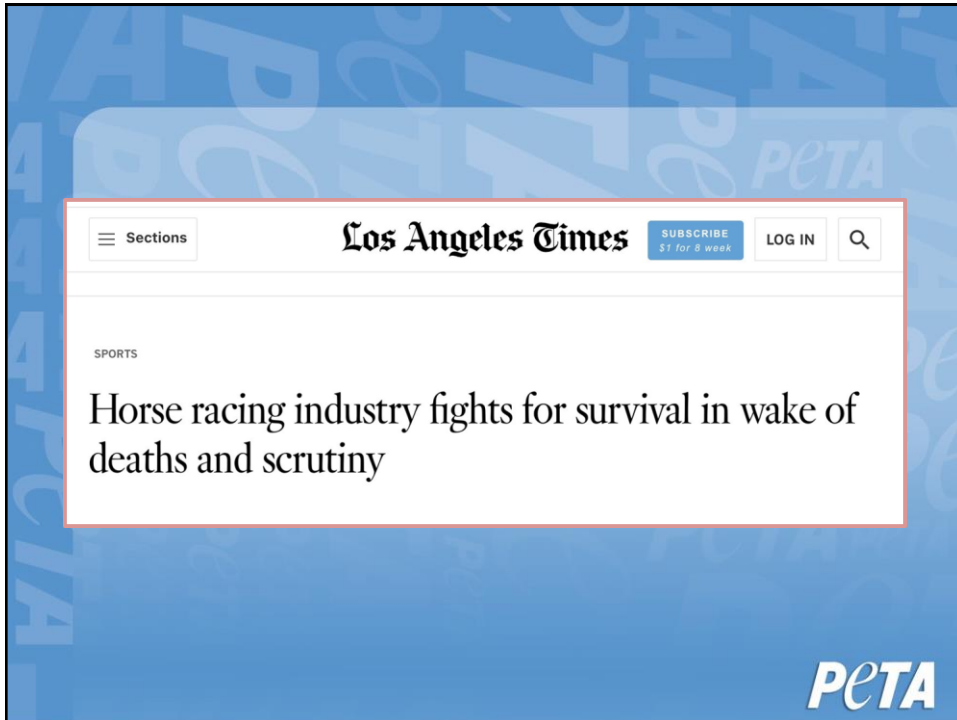
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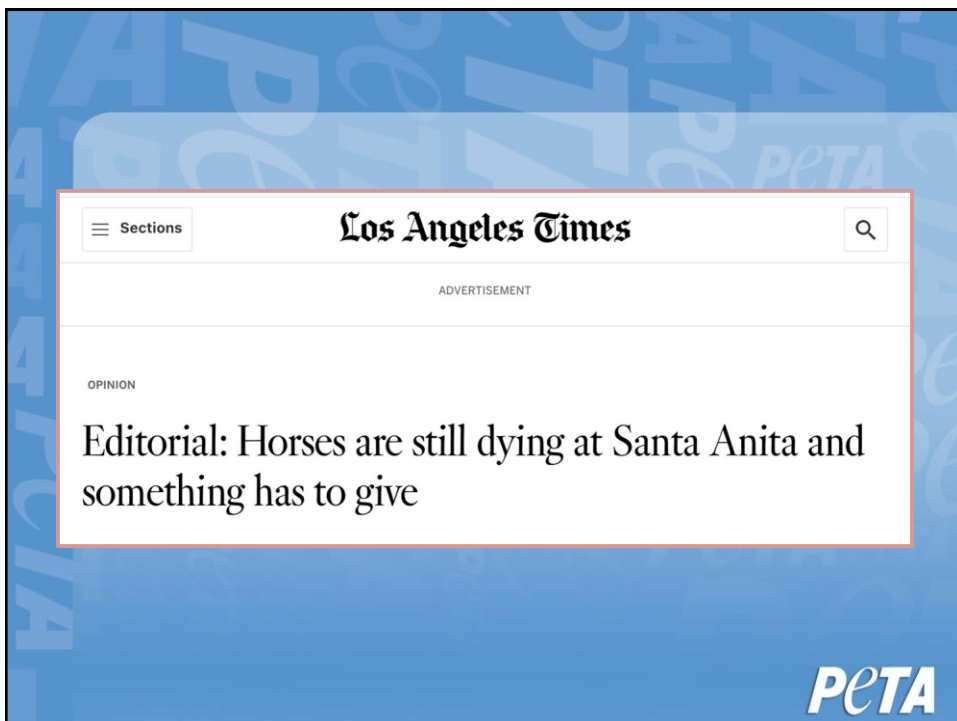
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BLOODHORSE
FOR MORE THAN 100 YEARS

Daily News Racing Triple Crown Stallions & Breeding Sales

PETA-Backed Equine Legislation Introduced in California

TOC's Greg Avioli: Dodd-sponsored legislation more likely to advance.

By Byron King | February 11, 2020

PETA

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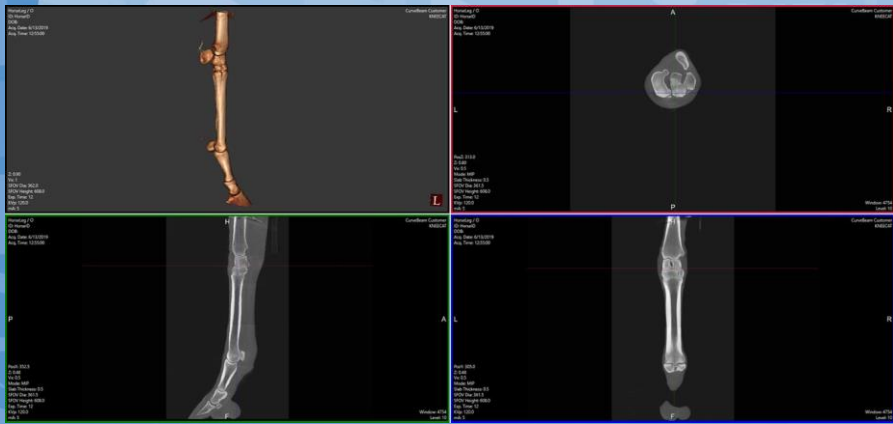


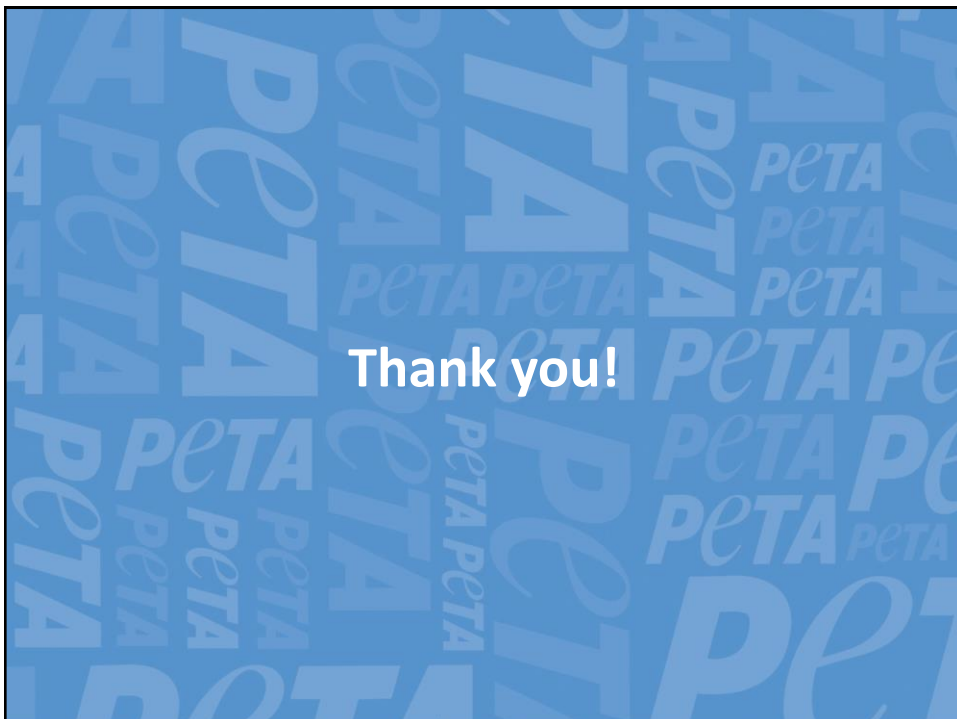
Photo Credit: The American College of Veterinary Sports Medicine and Rehabilitation

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Spotlight on Horse Racing

Presentation prepared by Kathy Guillermo, Senior Vice President, and Dr. Magnolia Martínez, Special Projects Manager, PETA
Presented by Elisabeth Custalow, Manager of Regulatory Affairs, PETA Foundation

Horse Racing Statutes and Regulations (a small sampling)

Illinois (Illinois Horse Racing Act of 1975, 230 Ill. Comp. Stat. 5/1 *et seq.*; 11 Ill. Admin. Code tit. 11, § 200.10 *et seq.*)

- Legislative Intent

230 Ill. Comp. Stat 5/1.2. Legislative intent. This Act is intended to benefit the people of the State of Illinois by encouraging the breeding and production of race horses, assisting economic development and promoting Illinois tourism. The General Assembly finds and declares it to be the public policy of the State of Illinois to:

- (a) support and enhance Illinois' horse racing industry, which is a significant component within the agribusiness industry;
- (b) ensure that Illinois' horse racing industry remains competitive with neighboring states;
- (c) stimulate growth within Illinois' horse racing industry, thereby encouraging new investment and development to produce additional tax revenues and to create additional jobs;
- (d) promote the further growth of tourism;
- (e) encourage the breeding of thoroughbred and standardbred horses in this State; and
- (f) ensure that public confidence and trust in the credibility and integrity of racing operations and the regulatory process is maintained.

- Lasix (Furosemide)

230 Ill. Comp. Stat. 5/36a. (a) It is recognized that there are horses which exhibit symptoms of epistaxis or respiratory tract hemorrhage which with proper treatment are sound and able to compete in races. The Board shall establish by rule the appropriate standards for the administration of furosemide (Lasix) or other Board approved bleeder medications in such circumstances

Ill. Admin. Code tit. 11, § 603.70. a) The Board recognizes that Exercise Induced Pulmonary Hemorrhage (EIPH) is almost universal in performance horses. The Board also recognizes that the diuretic furosemide is helpful in the management of the EIPH syndrome, this includes horses that already had a bleeding episode as well as horses that have not yet exhibited the epistaxis. In regulating the race day use of furosemide, the Board has placed strict controls on the dose, route and time the medication is administered. Additionally, Board security personnel monitors these horses during and after the administration. Advances in drug testing techniques permit the Board laboratory to quantitate post-race serum samples for furosemide, providing a thorough regulation of the drug. All of these measures are designed to prevent the misuse of furosemide.

b) Eligibility for Furosemide Treatment

A horse is eligible to race with furosemide if at least one of the following occurs:

- 1) The horse is on the Illinois Furosemide List and has complied with subsection (c);...

c) Furosemide List

Furosemide shall be administered to a horse that is entered to race only after the State Veterinarian has placed the horse on the Furosemide List. In order for a horse to be placed on the Furosemide List, the following process shall be followed:

- 1) After the horse's licensed trainer and licensed veterinarian determine that it would be in the horse's best interests to race with furosemide, they shall notify the State Veterinarian or his or her designee, using the prescribed form provided by the Board, that they wish the horse to be placed on the Furosemide List

- Whips and Buzzers

Ill. Admin. Code tit. 11, § 1411.100. a) Riding Crops

All riding crops are subject to inspection and approval by the Stewards and the Clerk of Scales.

- 1) Riding crops shall have a shaft and a flap and will be allowed in flat racing, including training, only as follows:

- A) Maximum weight of eight ounces;
- B) Maximum length, including flap, of 30 inches;
- C) Minimum diameter of the shaft of one-half inch; and
- D) Smooth shaft contact area, with no protrusions or raised surface, covered by shock absorbing material that gives a compression factor of at least one millimeter throughout its circumference.

- 2) The flap is the only allowable attachment to the shaft and must meet the following specifications:

- A) Length beyond the end of the shaft - maximum of one inch;
- B) Width - a minimum of 0.8 inch and a maximum of 1.6 inches;
- C) No reinforcements or additions beyond the end of the shaft;
- D) No binding within seven inches of the end of the shaft; and
- E) Shock absorbing characteristics similar to those required by subsection (a)(1)(D).

- 3) Although the use of a riding crop is not required, any jockey who uses a riding crop during a race shall do so only in a manner consistent with exerting his or her best efforts to win.

- 4) In all races in which a jockey will ride without a riding crop, an announcement of that fact shall be made over the public address system.

- 5) Riding crops shall not be used on two year old horses before April 1 of each year.

- 6) The riding crop shall only be used for safety, correction and encouragement.

- 7) All riders shall comply with the following when using a riding crop:

- A) Showing the horse the riding crop and giving it time to respond before striking the horse;
- B) After using the riding crop, giving the horse a chance to respond before using it again; and
- C) Using the riding crop in rhythm with the horse's stride.

- 8) Prohibited use of the riding crop includes, but is not limited to, striking a horse:

- A) on the head, flanks or any other part of its body other than the shoulders or hindquarters, except when necessary to control a horse;
- B) during the post parade or after the finish of the race, except when necessary to control the horse;
- C) excessively or brutally causing welts or breaks in the skin;
- D) when the horse is clearly out of the race or has obtained its maximum placing;
- E) persistently, even though the horse is showing no response under the riding crop; or
- F) striking another rider or horse.

9) After the race, horses will be subject to inspection by a racing official or veterinarian looking for cuts, welts or bruises in the skin. Any adverse findings shall be reported to the Stewards

230 Ill. Comp. Stat. 5/37. (a) It shall be unlawful for any person:

- (1) to use or conspire to use any battery, buzzer, electrical, mechanical or other appliances other than the ordinary whip or spur for the purpose of stimulating or depressing a horse or affecting its speed in a race or workout or at any time; or
- (2) to sponge a horse's nostrils or windpipe or use any method injurious or otherwise for the purpose of stimulating or depressing a horse or affecting its speed in a race or a workout at any time; or
- (3) to have in his possession within the confines of a race track, stables, sheds, buildings or grounds, or within the confines of a stable, shed, building or ground where horses are kept which are eligible to race over a race track of any racing association or licensee, any appliance other than the ordinary whip or spur which may or can be used for the purpose of stimulating or depressing a horse or affecting its speed at any time; or
- (4) to have in his possession with the intent to sell, give away or exchange any of such instrumentalities.

(b) Such possession of such instrumentalities by anyone within the confines of a race track, stables, sheds, buildings or grounds where horses are kept which are eligible to race over the race tracks of any racing association or licensee shall be prima facie evidence of intention to so use such instrumentalities.

(c) Any persons who violate this Section shall be guilty of a Class 4 felony. The Board shall suspend or revoke such violator's license.

Ill. Admin. Code tit. 11, § 1422.120. No appliances, electrical, mechanical or chemical, other than the ordinary whip shall be used for the purpose of stimulating a horse or affecting his speed in a race. Spurs may be employed during workouts or training periods. Every person so offending may be ruled off or otherwise penalized.

- Surface Conditions

Ill. Admin. Code tit. 11, § 1314.30. No racing shall be conducted by any race track operator over any track which is dangerous to drivers or horses competing thereon. If at any time inclement weather or other conditions appear to make the track unsafe, representatives of management

and the horsemen shall meet to determine whether or not racing shall be conducted. If a difference of opinion exists, the decision of the state steward shall be final.

- Unfit to Race

Ill. Admin. Code tit. 11, § 603.20. Every horse entered to race shall be subjected to a racing soundness exam on race day conducted by an official veterinarian. The State veterinarian shall keep or cause to be kept a continuing health and racing soundness record of each horse examined.

Ill. Admin. Code tit. 11, § 1413.210. The owner or trainer of any horse, before making the entry of such horse in any overnight race, must have said horse in condition to race, and if for any reason, said horse is not in such condition, it must be reported to the stewards and secretary.

- Humane Treatment

Ill. Admin. Code tit. 11, § 605.90. No licensee or other person under the jurisdiction of the Board shall alone, or in collaboration with another person:

- a) subject or permit any animal under his/her control, custody or supervision to be subjected to or to incur any form of cruelty, mistreatment, neglect or abuse;
- b) abandon, injure, maim or kill, or administer any noxious substance to, any animal; or
- c) deprive any animal of necessary care or sustenance, shelter or veterinary care.

California (Cal. Bus. & Prof. Code § 19400 *et seq.*)

- Legislative Intent

§19401. The intent of this chapter is to allow parimutuel wagering on horse races, while:

- (a) Assuring protection of the public.
- (b) Encouraging agriculture and the breeding of horses in this state.
- (c) Providing for maximum expansion of horse racing opportunities in the public interest.
- (d) Providing uniformity of regulation for each type of horse racing.

- Lasix (Furosemide)

Cal. Code Regs. tit. 4, § 1845. The only authorized bleeder medication for the control of exercise-induced pulmonary hemorrhage (EIPH) shall be furosemide, and it shall only be administered by a single intravenous injection, in a dosage of not less than 150 mg and not more than 500 mg, on the grounds of the racetrack where the horse will race, and no later than four hours prior to the post time of the race for which the horse is entered. It shall only be administered to a horse that is registered on the authorized bleeder medication list.

(a) A horse is registered on the authorized bleeder medication list as follows:

(1) The trainer and the owner's veterinarian shall determine whether furosemide is medically necessary to control EIPH and is not otherwise contraindicated for that horse; . . .

(c) Furosemide shall be administered only after:

(1) The trainer, owner, or the owner's veterinarian has consulted with the furosemide veterinarian regarding the condition of the horse and the furosemide veterinarian has examined the horse sufficient to establish a veterinary-client-patient relationship within the meaning of California Code of Regulations, title 16, section 2032.1; or

(2) The trainer, owner, or owner's veterinarian has consulted with the official veterinarian or racing veterinarian and the furosemide veterinarian has examined the horse sufficient to establish a veterinary-client-patient relationship within the meaning of California Code of Regulations, title 16, section 2032.1, and that the consulting official veterinarian or racing veterinarian directly supervises the furosemide veterinarian, or California registered veterinary technician, who administers furosemide

Cal. Code Regs. tit. 4, § 1843.5 . . . (h) In addition to the substances named in subsection (c)(1), any of the following substances may be administered under Rule 1845 of this division within 24 hours of the post time of the race in which the horse is entered:

(1) Furosemide;

(2) Other Authorized Bleeder Medication

- Whips and Buzzers

Cal. Code Regs. tit. 4, § 1688. (a) In all races where a jockey will not ride with a riding crop, an announcement shall be made over the public address system of such fact.

(b) Although the use of a riding crop is not required, any jockey or exercise rider who uses a riding crop during a race or training is prohibited from using a riding crop on a horse:

(1) on the head, flanks, or on any parts of its body other than the shoulders or hind quarters;

(2) during the post parade except when necessary to control the horse;

(3) excessively or brutally causing welts or breaks in the skin;

(4) when the horse is clearly out of the race or has obtained its maximum placing;

(5) persistently even though the horse is showing no response under the riding crop; or

(6) more than three times in succession without giving the horse a chance to respond before using the riding crop again.

(c) Subsections (b)(2) and (4) shall not apply to jockeys and exercise riders during training.

(d) Correct uses of the riding crop are:

(1) showing horses the riding crop before hitting them;

(2) using the riding crop in rhythm with the horse's stride; and

(3) using the riding crop as an aid to maintain a horse running straight.

Cal. Code Regs. tit. 4, § 1890. . . . (c) No person shall have in his possession on the premises during any recognized meeting any electrical stimulating or shocking device commonly known

as a battery, or any mechanical stimulating device, or any other appliance, which might affect the speed or actions of a horse

- Surface Conditions

Cal. Code Regs. tit. 4, § 1472. . . . (l) All licensed racing associations or racing fairs conducting live racing and/or training and other training facilities used for timed and reported workouts shall have:

- (1) Permanent track surface elevation grade marks installed at least at every 1/32 mile intervals to provide for a means of maintaining a continuous uniform grade of the track cushion and base (if granite). If the track is designed with the front stretch or backstretch at a different elevation than the other, a continuous grade from one elevation to the other shall be maintained.
- (2) A minimum of 2 percent cross slope in the straight-aways and a minimum of 4 percent cross slope in the center of the turns.
- (3) Synthetic and polymer or wax-coated sand track surfaces shall be exempt from the requirements of Subparagraph (l)(1)(2) of this rule.

Cal. Code Regs. tit. 4, § 1473. (a) Subject to limitations created by periods of inclement weather, all licensed racing facilities and training facilities used for timed and reported workouts which stable between 300 and 1100 racehorses in training shall provide at least one morning break for racetrack surface renovation. Racing facilities which stable more than 1100 racehorses in training shall provide at least two morning breaks to renovate the racetrack surface. For those racing facilities and training facilities with less than 300 racehorses, surface renovation shall be determined by the track maintenance supervisor and designated horsemen's representative stabled at the location

- Unfit to Race

Cal. Code Regs. tit. 4, § 1697. After entering the race course track for the post, a horse shall only be declared by the stewards when they consider such horse unfit to run in the race. No horse determined to be a starter shall be excused or declared from the race. Any horse which breaks through the gate or runs off without effective control shall be examined by the racing veterinarian and determined to be fit to compete before being permitted to start.

Cal. Code Regs. tit. 4, § 1853. (a) The official veterinarian shall examine each horse that is scheduled to race to determine its fitness to start. The horse identifier shall examine each horse to identify such horse from the Board's identification record and the photographs, record of pedigree, tattoo or brand number, microchip number, and such other points of identification as may be available. The horseshoe inspector shall inspect the horseshoes of each horse. No horse shall be eligible to start in a race, and shall be declared by the stewards, if it is found to be unfit to race, not properly identified, or improperly shod

Cal. Code Regs. tit. 4, § 1866. (a) The official veterinarian shall maintain a Veterinarian's List of those horses determined to be unfit to compete in a race due to veterinary treatment, physical distress, injury, lameness, unsoundness or infirmity.

(1) When a horse is placed on the Veterinarian's List, the trainer of such horse shall be notified within 72 hours.

(b) A horse placed on the Veterinarian's List as:

- (1) sick;
- (2) having received veterinary treatment-shockwave therapy;
- (3) injured;
- (4) unsound; or
- (5) lame,

may not workout for 72 hours after being placed on the list without the permission of the official veterinarian.

(c) The official veterinarian may require any horse placed on the Veterinarian's List to undergo a veterinary examination prior to resuming training at any facility under the jurisdiction of the Board.

(d) A horse placed on the Veterinarian's List shall be removed from the list only after having established or demonstrated to the satisfaction of the official veterinarian or the racing veterinarian that the horse is then raceably sound and in fit physical condition to exert its best effort in a race

- Animal Welfare

Cal. Code Regs. tit. 4, § 1902.5. No person under the jurisdiction of the Board shall alone, or in concert with another person, permit or cause an animal under his control or care to suffer any form of cruelty, mistreatment, neglect or abuse. Nor shall such person abandon; injure; maim; kill; administer a noxious or harmful substance to; or deprive an animal of necessary care, sustenance, shelter or veterinary care.

Recent Changes or Potential Changes

Illinois

Gov. Pritzker signed the Rebuild Illinois capital plan, which included Senate Bill 690, on June 28, 2019. Senate Bill 690 provided for, among other things:

- An increase in live-racing dates
- An organization license for a Standardbred (harness) racetrack in Cook County
- Authorization for state licenses for slot machines and casino games at racetracks
- Increased civil penalties for actions that are a detriment or impediment to horse racing
- Increased license and other fees
- Ineligibility for a racetrack to conduct gaming for a calendar year if its number of racing dates does not meet a particular threshold
- Abolition of recapture, which allows tracks to take funds from purse accounts to replace money lost to simulcasting

California

On February 11, California Assemblymember Ash Kalra introduced the Equine Welfare and Safety in Horse Racing Act, which includes requirements pertaining to CT scans, an on-site pharmacy at major tracks, medication restrictions, and suspension or revocation of licenses.

In 2019, the California Horse Racing Board amended or added rules to, among other things:

- Allow suspension of license to conduct race meeting to protect safety of horse or rider
- Make horse ineligible to start in a race if horse received an intra-articular injection within the previous five days (120 hours) before the scheduled post-time or if horse has not raced within 12 consecutive months since prior start or, if the horse is a first-time starter four years of age or older, until the horse has performed satisfactorily in a workout or Standardbred qualifying race
- Authorize out-of-competition test sample at any time
- Add certain medications to prohibited list

In November, Gov. Newsom asked the California Horse Racing Board to submit reform recommendations, and the CHRB proposed:

- Making positive drug tests public within 24 hours of confirmation
- Allotting revenue to welfare and safety
- Allowing more access to confidential veterinary records
- Requiring horses on high-priority watch list to be placed on veterinarian's list
- More stringent criteria for removal from veterinarian's list
- Weekly fatality reports posted online
- Protection of whistleblowers by tracks
- No running on tracks altered by weather conditions
- Eliminating corticosteroids
- More research on synthetic surfaces
- Eliminating extracorporeal shockwave therapy
- Requiring recent medical reports for horse entered in race
- Looking into requiring trainers to follow veterinary advice
- Increase out-of-competition testing (testing horses not yet entered) rather than post-race testing
- Educating trainers and veterinarians on various medications
- Reviewing penalty guidelines

Federal

The Horseracing Integrity Act (H.R. 1754), introduced in 2019, would establish “the Horseracing Anti-doping and Medication Control Authority, a private, independent, self-regulatory, nonprofit corporation with responsibility for developing and administering an anti-doping and medication control program for covered horses, covered persons, and covered horseraces.” It allows that “[t]he

Authority may enter into agreements with one or more State racing commissions to implement within their respective jurisdictions any of the components of the horseracing anti-doping and medication control program established by the Authority if the Authority determines that a particular State racing commission will be able to implement a component of the horseracing anti-doping and medication control program in accordance with the standards and requirements established by the Authority.” There was a hearing on January 28, 2020, in the Consumer Subcommittee of the House Energy and Commerce Committee.

Illinois' Top Legislation Ranking

- Ledy VanKavage
ledyv@bestfriends.org
- Senator Linda Holmes
- Rep. Stephanie Kifowit
- Rep. Diane Pappas

This segment includes all materials received by the course book publication deadline.
Please contact the speaker for any other materials used at the program.

AN ACT concerning animals.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 10. The Animal Welfare Act is amended by changing Sections 2, 3, 3.2, 3.3, 7, 20.5, and 21 as follows:

(225 ILCS 605/2) (from Ch. 8, par. 302)

Sec. 2. Definitions. As used in this Act unless the context otherwise requires:

"Department" means the Illinois Department of Agriculture.

"Director" means the Director of the Illinois Department of Agriculture.

"Pet shop operator" means any person who sells, offers to sell, exchange, or offers for adoption with or without charge or donation dogs, cats, birds, fish, reptiles, or other animals customarily obtained as pets in this State. However, a person who sells only such animals that he has produced and raised shall not be considered a pet shop operator under this Act, and a veterinary hospital or clinic operated by a veterinarian or veterinarians licensed under the Veterinary Medicine and Surgery Practice Act of 2004 shall not be considered a pet shop operator under this Act.

"Dog dealer" means any person who sells, offers to sell, exchange, or offers for adoption with or without charge or

donation dogs in this State. However, a person who sells only dogs that he has produced and raised shall not be considered a dog dealer under this Act, and a veterinary hospital or clinic operated by a veterinarian or veterinarians licensed under the Veterinary Medicine and Surgery Practice Act of 2004 shall not be considered a dog dealer under this Act.

"Secretary of Agriculture" or "Secretary" means the Secretary of Agriculture of the United States Department of Agriculture.

"Person" means any person, firm, corporation, partnership, association or other legal entity, any public or private institution, the State of Illinois, or any municipal corporation or political subdivision of the State.

"Kennel operator" means any person who operates an establishment, other than an animal control facility, veterinary hospital, or animal shelter, where dogs or dogs and cats are maintained for boarding, training or similar purposes for a fee or compensation.

"Boarding" means a time frame greater than 12 hours or an overnight period during which an animal is kept by a kennel operator.

"Cat breeder" means a person who sells, offers to sell, exchanges, or offers for adoption with or without charge cats that he or she has produced and raised. A person who owns, has possession of, or harbors 5 or less females capable of reproduction shall not be considered a cat breeder.

"Dog breeder" means a person who sells, offers to sell, exchanges, or offers for adoption with or without charge dogs that he has produced and raised. A person who owns, has possession of, or harbors 5 or less females capable of reproduction shall not be considered a dog breeder.

"Animal control facility" means any facility operated by or under contract for the State, county, or any municipal corporation or political subdivision of the State for the purpose of impounding or harboring seized, stray, homeless, abandoned or unwanted dogs, cats, and other animals. "Animal control facility" also means any veterinary hospital or clinic operated by a veterinarian or veterinarians licensed under the Veterinary Medicine and Surgery Practice Act of 2004 which operates for the above mentioned purpose in addition to its customary purposes.

"Animal shelter" means a facility operated, owned, or maintained by a duly incorporated humane society, animal welfare society, or other non-profit organization for the purpose of providing for and promoting the welfare, protection, and humane treatment of animals. An organization that does not have its own building that maintains animals solely in foster homes or other licensees is an "animal shelter" for purposes of this Act. "Animal shelter" also means any veterinary hospital or clinic operated by a veterinarian or veterinarians licensed under the Veterinary Medicine and Surgery Practice Act of 2004 which operates for the above mentioned purpose in addition to

its customary purposes.

"Day care operator" means a person who operates an establishment, other than an animal control facility, veterinary hospital, or animal shelter, where dogs or dogs and cats are kept for a period of time not exceeding 12 hours.

"Foster home" means an entity that accepts the responsibility for stewardship of animals that are the obligation of an animal shelter or animal control facility, not to exceed 4 foster animals or 2 litters under 8 weeks of age at any given time. A written agreement ~~Permits~~ to operate as a "foster home" shall be contracted with ~~issued through~~ the animal shelter or animal control facility.

"Guard dog service" means an entity that, for a fee, furnishes or leases guard or sentry dogs for the protection of life or property. A person is not a guard dog service solely because he or she owns a dog and uses it to guard his or her home, business, or farmland.

"Guard dog" means a type of dog used primarily for the purpose of defending, patrolling, or protecting property or life at a commercial establishment other than a farm. "Guard dog" does not include stock dogs used primarily for handling and controlling livestock or farm animals, nor does it include personally owned pets that also provide security.

"Return" in return to field or trap, neuter, return program means to return the cat to field after it has been sterilized and vaccinated for rabies.

"Sentry dog" means a dog trained to work without supervision in a fenced facility other than a farm, and to deter or detain unauthorized persons found within the facility.

"Probationary status" means the 12-month period following a series of violations of this Act during which any further violation shall result in an automatic 12-month suspension of licensure.

"Owner" means any person having a right of property in an animal, who keeps or harbors an animal, who has an animal in his or her care or acts as its custodian, or who knowingly permits a dog to remain on any premises occupied by him or her.

"Owner" does not include a feral cat caretaker participating in a trap, spay/neuter, vaccinate for rabies, and return or ~~release~~ program.

(Source: P.A. 99-310, eff. 1-1-16; 100-842, eff. 1-1-19; 100-870, eff. 1-1-19; revised 10-22-18.)

(225 ILCS 605/3) (from Ch. 8, par. 303)

Sec. 3. (a) Except as provided in subsection (b) of this Section, no person shall engage in business as a pet shop operator, dog dealer, kennel operator, day care operator, dog breeder, or cat breeder or operate a guard dog service, an animal control facility, or animal shelter, ~~or any combination thereof,~~ in this State without a license therefor issued by the Department. If one business conducts more than one such operation, each operation shall be licensed separately. Only

~~one license shall be required for any combination of businesses at one location, except that a separate license shall be required to operate a guard dog service.~~ Guard dog services that are located outside this State but provide services within this State are required to obtain a license from the Department. Out-of-state guard dog services are required to comply with the requirements of this Act with regard to guard dogs and sentry dogs transported to or used within this State.

(b) This Act does not apply to a private detective agency or private security agency licensed under the Private Detective, Private Alarm, Private Security, Fingerprint Vendor, and Locksmith Act of 2004 that provides guard dog or canine odor detection services and does not otherwise operate a kennel for hire.

(Source: P.A. 100-842, eff. 1-1-19.)

(225 ILCS 605/3.2)

Sec. 3.2. Foster homes. A person shall not operate a foster home without affiliating by formal written agreement with an animal shelter or animal control facility for which that person will operate the foster home ~~first obtaining a permit from the animal shelter or animal control facility for which that person will operate the foster home.~~ The written agreement shall include a clause allowing for the Department to inspect the foster home. The animal shelter or animal control facility shall be responsible for the records and have the obligation of

~~stewardship for animals in the foster home with which it affiliates. Upon application and payment of the required fees by the animal shelter, the Department shall issue foster home permits to the animal shelter. The animal shelter shall be responsible for the records and have all the obligations of stewardship for animals in the foster homes to which it issues permits.~~

Foster homes shall provide the care for animals required by this Act and shall report any deviation that might affect its adherence to its written agreement with the affiliating animal shelter or animal control facility ~~the status of the license or permit to the animal shelter.~~ If the subject of a complaint, a foster home may be inspected by the Department under the Department's licensing authority relative to the affiliating animal shelter or animal control facility. Refusal of the Department's inspection may result in revocation of the license.

A foster home shall not care for more than 4 foster animals or more than 2 litters under 8 weeks of age at any one time.

(Source: P.A. 100-870, eff. 1-1-19.)

(225 ILCS 605/3.3)

Sec. 3.3. Adoption of dogs and cats.

(a) An animal shelter or animal control facility shall not adopt out any dog or adopt out or return to field any cat unless it has been sterilized and microchipped. However, an

animal shelter, ~~or~~ animal control facility may adopt out a dog or cat that has not been sterilized and microchipped if:

(1) Blank; or ~~the adopting owner has executed a written agreement agreeing to have sterilizing and microchipping procedures performed on the animal to be adopted within a specified period of time not to exceed 30 days after the date of the adoption, or~~

(2) the adopting owner has executed a written agreement to have sterilizing and microchipping procedures performed within 14 days after a licensed veterinarian certifies the dog or cat is healthy enough for sterilizing and microchipping procedures, and a licensed veterinarian has certified that the dog or cat is too sick or injured to be sterilized or it would be detrimental to the health of the dog or cat to be sterilized or microchipped at the time of the adoption.

(b) An animal shelter or animal control facility may adopt out any dog or cat that is not free of disease, injury, or abnormality if the disease, injury, or abnormality is disclosed in writing to the adopter, and the animal shelter or animal control facility allows the adopter to return the animal to the animal shelter or animal control facility.

(c) The requirements of subsections (a) and (b) of this Section do not apply to adoptions subject to Section 11 of the Animal Control Act.

(Source: P.A. 96-314, eff. 8-11-09.)

(225 ILCS 605/7) (from Ch. 8, par. 307)

Sec. 7. Applications for renewal licenses shall be made to the Department in a manner prescribed by the Department, shall contain such information as will enable the Department to determine if the applicant is qualified to continue to hold a license, shall report beginning inventory and intake and outcome statistics from the previous calendar year, and shall be accompanied by the required fee, which shall not be returnable. The report of intake and outcome statistics shall include the following:

(1) The total number of dogs, cats, and other animals, divided into species, taken in by the animal shelter or animal control facility, in the following categories:

- (A) surrendered by owner;
- (B) stray;
- (C) impounded other than stray;
- (D) confiscated under the Humane Care for Animals Act;
- (E) transfer from other licensees within the State;
- (F) transferred into or imported from out of the State;
- (G) transferred into or imported from outside the country; and
- (H) born in shelter or animal control facility.

(2) The disposition of all dogs, cats, and other animals taken in by the animal shelter or animal control facility, divided into species. This data must include dispositions by:

- (A) reclamation by owner;
- (B) adopted or sold;
- (C) euthanized;
- (D) euthanized per request of the owner;
- (E) died in custody;
- (F) transferred to another licensee;
- (G) transferred to an out-of-State nonprofit agency;
- (H) animals missing, stolen, or escaped;
- (I) cats returned ~~animals released~~ in field; ~~trapped, neutered, released;~~ and
- (J) ending inventory; shelter count at end of the last day of the year.

The Department shall not be required to audit or validate the intake and outcome statistics required to be submitted under this Section.

(Source: P.A. 100-870, eff. 1-1-19.)

(225 ILCS 605/20.5)

Sec. 20.5. Administrative fines. The following administrative fines may ~~shall~~ be imposed by the Department upon any person or entity who violates any provision of this

Act or any rule adopted by the Department under this Act:

- (1) For the first violation, a fine of \$1,000 ~~\$500~~.
- (2) For a second violation that occurs within 2 ~~3~~ years after the first violation, a fine of \$2,500 ~~\$1,000~~.
- (3) For a third violation that occurs within 2 ~~3~~ years after the first violation, mandatory probationary status and a fine of \$3,000 ~~\$2,500~~.

If a person or entity fails or refuses to pay an administrative fine authorized by this Section, the Department may prohibit that person or entity from renewing a license under this Act until the fine is paid in full. Any penalty of \$500 or more not paid within 120 days of issuance by the Department shall be submitted to the Department of Revenue for collection as provided under the Illinois State Collection Act of 1986.

(Source: P.A. 98-855, eff. 8-4-14.)

(225 ILCS 605/21) (from Ch. 8, par. 321)

Sec. 21. The following fees shall accompany each application for a license, which fees shall not be returnable:

- a. for an original license to an individual \$350 ~~\$25~~
- b. for an original license to a partnership, animal shelter, or animal control facility or corporation..... \$350 ~~\$25~~
- c. for an annual renewal license \$100 ~~\$25~~
- d. for each branch office license \$100 ~~\$25~~

e. for the renewal of any license not renewed by

July 1 of the year \$400 ~~\$40~~

f. (blank) ~~for a permit for a foster home~~ ~~\$25~~

g. (blank) ~~for renewal of a permit for a foster home~~ .. ~~\$25~~

(Source: P.A. 89-178, eff. 7-19-95.)

Section 15. The Animal Control Act is amended by changing Sections 2.01, 2.07, 2.16, 11, 24, and 35 and by adding Sections 2.19-3 as follows:

(510 ILCS 5/2.01) (from Ch. 8, par. 352.01)

Sec. 2.01. Administrator. "Administrator" means a veterinarian licensed by the State of Illinois and appointed pursuant to this Act, or ~~in the event a veterinarian cannot be found and appointed pursuant to this Act,~~ a non-veterinarian may serve as Administrator under this Act. In the event the Administrator is not a veterinarian, the Administrator shall defer to the Deputy Administrator ~~veterinarian~~ regarding all medical decisions.

(Source: P.A. 93-548, eff. 8-19-03.)

(510 ILCS 5/2.07) (from Ch. 8, par. 352.07)

Sec. 2.07. Deputy Administrator. "Deputy Administrator" means a veterinarian licensed by the State of Illinois, appointed by the Administrator or the County Board.

(Source: P.A. 93-548, eff. 8-19-03.)

(510 ILCS 5/2.16) (from Ch. 8, par. 352.16)

Sec. 2.16. Owner. "Owner" means any person having a right of property in an animal, or who keeps or harbors an animal, or who has it in his care, or acts as its custodian, or who knowingly permits a dog to remain on any premises occupied by him or her. "Owner" does not include a feral cat caretaker participating in a trap, spay/neuter, vaccinate for rabies, and return ~~or release~~ program.

(Source: P.A. 93-548, eff. 8-19-03; 94-639, eff. 8-22-05.)

(510 ILCS 5/2.19-3 new)

Sec. 2.19-3. Return. "Return" in return to field or trap, neuter, return program means to return the cat to field after it has been sterilized and vaccinated for rabies.

(510 ILCS 5/11) (from Ch. 8, par. 361)

Sec. 11. Animal placement. When not redeemed by the owner, agent, or caretaker, a dog or cat must be scanned for a microchip. If a microchip is present, the registered owner or chip purchaser if the purchaser was a nonprofit organization, animal shelter, animal control facility, pet store, breeder, or veterinary office must be notified. After contact has been made or attempted, dogs ~~or cats~~ deemed adoptable by the animal control facility shall be offered for adoption, or made available to a licensed animal shelter, ~~humane society~~ or

rescue group. After contact has been made or attempted, the animal control facility may either: (1) offer the cat for adoption; (2) return to field or transfer the cat after sterilization; or (3) make the cat available to a licensed animal shelter or animal control facility. ~~The If no placement is available,~~ the animal may be humanely dispatched pursuant to the Humane Euthanasia in Animal Shelters Act. An animal control facility or ~~animal pound or~~ animal shelter shall not adopt or release any dog or cat to anyone other than the owner or a foster home unless the animal has been rendered incapable of reproduction and microchipped. ~~, or the person wishing to adopt an animal prior to the surgical procedures having been performed shall have executed a written agreement promising to have such service performed, including microchipping, within a specified period of time not to exceed 30 days. Failure to fulfill the terms of the agreement shall result in seizure and impoundment of the animal and any offspring by the animal pound or shelter, and any monies which have been deposited shall be forfeited and submitted to the county Pet Population Control Fund on a yearly basis.~~ This Act shall not prevent humane societies or animal shelters from engaging in activities set forth by their charters; provided, they are not inconsistent with provisions of this Act and other existing laws. No animal shelter or animal control facility shall release dogs or cats to an individual representing a rescue group, unless the group has been licensed ~~or has a foster care permit issued by the~~

~~Illinois~~ Department of Agriculture or is a representative of a not-for-profit out-of-state organization, animal shelter, or animal control facility. The Department may suspend or revoke the license of any animal shelter or animal control facility that fails to comply with the requirements set forth in this Section or that fails to report its intake and euthanasia statistics as required by law each year.

(Source: P.A. 100-870, eff. 1-1-19.)

(510 ILCS 5/24) (from Ch. 8, par. 374)

Sec. 24. Limitations. Nothing in this Act shall be held to limit in any manner the power of any municipality or other political subdivision to prohibit animals from running at large, nor shall anything in this Act be construed to, in any manner, limit the power of any municipality or other political subdivision to further control and regulate dogs, cats or other animals in such municipality or other political subdivision provided that no regulation, policy or ordinance is specific to breed.

(Source: P.A. 93-548, eff. 8-19-03.)

(510 ILCS 5/35)

Sec. 35. Liability.

(a) Any municipality, ~~or~~ political subdivision, or State university or community college allowing feral cat colonies and trap, sterilize, vaccinate for rabies, and return programs to

help control cat overpopulation shall be immune from criminal liability and shall not be civilly liable, except for willful and wanton misconduct, for damages that may result from a feral cat. Any municipality or political subdivision allowing dog parks shall be immune from criminal liability and shall not be civilly liable, except for willful and wanton misconduct, for damages that may result from occurrences in the dog park.

(b) Any veterinarian, ~~or~~ animal shelter, or animal control facility who in good faith contacts the registered owner, agent, or caretaker of a microchipped animal shall be immune from criminal liability and shall not, as a result of his or her acts or omissions, except for willful and wanton misconduct, be liable for civil damages.

(c) Any veterinarian who sterilizes feral cats and any feral cat caretaker who traps cats for a trap, sterilize, vaccinate for rabies, and return program shall be immune from criminal liability and shall not, as a result of his or her acts or omissions, except for willful and wanton misconduct, be liable for civil damages.

(d) Any animal shelter or animal control facility worker who microchips an animal shall be immune from criminal liability and shall not, as a result of his or her acts or omissions, except for willful and wanton misconduct, be liable for civil damages.

(Source: P.A. 97-240, eff. 1-1-12.)

Section 99. Effective date. This Act takes effect upon

Public Act 101-0295

SB0061 Enrolled

LRB101 06747 SLF 51774 b

becoming law.

Public Act 101-0210

HB3390 Enrolled

LRB101 08508 JRG 53585 b

AN ACT concerning regulation.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Animal Welfare Act is amended by adding
Section 18.2 as follows:

(225 ILCS 605/18.2 new)

Sec. 18.2. Fire alarm system.

(a) In this Section:

"Fire alarm system" means a system that automatically
triggers notification to local emergency responders when
activated.

"Staffing plan" means a plan to staff a kennel operator
anytime dogs or cats are on the premises. At a minimum, a
staffing plan must include the kennel operator's hours of
operation, number of staff, names of staff, and the staff's
contact information. The Department may adopt rules adding
requirements to a staffing plan.

"Qualified fire inspector" means a local fire official or a
building inspector working for a unit of local government or
fire protection district who is qualified to inspect buildings
for fire safety or building code compliance.

(b) A kennel operator that maintains dogs or cats for
boarding and that is not staffed at all times dogs or cats are
on the premises shall be equipped with at least one fire alarm
system or fire sprinkler system in operating condition in every
building of the kennel operator that is used for the housing of
animals. The kennel operator shall certify in its license
application and annually certify in its license renewal that
either: (1) its facility has a fire alarm system or a fire
sprinkler system, and shall include with the application or
license renewal an attached description and picture of the make
and model of the system used; or (2) the kennel is staffed at
all times dogs or cats are on the premises, and shall include
with the application or license renewal an attached staffing
plan. The Department shall include this certification on each
application for license or license renewal.

(c) A qualified fire inspector may inspect a kennel
operator that maintains dogs and cats for boarding during the
course of performing routine inspections. If during a routine
inspection a qualified fire inspector determines that the
kennel operator does not have a fire alarm system or fire
sprinkler system the inspector may inform the Department.

(d) For the purposes of this Section, veterinary hospitals,
practices, or offices are not kennel operators.

Section 99. Effective date. This Act takes effect January
1, 2020.

Effective Date: 1/1/2020

New Law: Application of the “Well-Being of the Companion Animal” in Marriage Dissolution

- Hon. William E. Holdridge
- Senator Linda Holmes
- Hon. Alfred L. Levinson
- Angela E. Peters
angela@aeppbuffalo.com

This segment includes all materials received by the course book publication deadline.
Please contact the speaker for any other materials used at the program.

WHAT IS THE WELL-BEING OF A COMPANION ANIMAL?

By Angela Peters and David Hopkins

A. 1) A reference to the statute, and 2) the historical basis for the statute

- 1) ILLINOIS PUBLIC ACT 100-0422, S.B.1261, amends the Illinois Marriage and Dissolution of Marriage Act, 750 ILCS 503

750 ILCS 5/503-Disposition of property and debts.

...

(n) If the court finds that a companion animal of the parties is a marital asset, it shall allocate the sole or joint ownership of and responsibility for a companion animal of the parties. In issuing an order under this subsection, the court shall take into consideration the well-being of the companion animal. As used in this Section, "companion animal" does not include a service animal as defined in Section 2.01c of the Humane Care for Animals Act. (effective 1.1.18) amends the Illinois Marriage and Dissolution of Marriage Act ("IMDMA").

2) P.A. 100-0422 is a further step in the trend in the U.S. in recent years, under both decisional and statutory law that reflects a departure from the traditional concept that pets are merely "property", like household furniture. Pets are still defined as property, but they are a class of unique property.

The theme of recent caselaw is that 'pets enjoy a status greater than mere chattel, as is illustrated in Illinois by the decision in IRMO Enders and Baker, 2015 Ill.App.1st, 142 435 (2015), 48 N.E.3d 1277. In Enders and Baker, in the context of a visitation issue, the Appellate Court approved language from a New York decision as to an applicable standard-i.e., "best interest for all concerned." Although the Enders and Baker Court rejected the ex-husband's request for visitation with two marital dogs, the Court's analysis seemingly "opened the door" in Illinois a bit wider for adjudications in other divorce cases as to either ownership (or co-ownership) and/or, at least theoretically, visitation of a marital pet.

Something of a statutory precedent has existed in Illinois since 2008, when an amendment to the Illinois Domestic Act of 1986, one protective of pets, was passed. The amendment, in relevant part, provides as follows:

"(11.5) Protection of animals. Grant the petitioner the exclusive care, custody or control of any animal owned, possessed, leased, kept, or held by either the petitioner or the respondent or a minor child residing in the residence or household of either the petitioner or the respondent and order the respondent to stay away from the animal and forbid the respondent from taking, transferring, encumbering, concealing, harming, or otherwise disposing of the animal." ICVA, 750 ILCS 60/214(b)(11.5)

B. What is the definition of 'companion animal'? Companion animal is not defined in 503(n). The statute states that companion animal does not include a service animal as defined in Section 2.01c of the Human Care for Animals Act. (HCAA). HCAA is referred to in the legislative transcripts that led to the enactment of 503(n). The HCAA defines companion animal to mean an animal that is commonly considered to be, or is considered by the owner to be, a pet. "Companion animal" includes, but is not limited to, canines, felines, and equines.

- i) Google defines 'companion animal' as an animal that serves as a domestic pet. It includes any other domesticated animal normally maintained in or near the household of the owner or person who cares for such domestic animal.
- ii) These two definitions, both statutory and common, are so alike. Common that a companion animal is generally regarded as a pet or domestic animal. There are no layers to this definition. Whether an animal is a companion animal can be simply ascertained by looking at the facts involved in the case at hand.
- iii) Google defines 'pet' as a domestic or tamed animal kept for companionship or pleasure.
- iv) Black's Law Dictionary does not include 'pet' in its legal definitions.
- v) Miriam Webster defines pet as 'a domesticated animal kept for pleasure rather than utility'.

The definitions of companion animal and of pet are either consistent, exact, or commonly accepted as interchangeable.

C. What is the definition of 'well-being'?

Wikipedia defines well-being as: Wellness refers to diverse and interconnected dimensions of physical, mental, and social well-being that extend beyond the traditional definition of health. It includes choices and activities aimed at achieving physical vitality, mental alacrity, social satisfaction, a sense of accomplishment, and personal fulfillment. Well-being, wellbeing, or wellness is the condition of an individual or group. A high level of well-being means that in some sense the individual's or group's condition is positive.

Black's Law Dictionary does not define either 'companion', 'companion animal', or 'well-being'. We are left to our own devices.

5 ILCS 70/1.01 provides that "All general provisions, terms, phrases and expressions shall be liberally construed in order that the true intent and meaning of the General Assembly may be fully carried out.

The main goal in construing a statute is to ascertain and give effect to the intent of the legislature. *Murray v. Chicago Youth Center*, 224 Ill.2d. 213(2007). Senator Linda Holmes, the proponent of S.B. 1261, in the Illinois General Assembly, April 26, 2017 legislative session on S.B. 1261, stated that, "[The bill] does refer to cats, dogs, and also—horses are actually considered companion animals also.' This definition is the HCAA definition of 'Companion Animal'.

When a court interprets a statute, it is guided by rules of statutory construction. Judges are to first attempt to find the 'plain meaning' of a law, based solely on the words of the statute. If the statute is not clear, a court then may look to extrinsic evidence, or legislative history e.g.. <https://legal-dictionary.thefreedictionary.com/interpretation>

Well-being factors from a family law perspective:

- How and why the pet was acquired
- Contribution to and past participation in the care of the pet/who took it to the vet, eg.
- Human's needs (not the animals) and the actual reason(s) that custody, visitation or possession is being sought
- Proposed "custodial" arrangement including financial elements (N.B.: The kids can be key)
- Past cooperation with the other party (or lack thereof), both as to the pet and to any other matters
- Prior agreement/course of conduct in "sharing" the pet
- Distance between new residences
- Willingness to continue the pet's relationship with the other party and/or with the children
- Other factors unique to the case, including relevant attributes of the pet that are at issue.

Factors for well-being consideration from the perspective of a dog trainer, Behesha H. Doan. Perhaps expert testimony is necessary for a complete picture.

- Provide a safe, stable and secure environment
- Maintain a stable, consistent relationship with the dog
- Attend to the daily needs of the dog, including, feeding, physical care and meaningful interaction
- Food and water, appropriate shelter, exercise
- Dogs are hardwired to interact socially. Failing to consider the dog's need for interaction with their humans would be to leave a huge part of who they are subject to neglect, misunderstanding or even abuse.
- Attend to the adequate training for the dog to maintain mental balance
- Provide support for the dog through veterinary care
- Ability to identify and prioritize the dog's needs ahead of their own
- Ability to empathize with and meet the dog's needs
- Ability to regulate their own impulses and emotions
- Assist the dog in developing and maintaining self control
- Exercise appropriate judgment regarding the dog's welfare
- Psychological needs of the dog met

Dogs seek balance (example): When a dog's owner has unrest and or chaos in their life, it will most certainly affect the dog. Divorce often creates a situation of disruption, but the goal would be to make this temporary.

The well-being of the dog is directly related to the quality of their relationships with their humans. When both are in balance, all relationships flourish.

-Needs vary depending on breed traits and individual temperments

Some dog breeds require high expenditures of energy to remain balanced and fulfilled. Some are bred for cooperation and require close bonds with humans. Depending on the dog's genetic drives and individual personality traits, they may thrive in one environment much more richly than another. What does well-being mean for dogs, Behesha H. Doan of Extreme K-9 Professional Dog Training.

D. What is the advocate to focus on? What is the trial court looking for? What is the appellate court looking for?

The focus here is to understand the path to treatment of the pet in a divorce case. And that well-being is only one element of your evidence. The well-being standard now allows the courts to look at what some courts felt they could not look at. Now it is mandated.

In planning to present evidence of the pet's well-being to the court, it is important to analyze the case for all strengths and weaknesses as you don't really know what the court will focus on for its decision. Everything could be equal if both parties love the pet.

Although the increase in custody battles over companion animals demonstrates their evolving social importance as family members, courts typically resolve these disputes based on one criterion: the property status of the animal. In other words, which party is the more rightful "owner" under the law? This issue can get murky when a couple has been jointly caring for an animal for years and sharing veterinary expenses, food and other custodial costs (as well as intangible "costs" like time spent with the animal), despite who may have initially paid any fees in acquiring the animal.

How is it different from other evidence you will want to present? It includes all of the other factors, but it may also be specific to the particular pet, such as what type of dog or cat it is, where each of the parties is living, their work hours, etc.

E. Was it considered by courts in the past? Absolutely. Courts stretched their muscle to find standards to use for pets, and these standards did not fit the property model.

a. Best interest of all concerned. (Enders and Baker, 2015 IL App (1st) 142435) The court did consider the wellbeing of the pet as it considered that husband lived in an apartment that did not allow pets. Husband had not even made a request for possession or allocation of the pet to him.

b. Animal Control Act (Enders and Baker, 2015 IL App (1st) 142435)

c. Lost property (public policy of encouraging citizens to care for lost dogs) (Morgan v. Kroupa, 702 A. 2d 630 - 1997 - Vt: Supreme Court)

d. Interests of the pet (Raymond v. Lachmann, 695 N.Y.S. 308, 1999)

e. Equity providing relief from judgment when justice so requires (Juelfs v. Gough, 41 P.3d 593, S.Court of Alaska, No. S-9931, 2002).

Arf, Arf

TAB 6

The Pet Insurance Industry

- Lynne Hennessey
- Jules Benson

This segment includes all materials received by the course book publication deadline.
Please contact the speaker for any other materials used at the program.



PET HEALTH INSURANCE (PHI)

Jules Benson BVSc MRCVS – AVP, Veterinary Relations

Lynne Hennessey AIC, CCEP, MCM – Compliance Director



0

History of PHI

- US vs other countries
 - Regulatory environment
 - Different insurance models
 - Liability issues
 - Healthcare/cultural environment?



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1

PHI Growth

- PHI is regulated as Property and Casualty
- Growth > 24% annually
- CA, NY, FL, NJ largest markets
- Approx 2% of population insured
 - Dogs >>> Cats >>> Exotics (no Horses!)
 - \$1.3B gross written premium
 - 98% uninsured



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2

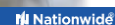
How It Works

- Annual or Monthly Policy Period
- Percent of Invoice or Benefit Schedule
- Limits, Deductibles, Co-pays
- Waiting Periods
- Accident, Illness, Wellness, Catastrophic
- No Pre-existing Conditions



3

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3

Cost of PHI

- Rates and premiums are highly dependent on product
 - Benefit schedule products are more rate-stable (capped by condition)
 - POI products see rate increases as the uptake of veterinary services changes
- Rating factors include:
 - Species
 - Breed
 - Age
 - Location
 - Policy factors – deductible, copay, limits, discounts, etc



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4

Regulation

- P&C Product
- DOI regulation of underwriting company
- Filed forms and rates
- CA only state with Pet Insurance regulation
- Model law
- Practice Act and VCPR
 - 225 ILCS 115/ *Veterinary Medicine and Surgery Practice Act of 2004*



5

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5

Regulatory Concerns

- Non-licensed producers
- Unfiled rates and discounts
- Public understanding
- Un-tracked complaint data by DOI
- All premium and complaint data under Inland Marine on annual statements



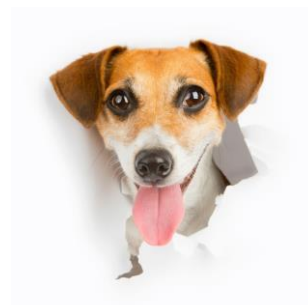
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6

Wrap-up



7

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7

Pet Health Insurance

QUESTIONS?



TAB 7

Police Shooting and the Household Dog

- Daniel J. Kolde
- Chris Green

This segment includes all materials received by the course book publication deadline.
Please contact the speaker for any other materials used at the program.

AMERICAN BAR ASSOCIATION

TORT TRIAL AND INSURANCE PRACTICE SECTION (Sponsor)

CRIMINAL JUSTICE SECTION (Co-Sponsor)

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

1 RESOLVED, That the American Bar Association urges all federal, state, local, territorial,
2 and tribal legislative bodies to enact laws, and governmental agencies to adopt policies,
3 that provide law enforcement officers with comprehensive animal encounter training on
4 the reasonable use of force necessary to better secure the safety of such officers, protect
5 public health, reduce legal liability, and ensure the humane treatment of the animals
6 encountered.

REPORT

This resolution builds upon existing ABA Criminal Justice Standards on Urban Police Function that focus on limiting the excessive or unnecessary use of force by law enforcement officers.¹ In the United States, the number one reason a police officer discharges their weapon is to shoot at a dog.² In some cities, police firing their guns at dogs accounts for a full 75% of all service weapon use.³ The U.S. Department of Justice has recognized the dangers posed by these incidents and produced materials to help address them.⁴ However, such resources remain voluntary and often are not utilized widely enough.⁵ This report will discuss the numerous public health and safety hazards, financial and legal liability, insurance issues, and animal welfare concerns resulting from the lack of current federal, state, and territorial laws on the subject of animal encounter training for law enforcement officers. A recommendation by the ABA will assist decision makers seeking to address these concerns through enacting comprehensive and consistent laws that provide adequate and necessary animal encounter training to law enforcement officers in order to better ensure the amount of force deployed during such encounters is reasonably necessary to protect all involved from unjustifiable harm.

I. PUBLIC HEALTH & SAFETY

When law enforcement officers shoot at family pets or other animals, they risk causing injuries and even death to innocent human bystanders. Police officers firing their guns at animals in heavily populated areas further increases the risk of accidentally shooting members of the public, either directly, or indirectly as bullets ricochet off hard surfaces.⁶ Humans injured in these unfortunate accidents have included a four-year-old girl in Ohio, whom an officer shot in her leg after firing at her dog;⁷ a Los Angeles woman who was shot in the leg when officers fired at a dog in a crowded area;⁸ and an Illinois man whom officers mistakenly shot in the leg as they fired nineteen rounds at a dog in the backyard of the home next door.⁹

¹ Standards on Urban Police Function §§ 1-2.4(d), 1-10.1(c) (Dec. 5, 2018), https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crimjust_standards_urbanpolice/.

² Mike Carter, *Half of Intentional Shootings by Police Involve Dogs, Study Says*, SEATTLE TIMES (Dec. 2, 2012).

³ *Id.* (“Nearly three-quarters of the police shootings in Milwaukee, Wis., from 2000 to 2002 involved dogs.”).

⁴ Cynthia Bathurst et al., U.S. Dep’t of Justice, THE PROBLEM OF DOG-RELATED INCIDENTS AND ENCOUNTERS, 42 (2011), <https://www.nationalcanineresearchcouncil.com/sites/default/files/The-Problem-of-Dog-Related-Incidents-and-Encounters-2011.pdf>.

⁵ C.J. Ciaramella, *Why Are Detroit Cops Killing So Many Dogs?*, Reason (Nov. 15, 2016)(citing to a Detroit attorney who claims that “none of the officers he’s deposed has watched them”).

⁶ One night in April 2011, police in Camden, N.J., fired more than 30 bullets at a puppy, ricocheting across vehicles and piercing a home. *GUNNED DOWN: Why are so many dogs being shot by police?*, PETFUL SPECIAL REPORT, 3 (2013), <https://www.petful.com/gunned-down-report-new.pdf>.

⁷ Earl Rinehart, *Columbus Police Officer Injures 4-Year-Old While Shooting at Dog*, COLUMBUS DISPATCH (June 19, 2015).

⁸ Kate Mather, *Woman Riding Bicycle Along Venice Boardwalk Wounded by Gunfire After LAPD Shoots ‘Agitated’ Dog Nearby*, L.A. TIMES (Nov. 5, 2016).

⁹ *Brandon v. Village of Maywood*, 157 F. Supp. 2d 917, 924 (N.D. Ill. 2001).

Unfortunately, when police officers fire lethal weapons at encountered animals, the potential harm to nearby humans can exceed physical injury. One such instance involved an Iowa officer who attempted to intervene in a domestic dispute between a woman and her husband who was holding the couple's three-year-old son.¹⁰ When the family's dog tried to protect the woman, the officer fired his gun at the dog but slipped in the snow and missed, accidentally shooting and killing the young mother instead.¹¹ In another case in Los Angeles County, sheriffs opened fire at a dog at a loud party and killed a seventeen-year-old boy when the bullets ricocheted and hit him in the chest.¹²

In some of the cases referenced above, using deadly force against the dog in question may have been objectively reasonable under the circumstances. However, if the officers had been trained in animal behavior and nonlethal tactics, they instead may have been able to manage the perceived threats without causing harm to any of the individuals involved.¹³ As statistics from several major cities now demonstrate, when police officers are provided with such training they are more likely to react in ways that preserve public safety without incurring the significant emotional, physical, and financial costs associated with unnecessarily using deadly force against animals they encounter in the line of duty.¹⁴

Most commonly, law enforcement officers discharge their weapons at dogs to protect themselves or their fellow officers.¹⁵ Yet numerous examples exist of police officers firing their guns at dogs and accidentally shooting themselves,¹⁶ their partners,¹⁷ their supervisors,¹⁸ or even their own K9 police dogs.¹⁹ In contrast, comprehensive records dating back to 1791 contain not a single documented case of a police officer ever being killed in a dog attack.²⁰ Indeed, the only police officers who have died in relation to dog bites did so as a result of subsequently contracting rabies—which since has been

¹⁰ Jason Clayworth, *Lawyer for family of mother slain by Iowa cop: 'Burlington covered up a murder,'* DES MOINES REGISTER (Oct. 18, 2018).

¹¹ *Id.*

¹² Maya Lau et al., *L.A. Sheriff's Deputies Shoot at Dog, Firing Bullets That Bounce and Kill Teen, Officials Say*, L.A. TIMES (June 22, 2017). One of the officers also was injured by the ricocheting bullets fired at the party. *Id.*

¹³ Conor Friedersdorf, *What Dog Shootings Reveal About American Policing*, THE ATLANTIC (July 13, 2017).

¹⁴ Courtney Lee, *More than Just Collateral Damage: Pet Shootings by Police*, U. NEW HAMPSHIRE L.REV. 171, 196 (Nov. 19, 2018).

¹⁵ Kaylan E. Kaatz, *Those Doggone Police: Insufficient Training, Canine Companion Seizures, and Colorado's Solution*, 51 SAN DIEGO L. REV. 823, 826 (2014).

¹⁶ *Sheriff's Deputy Hospitalized After Accidentally Shooting Himself In Leg*, CBS LA (Apr. 16, 2014).

¹⁷ *Police officer shot by partner trying to kill dog*, FOX 16 NEWS (Nov. 8, 2012).

¹⁸ *Police officer, aiming for dog, accidentally shoots his sergeant*, WABC-13 NEWS, NEW YORK (Feb. 18, 2015), <https://abc13.com/news/cop-aiming-for-dog-accidentally-shoots-sergeant/523510/>.

¹⁹ Jose Cardenas, *Parolee, Police Dog Killed*, L.A. TIMES (Aug. 26, 2003). The first LA County Sheriff's Department dog killed in the line of duty was Marco, a 9-year old Malinois who was ordered to bite a 23-year-old domestic violence suspect. Before the dog could reach the man, the officers mistook a flip-flop in his hand for a weapon and fired a total of 81 bullets that killed both Deondre Brunston and Marco. *Id.*

²⁰ "Animal Related" officer deaths 1791-2019, OFFICER DOWN MEMORIAL PAGE, <https://www.odmp.org/search?cause=Animal%20related&from=1791&to=2019&filter=nok9&o=>.

eradicated in dogs long after the last such incident in 1936.²¹ By comparison, during that same 228-year span at least 69 police officers were killed by horses, three by bees, two by cows, one by lions, one by a spider, and one by a cat.²²

Notably, many other service professionals encounter dogs in the daily course of their jobs. These include mail carriers, meter readers, cable installers, delivery drivers, and real estate agents. Yet despite not carrying firearms or other lethal weapons, only 1% of U.S. Postal Service workers are bitten by dogs.²³ This is primarily due to the fact that postal employees receive comprehensive training in animal encounters and dog-bite prevention.²⁴ Such instruction uses live dogs and sample scenarios to educate postal workers on how to interpret a dog's body language to determine whether the dog is angry, afraid, or friendly. It also teaches mail carriers how to calm, distract, and subdue dogs with voice commands, or fend them off using non-lethal methods.²⁵ This in-person training is kept current by annually requiring postal workers to watch a 2-hour video on canine behavior.²⁶ As described by U.S. Postal Service Safety Director, Linda DeCarlo, "Dog bite prevention training and continuing education are important to keep pet owners, pets and those who visit homes—like letter carriers—happy and healthy."²⁷

II. FINANCIAL AND LEGAL LIABILITY FOR GOVERNMENTS AND INSURERS

When innocent bystanders are killed or wounded by police firing lethal weapons at dogs, the financial liability can be substantial for the municipal, county, or state governments that employ those officers. In 2019, a claims board approved a \$3 million settlement for the aforementioned teenager killed when two L.A. Sheriff's deputies fired at a loose dog.²⁸ In 2018, the City of Burlington, Iowa agreed to pay \$2 million²⁹ to settle a federal lawsuit brought by the family of the young mother killed by an officer firing at her dog.³⁰ Financial liability also can be significant when bystanders are injured, rather than killed. In 2016, the Columbus City Council approved a \$780,000 settlement after a four-year-old child was shot in her living room by a police officer firing his gun at her family's dog from their front doorway.³¹

²¹ *Id.* See Christine Petersen, *Modeling Infectious Disease Research Using Canine Models*, NATIONAL ACADEMIES OF SCIENCES, ENGINEERING AND MEDICINE (May 7, 2019).

²² "Animal Related" officer deaths 1791-2019 *supra* note 20.

²³ U.S. Postal Service, *Press Release, U.S. Postal Service Releases Annual Dog Attack City Rankings* (Apr. 6, 2017), https://about.usps.com/news/national-releases/2017/pr17_016.htm.

²⁴ *GUNNED DOWN*, *supra* note 6, at 5.

²⁵ Allie Ferguson, *Helping Postal Workers Fend Off an Age-Old Problem: Dog Bites*, NAT'L PUBLIC RADIO (May 17, 2015).

²⁶ *GUNNED DOWN*, *supra* note 6, at 5.

²⁷ U.S. Postal Service, *supra* note 23.

²⁸ Statement of Proceedings for the Regular Meeting of the Los Angeles Contract Cities Liability Trust Fund Claims Board (August 14, 2019).

²⁹ Andy Hoffman, *\$2M settlement between Steele family, city of Burlington finalized*, THE HAWK EYE (Aug 8, 2018).

³⁰ Erin Jordan, *Autumn Steele's Family Files Federal Lawsuit*, THE GAZETTE (Nov. 21, 2016).

³¹ Lu Ann Stoia, *Family Awarded \$780k from City After Daughter Accidentally Shot by Columbus Officer*, WSYX ABC 6 (Sept. 12, 2016). The traumatic event required Ava Ellis to undergo multiple surgeries. *Id.*

Even when police officers kill or wound dogs and other pets without harming humans, significant legal and financial liability can arise if those shootings are found to be unjustified. In 2013, the Minneapolis City Council approved a \$225,000 settlement to a family whose two dogs were killed by police in such close proximity to the couple's young children that the dogs' blood splattered on their 3-year-old daughter while she was eating breakfast at her kitchen table.³² As one commenter notes, "While dogs do not have civil rights, their owners do."³³ Accordingly owners whose pets have been killed by police can bring federal claims against both the officers and their employers for illegal seizures under the Fourth Amendment to the United States Constitution.³⁴ In such situations, a citizen alleging the deprivation of a constitutional right due to official state action is able to bring a lawsuit under 42 U.S.C. § 1983.³⁵ And as the Seventh Circuit determined in one such 2008 case, "the use of deadly force against a household pet is reasonable only if the pet poses an immediate danger and the use of force is unavoidable."³⁶

That standard of reasonableness applies in situations when police officers happen to encounter dogs during their routine daily duties. However, many fatal shootings of dogs occur when police officers are serving search or arrest warrants and have the added benefit of time to prepare. In such cases, courts have adopted an even stricter standard of reasonableness.³⁷ In the most notorious of such cases, *San Jose Charter of the Hells Angels Motorcycle Club v. City of San Jose*,³⁸ the Ninth Circuit ruled in 2005 that "the Fourth Amendment forbids the killing of a person's dog, or the destruction of a person's property, when that destruction is unnecessary—i.e., when less intrusive, or less destructive, alternatives exist."³⁹ The court further declared, "We have recognized that dogs are more than just a personal effect. The emotional attachment to a family's dog is not comparable to a possessory interest in furniture."⁴⁰ In the wake of the Ninth Circuit's ruling, both the City of San Jose and San Jose County settled with the Hells Angels members for \$2 million (\$1 million each).⁴¹

Last year the *ABA Journal* reported on multiple large payouts resulting from recent lawsuits filed after police officers wrongfully shot family pets. The feature quotes the director of one law enforcement-related organization who states, "Law enforcement

³² Matt McKinney, *April 6: Family wins \$225,000 settlement against Minneapolis police*, Star Tribune, (June 1, 2013).

³³ Carter, *supra* note 2.

³⁴ Lee, *supra* note 14, at 179.

³⁵ 42 U.S.C. § 1983 (1996).

³⁶ *Viilo v. Eyre*, 547 F.3d 707, 710 (7th Cir. 2008).

³⁷ Kaatz, *supra* note 15, at 847.

³⁸ *San Jose Charter of the Hells Angels Motorcycle Club v. City of San Jose*, 402 F.3d 962, 968–69 (9th Cir. 2003). The Supreme Court denied certiorari in the case. Kaatz, *supra* note 15, at 847, fn 142.

³⁹ *Hells Angels*, 402 F.3d at 977-78.

⁴⁰ *Id.* at 975.

⁴¹ Karen Snell, *The Police Shot My Dog*, 2013 Animal Law Conference presentation (Oct. 27, 2013) (Of the \$2,000,000 total settlement, \$800,000 was for the shooting of the dogs), https://www.youtube.com/watch?v=b5r3vmDEFaw&list=PLB20uPYJaEJ5SknZ8fZCqsL_K81K8pr1o.

agencies across the country are getting slammed with settlements and judgments that are costing them thousands of dollars that could be better spent within their agencies.”⁴²

One such case in 2017 led to a \$1.26 million jury award against a Maryland county and police officer who shot a Chesapeake Bay retriever in his own yard while the family was home unable to hear the officer knocking at their door.⁴³ That same year the City of Hartford, Connecticut, settled for \$885,000 with a family whose dog was shot and killed during an unlawful search.⁴⁴ Also in 2017, San Diego County paid \$225,000 to a family for shooting their puppy behind a fence that prominently displayed “Beware of Dog” signs,⁴⁵ while in Las Vegas, Police approved a settlement of \$199,000 in an excessive force lawsuit in which five officers burst into a home and killed the family dog.⁴⁶ And these are only a few examples from one single year.⁴⁷ More recently, in July 2019, St. Louis County settled for \$750,000 with a family whose dog was killed when a SWAT team charged into their home merely to investigate unpaid utility bills.⁴⁸ In addition to these federal cases filed under the U.S. Constitution, large jury verdicts for dog shootings by police are being secured in state courts as well. One Maryland case, *Brooks v. Jenkins*, ultimately resolved in 2014 with a \$207,500 award to a family whose chocolate Lab survived being shot by a county Sheriff’s Deputy.⁴⁹

The costs of defending such lawsuits, and of paying any resulting damage awards or settlements, most often are borne by local taxpayers⁵⁰ and the insurance companies who underwrite the governmental entities involved.⁵¹ In the Colorado case that resulted

⁴² Arin Greenwood, *Courts are awarding significant damages to families whose dogs are killed by police*, ABA JOURNAL (April 2018).

⁴³ *Reeves v. Davis*, No. C-02-CV-15-002956, 2017 WL 2723614, at *1 (Md. Cir. Ct. Sept. 27, 2016) (the jury awarded \$500,000 in economic damages, \$750,000 in noneconomic damages, and \$10,000 for trespass to chattel). The \$1.26 million award is believed to be “the largest civil judgment in U.S. history for a pet’s death at the hands of police.” Greenwood, *supra* note 42. A judge later reduced the damage award to a total of \$207,500 after citing a Maryland statute that limits local governments’ liability. *Id.*

⁴⁴ Greenwood, *supra* note 42. The 2nd Circuit deemed the search to have been “unlawful.” *Id.*

⁴⁵ Greg Moran, *County pays \$225,000 to settle lawsuit over deputy shooting pit bull puppy*, SAN DIEGO UNION-TRIBUNE (Jan. 25, 2017).

⁴⁶ Wesley Juhl, *Las Vegas police settle lawsuit involving fatal dog shooting for \$199K*, LAS VEGAS REVIEW-JOURNAL (Mar. 27, 2017).

⁴⁷ For example, in 2018, Detroit, Michigan settled one federal lawsuit in for \$225,000 and another in 2016 for \$100,000, both for police killing pet dogs that already were safely restrained in fenced yards. C.J. Ciaramella, *Detroit to Pay \$225,000 After Cops Shoot Three Dogs in Marijuana Raid*, REASON (Mar. 22, 2018). In 2016, a smaller Colorado municipality also agreed to settle a federal lawsuit for \$262,500 for a dog shot and killed in her owner’s driveway after already being snared on a catch-pole. Greenwood, *supra* note 42.

⁴⁸ Tony Messenger, *St. Louis County settles for \$750,000 in case where SWAT team shot family dog*, ST. LOUIS POST-DISPATCH (July 2, 2019). The settlement came one week into the federal trial over the incident.

⁴⁹ *Brooks v. Jenkins*, 220 Md. App. 444 (2014).

⁵⁰ Nick Wing, *We Pay A Shocking Amount For Police Misconduct, and Cops Want Us Just to Accept It. We Shouldn’t.*, HUFF. POST (May 29, 2015) (“That money [used to pay settlements to victims of police misconduct], like the rest of the police department’s budget, comes from taxpayers.”).

⁵¹ Meme Moore, *Police Controversies Affecting Coverage: Underwriters are taking a harder look at insurance terms and conditions for police departments in the wake of highly publicized deaths*, RISK & INSURANCE (May 5, 2015).

in a \$262,500 settlement after a dog was shot in her family's garage while secured with a snare pole, a municipal spokeswoman all but boasted that, "The city's out-of-pocket cost was a \$50,000 deductible. Our insurance agent covered the rest."⁵² The city's own legal expenses in that case totaled an additional \$125,227.⁵³ Given that most of these family pet shooting lawsuits are filed as federal civil rights claims, "even nominal payoffs to the plaintiff can balloon when the defendant officers and agencies have to pay attorney fees for the winners."⁵⁴ Under the relevant statute, plaintiffs' recoverable legal fees are set at the prevailing rate for private attorneys in the community.⁵⁵ In just one such dog shooting case, the plaintiffs' attorneys' fees alone totaled over \$530,000.⁵⁶

III. SCOPE AND SEVERITY OF THE PROBLEM

"The Department of Justice estimates that U.S. law enforcement officers kill roughly 10,000 companion dogs per year, or twenty-five to thirty per day."⁵⁷ One DOJ official has gone so far as to describe the occurrence as an "epidemic."⁵⁸ Over the past decade, Chicago police fired their guns at dogs a total of 700 times,⁵⁹ killing an average of 2 dogs every single week in one five-year span.⁶⁰ Given that just one of those 700 shootings led to a \$333,000 judgment against the city,⁶¹ the potential financial liability is immense. Nearby, in much smaller Milwaukee, police shot and killed 434 dogs during a recent nine-year period—equating to roughly one dog killed by police every single week for nearly a decade.⁶² In Buffalo, NY, one officer alone shot as many dogs in a two-year period as all 34,000 members of the New York City Police Department.⁶³ Police officers in Detroit also have been subject to scrutiny for shooting and killing a startling number of animals in the line of duty—with official records revealing that as of 2017 one Detroit police officer alone had shot at least "80 dogs."⁶⁴

⁵² Jesse Paul, *Commerce City Pays \$262,500 to Family Whose Dog Was Killed by Cop*, DENVER POST (July 27, 2016), (quoting Michelle Halstead, spokeswoman for Commerce City, Colorado).

⁵³ Chris Halsne, *Settlement reached in police killing of dog, called largest in U.S. history*, KDVR FOX NEWS (Jan. 25, 2016), <https://kdvr.com/2016/01/25/settlement-reached-in-police-killing-of-dog/>.

⁵⁴ David Griffith, *Can Police Stop Killing Dogs?*, POLICE MAG. (Oct. 29, 2014); see also, Mike Carter, *Owners of Dog Slain by Police Are Awarded Attorney Fees*, SEATTLE TIMES (Apr. 25, 2013).

⁵⁵ Snell, *supra* note 41.

⁵⁶ *San Jose Charter of the Hells Angels Motorcycle Club v. Santa Clara*, No. CV99200022JF, 2006 WL 427934, at *16–17 (N.D. Cal. Dec. 6, 1999).

⁵⁷ Lee, *supra* note 14, at 176 (citing Laurel Matthews, a supervisory program specialist with the Department of Justice's Community Oriented Policing Services).

⁵⁸ Griffith, *supra* note 54.

⁵⁹ Frank Main, *700 dogs have been shot or shot at by police in Chicago in the past decade*, CHICAGO SUN-TIMES (Mar. 23, 2018).

⁶⁰ Dawn Turner Trice & Jeremy Gerner, *Are police too quick on the draw against dogs?*, CHICAGO TRIB. (Aug. 6, 2013)(citing Chicago police shooting statistics from 2008 to mid-2013).

⁶¹ David Heinzmann, *Family gets \$333,000 for 2009 raid in which cops killed dog*, CHICAGO TRIB. (Aug. 19, 2011). The Chicago officers shot and killed the family's 9-year old Labrador retriever, Lady, after refusing the two teenage sons' request to secure their "tail-wagging" dog before conducting a search "that found no criminal activity in the apartment." *Id.*

⁶² Radley Balko, *"Why did you shoot me? I was reading a book,"* SALON (July 7, 2013).

⁶³ *Id.*

⁶⁴ C.J. Ciaramella, *Detroit Police Shot 54 Dogs Last Year—Twice as Many as Chicago*, REASON (Sept. 4, 2018). In a 2016 lawsuit two other Detroit officers stated they each had shot roughly 19 or 20 dogs. *Id.*

a. Unjustified Shootings Can Damage Police-Community Relations

Beyond causing physical harm to people and animals, and serious financial liability for governments and their insurers, when the police kill a family dog it can lead to the deterioration of police-community relations that already may be strained.⁶⁵ As the head of the Milwaukee Fire and Police Commission, observed, “Even one dog shooting generates so much outrage that it can take years to repair the damage to community relations.”⁶⁶ The former Deputy Executive Director of the National Sheriffs’ Association further implored, “[W]hen an officer ends up shooting a dog it rips right at the fabric of the community. This problem needs to be solved.”⁶⁷

Even members of the general public without direct connections to the animals killed by police frequently become incensed and mobilized by these stories.⁶⁸ In a 2014 Cleburne, Texas incident, footage was obtained via FOIA of a police officer whistling two dogs over to him then shooting them as they arrived—the resulting viral video immediately became international news.⁶⁹ The public outrage against the officer, department, and city was swift and severe. It started with a petition to terminate Officer Kevin Dupre that generated 65,000 signatures within the first week.⁷⁰ That was followed by several public protests, multiple death threats against the officer, and the City of Cleburne’s website being shut down by hackers in possible retaliation.⁷¹

When police wrongfully shoot any pet, it can cause a great deal of community agitation, but when police shoot a service animal, it can spark even more societal indignation.⁷² In 2017, a Minneapolis officer shot two tail-wagging dogs in their backyard that were service animals for the owner’s children, assisting them with seizures and anxiety.⁷³ Both dogs ultimately survived, but again the public backlash against the police was fast and scathing. Before long an online petition calling for the officer to be fired gathered over 138,000 signatures,⁷⁴ and a webpage soliciting donations for the dogs’ care collected over \$37,000.⁷⁵

⁶⁵ See Griffith, *supra* note 54 (describing the “PR Nightmare” that can result when police kill dogs).

⁶⁶ Dinesh Ramde, *Milwaukee Police No Longer Shooting as Many Dogs, Thanks in Part to Training*, ST. PAUL PIONEER PRESS (June 14, 2014).

⁶⁷ C.J. Ciaramella, *Cops Kill Lots of Dogs. This Simulator Trains Them Not To*, REASON (Sept. 14, 2018)(quoting National Sheriffs’ Association Deputy Executive Director John Thompson).

⁶⁸ Hal Herzog, *Why People Care More About Pets Than Other Humans*, WIRED (Apr. 13, 2015).

⁶⁹ Jenny Awford, *Texas cop who triggered outrage when he shot family’s tail-wagging dog receives death threats*, DAILY MAIL UK (Oct. 23, 2014).

⁷⁰ Dan Solomon, *Horrible Video Shows a Cleburne Police Officer Calling To, Then Shooting, a Tail-Wagging Dog*, TEXAS MONTHLY (Oct. 20, 2014).

⁷¹ Frank Heinz & Tim Ciesco, *Cleburne Officer Cleared of Shooting, Killing Dog*, NBC DFW 5 (Dec. 20, 2014), <https://www.nbcdfw.com/news/local/Cleburne-Officer-Cleared-of-Shooting-Killing-Dog-286462351.html>.

⁷² See, e.g., Greg Hadley, *She Called 911 Because Someone in her Yard Was on Drugs. Police Shot her Service Dog.*, MIAMI HERALD (Apr. 20, 2017).

⁷³ Abigail Adams, *Video Shows Police Shooting Emotional Support Dogs in Owner’s Yard*, TIME (July 11, 2017).

⁷⁴ Aaron V., *Justice for Ciroc and Rocko: Fire Trigger-Happy Minneapolis Police Officer*, CARE2 PETITIONS.

⁷⁵ Karli Jones, *Justice For Our Dogs*, GOFUNDME, <https://www.gofundme.com/43u375s>.

b. All Types of Pets Are Shot by Police—And All Owners Can Be Impacted

While some may assume that police only use lethal force on large or intimidating dogs, records show that officers across the U.S. have killed family dogs of almost every type, size, shape, or breed.⁷⁶ Numerous examples exist where police officers have shot small dogs like Chihuahuas,⁷⁷ Miniature Dachshunds,⁷⁸ and even puppies,⁷⁹ as well as breeds widely considered to be family-friendly, such as Labrador Retrievers,⁸⁰ Cocker Spaniels,⁸¹ and Golden Retrievers.⁸² Police officers also have shot and killed several other species of domesticated animals, including pet pigs,⁸³ goats,⁸⁴ and even cats.⁸⁵ Many instances further have come to light where police officers killed animals that clearly posed no threat to anyone—such as dogs who were shot after being tied up outside,⁸⁶ secured behind closed doors,⁸⁷ or even while they were attempting to run away.⁸⁸ Several of these incidents have been captured by police officers' own cameras, such as a 2016 Detroit incident involving a tethered dog that led to a \$100,000 judgment against the city.⁸⁹

⁷⁶ Lee, *supra* note 14, at 176-78.

⁷⁷ See, e.g., Christopher Brito, *Arkansas deputy fired after shooting a barking chihuahua in the face*, CBS NEWS (Jan. 8, 2019), <https://www.cbsnews.com/news/arkansas-deputy-fired-after-shooting-a-barking-chihuahua-in-the-face/>. After video of the incident surfaced, angry citizens made over 300 calls in one day to the Faulkner County Sheriff's Office and the officer later was charged with animal cruelty. *Id.*

⁷⁸ See, e.g., *Danville Police Shoot, Kill Growling Miniature Dachshund*, RICHMOND TIMES-DISPATCH (June 11, 2009).

⁷⁹ See, e.g., Melissa Pamer, *Video Shows Texas Police Officer Fatally Shoot Tail-Wagging Puppy*, KTLA (Oct. 22, 2014), <http://ktla.com/2014/10/22/video-shows-texas-police-officer-fatally-shooting-tail-wagging-puppy/>.

⁸⁰ See, e.g., *Dog Shooting in Coeur d'Alene Violated Policy, Police Chief Says*, THE OREGONIAN (Sept. 6, 2014) (noting that an Idaho officer was found to have acted unreasonably when he shot a Labrador shut inside a van with partially-opened windows).

⁸¹ See, e.g., Rick Hurd, *Concord: Owners of Cocker Spaniel Shot by Police Seek Apology*, MERCURY NEWS (June 24, 2013) (describing how an officer in California shot and wounded a thirteen-year-old cocker spaniel who barked at him from within a yard).

⁸² See *Bixby Police Officer Loses Job Over Gesture Made on Camera*, THE OKLAHOMAN (July 1, 2004) (describing the firing of a police officer in Oklahoma who shot a Golden Retriever tethered in a yard).

⁸³ See Frank Warner, *Slatington Pot-Bellied Pig Shot to Death by Police Officer; Chief Defends Action*, THE MORNING CALL (Aug. 2, 2017) (describing how officers shot a pet pig named Oscar after he escaped his property and allegedly chased the officers).

⁸⁴ Lizzy Acker, *It Took 4 Shots and 2 Guns to Kill an Aggressive Goat in Portland*, OREGONLIVE (Aug. 10, 2017) (chronicling the shooting of a goat who police claim was behaving aggressively, but who the owner claims would submit to his children).

⁸⁵ Donald Bradley & Glenn Rice, *Raymore Police Mistakenly Kill Family Cat*, KANSAS CITY STAR, Sept. 11, 2009, at A4 (recounting the shooting of Tobey, an elderly, declawed, deaf, six-pound, "cuddly" pet cat whom officers shot twice in the head and dumped in a city trash can).

⁸⁶ See, e.g., Abigail Curtis, *Maine Man Fighting Back After Police Allegedly Shot, Killed His Dog in Louisiana*, BANGOR DAILY NEWS (Apr. 30, 2014) (summarizing an incident in Louisiana where an officer shot a dog after permitting the owner to tie his dog to a fence with a short leash).

⁸⁷ C.J. Ciaramella, *Why Are Detroit Cops Killing So Many Dogs?*, REASON (Nov. 15, 2016) (reviewing several dog shootings by Detroit police officers, including one where a dog was shot through the back door of a home and another where a dog was shot through a closed bathroom door inside the house).

⁸⁸ *Id.* (reviewing another incident where Detroit police shot a dog, but the bullets entered from behind).

⁸⁹ Danny Spewak, *Collateral Damage: Police Shooting Dogs in Line of Duty*, CLICK ON DETROIT (Mar. 27, 2017).

Similarly, contrary to what some may mistakenly assume, the unjustified shooting of pets by law enforcement impacts families across the socio-economic spectrum.⁹⁰ This point was underscored in the episode that occurred in the tranquil suburb of Berwyn Heights, Maryland, where the town's Mayor had his own two black Labrador retrievers shot and killed in his home by Prince George's County Deputies.⁹¹ The police's justification for the raid was that a box containing marijuana had been addressed to the Mayor's wife who was a state finance officer.⁹² A few days later police arrested a FedEx driver and an accomplice who had been mailing such boxes to other unsuspecting addresses.⁹³ The Mayor described the ordeal as "the most traumatic experience of his life."⁹⁴ To Mayor Calvo's credit, he recognized that what happened to him was part of a broader problem of policy, not of individual officers. "I don't think they're bad people," the Mayor said. "Just poorly trained."⁹⁵ As a result, Mayor Calvo sued Prince George's County.⁹⁶ The lawsuit was settled for an undisclosed sum, but the agreement importantly mandated "better training in dealing with the pets [county police] encounter in raids, as well as treating them more humanely."⁹⁷ Calvo also was instrumental in helping pass state legislation requiring police agencies to report information on all SWAT team deployments including whenever a SWAT team injures or kills a pet.⁹⁸

IV. SOLUTIONS ALREADY EXIST—ANIMAL ENCOUNTER TRAINING WORKS

a. Comparing Apples to Big Apples

When the City of Chicago instituted non-lethal animal encounter training for its utility meter readers, the number of employee dog bites dropped by 90%.⁹⁹ Yet until recently the city still did not provide comprehensive animal encounter training to its 12,474 sworn officers—"the nation's second-largest police force."¹⁰⁰ One commentator succinctly points out that, "it is not unreasonable to ask police departments to train cops at least as well as meter readers when the failure to do so predictably results in needlessly killed pets and endangered humans. But many police departments don't care enough to go to

⁹⁰ OF DOGS AND MEN (Ozymandias Media 2015)(profiling a wide range of dog owners whose pets were killed by police, including single mothers, young urban couples, suburban families, elderly women).

⁹¹ *Md. mayor's dogs shot dead in botched police raid*, THE TORONTO STAR (Aug. 7, 2008).

⁹² *SWAT team kills 2 dogs in raid on Md. mayor's home*, POLICEONE.COM (Aug. 1, 2008).

⁹³ *Md. mayor's dogs shot dead*, *supra* note 90.

⁹⁴ *SWAT team kills 2 dogs in raid on Md. mayor's home*, *supra* note 92.

⁹⁵ Sarah Brumfield, *County Settling Suit Over Raid of Md. Mayor's Home*, NBC NEWS 4 WASHINGTON (Jan. 24, 2011).

⁹⁶ Alan Suderman, *Berwyn Heights mayor sues Prince George's County over SWAT raid that killed his dogs*, WASHINGTON EXAMINER (June 22, 2009).

⁹⁷ Radley Balko, *Militarized police overreach: "Oh, God, I thought they were going to shoot me next,"* Salon (July 10, 2013).

⁹⁸ Brumfield, *supra* note 95.

⁹⁹ *Dog Bite Prevention Training Helps Meter Readers*, PETCHA, <https://www.petcha.com/dog-bite-prevention-training-helps-meter-readers/>.

¹⁰⁰ *Annual Report 2017*, CHICAGO POLICE DEPARTMENT, <https://home.chicagopolice.org/wp-content/uploads/2019/03/Chicago-Police-Department-Annual-Report-2017.pdf>.

the trouble.”¹⁰¹ Consequently Chicago police historically have shot roughly ten times more pets than have officers in either New York or Los Angeles. Indeed, records show that while NYPD shot nine dogs in 2014, and LAPD shot eight dogs in 2015, in just the first nine months of 2015 Chicago police already had fired their weapons at animals at least 84 times.¹⁰²

The difference is that the NYPD and LAPD provide some of the most comprehensive animal encounter training to their law enforcement officers, coupled with department-wide accountability to make sure such training is implemented and adhered to. The ASPCA calls the NYPD one of the “shining examples” of what animal training can do for a police department. “We have been involved in training NYPD officers for many years. On a per capita basis, New York is far lower in incidents than that of lot of other cities.”¹⁰³ The ASPCA’s assistant director for law enforcement also served twenty-one years with the NYPD.¹⁰⁴ He states that, “There are some individual departments in other parts of the country that avail themselves of our training, but not many. Not enough.”¹⁰⁵

b. Accountability is Key

The City of Los Angeles has one of the lowest per-capita rates of officers shooting dogs.¹⁰⁶ Beyond providing ongoing mandatory animal encounter training to its officers every single use of force in the 450 square miles covered by the LAPD is reviewed by a department headed up by Captain Scott Sargent, who not only is an attorney, but also was a K-9 dog handler for several years.¹⁰⁷ He states that, “Law enforcement officers are authorized to use deadly force only to protect themselves or others from what is reasonably believed to be an imminent threat of death or serious bodily injury.”¹⁰⁸ LAPD officers also cannot use lethal force against a dog to protect property, including other animals. According to Sargent, LAPD officers are “absolutely forbidden to use force arbitrarily” and the department “simply will not stand for it.”¹⁰⁹ This is not just for the safety of the public and their animals, but also for the safety of the officers themselves, as failing to anticipate and resolve animal encounters immediately with the proper equipment can interrupt or slow an entry down and put the entire unit at risk.¹¹⁰

¹⁰¹ Friedersdorf, *supra* note 13.

¹⁰² Ciaramella, *Why Are Detroit Cops Killing So Many Dogs?*, *supra* note 5.

¹⁰³ Danny Spewak and Megan Blarr, *Collateral Damage: Police shooting dogs in line of duty—Buffalo Police have opened fire on 92 dogs since 2011, killing the vast majority of them. Is it time to start training?*, Marshfield News Herald (Nov. 14, 2014)(Quoting Dr. Randall Lockwood, a senior vice president for the American Society for the Prevention of Cruelty to Animals).

¹⁰⁴ Balko, “*Why did you shoot me? I was reading a book,*” *supra* note 62.

¹⁰⁵ *Id.* (quoting Joseph Pentangelo, the ASPCA’s assistant director for law enforcement).

¹⁰⁶ LAPD Captain Scott Sargent, *The Police Shot My Dog*, 2013 Animal Law Conference presentation (Oct. 27, 2013),

https://www.youtube.com/watch?v=b5r3vmDEFaw&list=PLB20uPYJaEJ5SknZ8fZCqsL_K81K8pr1o).

¹⁰⁷ For an example of an LAPD review, see [http://assets.lapdonline.org/assets/pdf/104-11%20PR%20\(OIAS\).pdf](http://assets.lapdonline.org/assets/pdf/104-11%20PR%20(OIAS).pdf).

¹⁰⁸ Sargent, *supra* note 106.

¹⁰⁹ *Id.*

¹¹⁰ *Id.* The LAPD Use of Force Directive for Dog Encounters is an example of such policies, available at <http://www.sheriffs.org/sites/default/files/LAPD%20Directive%207%20Dog%20Encounters.pdf>.

c. The Successful Results of Animal Encounter Training

Now that several U.S. cities and states have implemented non-lethal animal encounter training in recent years, they provide instructive comparisons to judge the effectiveness such training has had on the number of dogs shot by their law enforcement officers. Notably, the City of Chicago achieved a 67% drop in the number of police officers shooting at dogs after it instituted comprehensive animal encounter training along with updated policies and procedures—falling from 73 incidents in 2014 to 24 in 2017.¹¹¹ This change in policy did not come easy and resulted primarily from a “scathing” Department of Justice report on Chicago Police Department practices commissioned in the wake of the controversial police shooting of Laquan McDonald.¹¹² The DOJ report stated, “During our review of officer-involved shootings we saw shootings at dogs that appeared to be unnecessary, retaliatory or reckless. We also observed that there were many complaints from community members that officers unnecessarily or recklessly killed their dogs and that, like other civilian complaints, these complaints were not adequately investigated.”¹¹³

In addition to providing training for officers on how to de-escalate interactions with dogs they perceive to be hostile, in 2017 the department adopted a new use-of-force policy that clearly declares a Chicago police officer “is justified in using deadly force to stop a dangerous animal only when the animal reasonably appears to pose an imminent threat to the safety of the sworn member, another person, or another animal and no reasonably effective alternatives appear to exist.”¹¹⁴ As part of this new policy, the Civilian Office of Police Accountability now investigates every dog shooting by Chicago police officers—something that previously happened only “rarely, if ever.”¹¹⁵

Impressively, after Texas passed statewide legislation in 2015 requiring officers to have 4 hours of animal encounter training, the number of dogs shot by TX police fell from 281 in 2014 to 32 in 2018, with only 17 shot as of November 2019—a drop of over 90%.¹¹⁶ One Texas tale exemplifies the broad positive impact that instituting animal encounter training can achieve. Such training brought accolades to the town of Arlington, Texas after calls came into police of an “aggressive pit bull” chasing people around a neighborhood, with one caller pleading, “This dog is so vicious, please get him.”¹¹⁷ When officers arrived, however, they observed the dog’s behavior, and based on their

¹¹¹ Main, *supra* note 59.

¹¹² *Id.*

¹¹³ U.S. Dep’t Just. Civil Rights Div. & U.S. Attorney’s Office N.D. Ill, *Investigation of the Chicago Police Department* 28 n.4, (Jan. 13, 2017).

¹¹⁴ Chicago Police Department, *Use of Force, General Order G03-02*, (2017) at 2 (available at <https://home.chicagopolice.org/use-of-force-policy/>).

¹¹⁵ Main, *supra* note 59 (quoting Mia Sissac, a spokeswoman for Chicago’s Civilian Office of Police Accountability).

¹¹⁶ Email Communication with Shelby Bobosky, Interim Executive Director, Texas Humane Legislation Network, Oct. 17, 2019.

¹¹⁷ *Arlington Officer Praised For Rescuing ‘Aggressive’ Pit Bull*, CBS DFW (June 27, 2014). <https://dfw.cbslocal.com/2014/06/27/arlington-officer-praised-for-rescuing-aggressive-pit-bull/>

recently added training determined the dog was just “thirsty and lost.”¹¹⁸ The officers then coaxed the dog into their patrol car with a protein bar. A quick scan for microchip later revealed that “Jeffery” had been adopted from a local shelter just the week before and simply escaped his new back yard.¹¹⁹ Photos of the officers calmly petting the dog through the window of their cruiser posted to the Arlington Police Department’s Facebook page reached over 2 million people in less than 24 hours. Today that post boasts 176,000 likes, 18,000 comments, and has been shared over 71,000 times.¹²⁰ Police Chief Johnson responded saying, “This is exactly the type of compassion we love to see our employees exhibit and credit their good judgment and our significant investment that our organization has made in providing training to officers on how to deal with dogs.”¹²¹

VI. LEGISLATION IS THE ANSWER

While the New York, Los Angeles, and Chicago police departments provide good models for others, far too many law enforcement officers in the United States still are forced to engage with citizens and their pets without the benefits of such training—putting themselves, their fellow officers, and local citizens at risk.¹²² As one commenter has noted, “Although the need for adequate training is readily apparent nationwide, it is an institutional problem that exceeds a single department.”¹²³

To address the issue, in 2011 The Department of Justice’s Community Oriented Policing Services released a publication entitled, *The Problem of Dog-Related Incidents and Encounters*, to help law enforcement better prepare to handle encountering dogs in the field.¹²⁴ In the introduction, the Director of the DOJ-COPS office notes, “There are a variety of circumstances where a dog could be involved in a police call, and it is critical that police departments not only develop effective departmental strategies advocating for the proper handling of dog-related incidents and encounters, but also proactively create tactical-response strategies, ensuring humane treatment of dogs and safety for the public and officers.” The DOJ-COPS office later produced an accompanying series of five animal encounter training videos entitled, *Police & Dog Encounters: Tactical Strategies and Effective Tools to Keep Our Communities Safe and Humane*, that it has made available online at no cost.¹²⁵

¹¹⁸ Elisa Black-Taylor, *Arlington PD officers use their mandatory dog behavior training to save lost dog*, ELISA’S EXAMINER (June 30, 2014), <https://elisasexaminer.wordpress.com/2016/07/08/arlington-pd-officers-use-their-mandatory-dog-behavior-training-to-save-lost-dog/>.

¹¹⁹ *Id.*

¹²⁰ Arlington Police Department Facebook post, <https://www.facebook.com/ArlingtonPolice/photos/a.10151419638535755/10152078636300755/?type=1&theater>.

¹²¹ *Arlington Officer Praised For Rescuing ‘Aggressive’ Pit Bull*, *supra* note 117.

¹²² Elizabeth Olsen, *Paws Up, Don’t Shoot: Preventing Officer-Involved Shootings of Companion Canines*, 23 ANIMAL L. 65, 91 (2016).

¹²³ Kaatz, *supra* note 15, at 853.

¹²⁴ Bathurst et al., *supra* note 4, at 10.

¹²⁵ Center for Public Safety & Justice, *Police and Dog Encounters*, YOUTUBE (June 18, 2014), <https://www.youtube.com/playlist?list=PLhE9QvBTLkY5KG7GVSu5M5QxtWQkVxTKS>; See also, Donald Cleary & Melissa Bradley, *Police and Dog Encounters: Tactical Strategies and Effective Tools to Keep*

Although these resources are quite valuable, and many departments have put them to good use, they still are voluntary, meaning that the police officers who likely could benefit from them most often do not use them.¹²⁶ In response, following the lead of Colorado's "Dog Protection Act", several other states, counties, and municipalities have recognized the need to prepare officers for such interactions and thus have enacted laws that either require or encourage the completion of animal encounter training programs along with accountability procedures to make sure that training is properly implemented and adhered to.¹²⁷ As noted above, the 2015 Texas legislation successfully reduced officer-involved shootings of dogs by over 90% across the state.¹²⁸

VI. CONCLUSION

All interested parties benefit from the reduction of unnecessary harmful accidents: members of the public, families and their pets, police officers, the governmental entities they work for, and the taxpayers or insurance companies who bear the ultimate financial liability for mistakes. When police officers are provided comprehensive animal encounter training, not only are they better prepared to protect themselves from dog bites, they also are less likely to resort to using deadly force that may unjustifiably harm or kill innocent human bystanders and family pets. Conversely, when insufficiently trained officers are thrust into situations where they have to make split-second decisions without the benefit of education about animal behavior and non-lethal options, the consequences can be catastrophic for the entire community impacted, physically, emotionally, legally, and financially.

One former officer who now has provided animal encounter training to over 2,100 other law enforcement officers, states that, "The only reason why there are a lot of shootings is that [police officers] don't have the training."¹²⁹ The former Deputy Executive Director for the National Sheriffs' Association, John Thompson, further explains, "Law enforcement officers want to handle their calls safely and go home at the end of their shift, while not causing any needless harm. [Training] will give them much needed tools to recognize and address possible conflict with dogs instead of simply shooting an animal."¹³⁰

Our Communities Safe and Humane, 6 COMMUNITY POLICING DISPATCH (Dec. 2013). Narrated by retired Chicago police superintendent, Terry Hillard, the videos feature dog behavior expert Brian Kilcommons demonstrating real-life scenarios with SWAT and street officers. *Id.*

¹²⁶ Ciaramella, *Why Are Detroit Cops Killing So Many Dogs?*, *supra* note 5 (citing to a Detroit attorney who claims that "none of the officers he's deposed has watched them").

¹²⁷ Lee, *supra* note 14, at 222 (noting that such laws exist in five states: Colorado, Illinois, Ohio, Tennessee, and Texas). Nevada also enacted a law in 2015 that requires dog-encounter training. NEV. REV. STAT. § 289.595 (2015).

¹²⁸ Bobosky, *supra* note 116.

¹²⁹ Esther Robards-Forbes, *Austin police get hands-on training to reduce dog shootings*, Austin-American Statesman (Sept. 10, 2014) (quoting Jim Osorio, senior law enforcement specialist for the National Humane Law Enforcement Academy).

¹³⁰ National Sheriffs' Association, *National Law Enforcement Center On Animal Abuse, National Sheriffs' Association And Virtra Launch New Law Enforcement Training Program To Reduce Animal Injury In Police Encounters*, Press Release (June 5, 2018) (quoting National Sheriffs' Association former Deputy

As described by the National Sheriffs' Association, the goal of animal encounter training "is not to make each law enforcement officer a canine behavior expert. Rather, the intent of [such] training is to give police officers the knowledge and tools to safely handle dog encounters during their daily duties, and to keep officers, the public, and pets as safe as possible."¹³¹ Accordingly, to encourage the consistent implementation of such training, the American Bar Association should urge all federal, state, local, territorial, and tribal legislative bodies to enact laws, and governmental agencies to adopt policies, that provide law enforcement officers with comprehensive animal encounter training on the reasonable use of force necessary to better secure the safety of such officers, protect public health, reduce legal liability, and ensure the humane treatment of the animals encountered.

Executive Director John Thompson), <https://www.sheriffs.org/National-Law-Enforcement-Center-Animal-Abuse-National-Sheriffs%E2%80%99-Association-and-VirTra-Launch-New>.

¹³¹ National Sheriffs' Association, *About Law Enforcement Dog Encounters Training (LEDET)*, available at <https://www.sheriffs.org/ledet>. The National Sheriffs' Association helped develop an immersive animal encounter simulator to provide exactly this type of training. Mark Roper, *Deputies learn how to handle dogs with virtual reality training*, ABC2 BALTIMORE (June 6, 2018).

EXECUTIVE SUMMARY

1. Summary of the Resolution

This Resolution urges all federal, state, local, territorial, and tribal legislative bodies and/or governmental agencies to enact laws that provide for comprehensive animal encounter training to law enforcement officers on the reasonable use of force necessary to better secure the safety of such officers, protect public health, reduce legal liability, and ensure the humane treatment of the animals encountered.

2. Summary of the Issue that the Resolution Addresses

The number one reason U.S. police officers discharge their weapons is to fire at dogs, and in some cities, police shooting guns at dogs accounts for 75% of all service weapon use. When insufficiently trained officers are thrust into situations where they have to make split-second decisions without the benefit of education about animal behavior and non-lethal options, the physical, emotional, legal, and financial consequences can be catastrophic for the entire community impacted. All interested parties benefit from the reduction of unnecessary harmful accidents: members of the public, families and their pets, police officers, the governmental entities they work for, and the taxpayers or insurance companies who bear the ultimate financial liability for fatal mistakes. But despite the documented success of existing non-lethal animal encounter training programs in reducing unnecessary harmful accidents in the states, counties, and municipalities that have implemented them, most police officers in the U.S. still are not afforded such training.

3. Please Explain How the Proposed Policy Position will address the issue

When police officers are provided comprehensive animal encounter training, not only are they better prepared to protect themselves from dog bites, they also are less likely to resort to using deadly force that may unjustifiably harm or kill innocent human bystanders and family pets. By encouraging legislative action to provide such training, the proposed policy position will assist implementation of a consistent U.S. legal regime that better secures the safety of such officers, protects public health, reduces legal liability, and ensures the humane treatment of the animals encountered in accordance with the goals of the American Bar Association. This resolution builds upon existing ABA Criminal Justice Standards on Urban Police Function that focus on limiting the excessive or unnecessary use of force against individuals encountered by law enforcement officers.

4. Summary of Minority Views

None.

TAB 8

The Rise of Aquatic Animal Law: Lewis & Clark Launches First Initiative

- Prof. Kathy Hessler

This segment includes all materials received by the course book publication deadline.
Please contact the speaker for any other materials used at the program.

The Animal Law Clinic

At Lewis & Clark Law

Protecting Ireland's Most Threatened Fish

Lindsay Vierheilig, Legal Intern

Kathy Hessler, Director, Animal Law Clinic & Aquatic Animal Law Initiative

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INTRODUCTION

It cannot be overstated how important marine and freshwater resources are to the country of Ireland. The country maintains one of the largest marine areas in Europe, one that is ten times that of its land mass.¹ This marine area provides a plethora of resources and economic value to the country. The fishing industry in Ireland alone brought in €226 million in 2017.² Additionally, the seemingly endless array of coastal wildlife attracts millions of tourists each year. Ireland's freshwater ecosystems are also significant sources of value. The country has 70,000 kilometers of rivers, 12,000 lakes, and 850 square kilometers of estuaries.³ These rivers and lakes are important sources of fishing and tourism, and have allowed Ireland to industrialize and develop into a strong independent nation.

Unfortunately, these ecosystems have faced numerous threats in recent decades and fish species have suffered as a result.⁴ Ireland's marine area is now one of the most overfished and exploited marine areas in Europe and the world,⁵ and its freshwater fish populations are likewise suffering. From obstructions of migratory paths from invasive structures such as dams, to pollution from industrial activity, Ireland's fish populations are dwindling as a result of human activity. This decline may be partly because Ireland's legal protections for fish are substantially lacking in comparison to what exists in other countries.

Currently, there are no official protections for marine or fresh water fish species under Irish law.⁶ This is not because Ireland lacks the legal framework for protection, however. Ireland adequately classifies and protects many other animal species, including some other aquatic animals, as endangered. Despite this, it has largely ignored the need for fish protection even in the face of declining fish populations. This has significant impacts not only on the species themselves but also on aquatic environments and ecosystems, as well as on the efforts of Ireland's neighboring nations to protect them. In order for Ireland to preserve its environment and maintain sustainable fish populations, the nation will have to take significant action to protect some of its most vulnerable species.

¹ Environmental Protection Agency, *Ireland's Environment An Assessment* (2016), available at http://www.epa.ie/pubs/reports/indicators/SoE_Report_2016.pdf.

² European Commission, *The Common Fisheries Policy*, https://ec.europa.eu/ireland/news/key-eu-policy-areas/fisheries_en (last visited February 20, 2019).

³ Environmental Protection Agency, *Water*, <http://www.epa.ie/irelandsenvironment/water/> (last visited February 19, 2019).

⁴ Many aquatic species, both marine and freshwater face threats in Ireland, but in order to keep this paper a manageable length, it will focus only on fish. However, much of what is said here may also apply to other aquatic species.

⁵ *Id.*

⁶ Current protections include listing under endangered lists such as the IUCN, Habitats Directive, and OSPAR, but no official legislative protections for fish. This will be discussed in detail later.

This paper will analyze Ireland's current legal framework as it pertains to marine and freshwater fish protection and compare it to the United Kingdom's (UK) system, with a focus on Northern Ireland. The UK provides an appropriate basis for comparison because it shares not only a rich history with Ireland, but it is also encompasses much of the same marine region as Ireland. Northern Ireland and Ireland are also uniquely connected as they jointly occupy an island home. Thus, some of the same marine and fresh water species will be found throughout the territory and face similar challenges and need for protection. And while Northern Ireland is a part of the UK, it has protections that go above and beyond that of the rest of the UK and specifically relate to the geographic and biological realities of Ireland's environment. This proximity makes regional cooperation regarding species protection not only desirable, but more easily attainable⁷ because a legal framework and some scientific assessment is already in place regarding relevant species.

The overarching goal of this paper is to highlight the similarities between the environmental goals, legal systems, and species shared by each region, and to suggest that Ireland should be providing the same or similar protections as its neighbors to all of its endangered species.

⁷ Putting the issues arising from the Brexit problem aside for the purposes of this conversation. This is an important issue that will need to be addressed no matter how Brexit is resolved, but it is beyond the scope of this paper.

IMPORTANCE OF REGIONAL COOPERATION

To begin, it is important to note why regional cooperation is so important to the protection of fish species and the effect that a lack of protection has on the marine and fresh water environments shared by jurisdictions. First, many of Ireland's aquatic species are currently at risk of extinction due to human activities such as overfishing and pollution. Second, Ireland's own lack of protection has negative impacts on the ability of other countries to protect species in their territory. Finally, Ireland, Northern Ireland, and the rest of the UK have overlapping environmental goals that should make it desirable to have similar protections in place throughout these jurisdictions.

The waters surrounding the UK and Ireland are rich in marine life and provide a home to hundreds of species of fish, 24 species of whales and dolphins, large colonies of seals, and some of the largest populations of seabirds in Europe.⁸ Unfortunately, many of these species are facing the threat of extinction. A prime example of this threat was shown in the EU's most recent assessment of fish stocks in the region.⁹ As part of the EU's Marine Strategy Framework Directive,¹⁰ fish and shellfish stocks in the EU are assessed to determine if they are in Good Environmental Standing (GES). The 2017 assessment found that 67% of fish and shellfish stocks in Europe's seas do not meet GES.¹¹ These depleted populations include whiting, sole, sea bass, skates, sharks, and other species.

These statistics can be traced, in the part, to prevalence of overfishing in Irish waters. In 2016 and 2017, Ireland was deemed the worst offender when it comes to overfishing in EU waters, according to a study done by New Economics.¹² Each year, the Member States of the EU set Total Allowable Catch (TAC) quotas for fish species in the EU as part of the EU's Common Fisheries Policy.¹³ Ireland exceeded the set Atlantic TAC for 2017 by 18%.¹⁴ While this may be indicative of an

⁸ Environmental Protection Agency, *Ireland's Environment An Assessment*, 2016, <https://www.law.cornell.edu/citation/2-100> (last visited Oct. 24, 2018).

⁹ The term "stocks" is used to describe populations of fish species as fishery resources. Because the Marine Strategy Framework Directive analyzes fish in terms of stocks rather than as individual fish, it will not be discussed further.

¹⁰ "The Marine Directive aims to achieve Good Environmental Status (GES) of the EU's marine waters by 2020 and to protect the resource base upon which marine-related economic and social activities depend... In order to achieve GES by 2020, each Member State is required to develop a strategy for its marine waters (or Marine Strategy)." This will be discussed briefly in a later section, but a detailed discussion is not necessary for the purposes of this paper. European Commission, *Our Oceans, Seas and Coasts*, 2017, http://ec.europa.eu/environment/marine/eu-coast-and-marine-policy/marine-strategy-framework-directive/index_en.htm (last visited Oct. 24, 2018).

¹¹ European Environmental Agency, *Marine fish stocks*, 2017, <https://www.eea.europa.eu/airs/2018/natural-capital/marine-fish-stocks> (last visited February 10, 2019).

¹² New Economics Foundation, *Landing the Blame: Overfishing in the Atlantic 2018*, 2018, <https://neweconomics.org/uploads/files/Landing-the-blame-Atlantic-2018.pdf> (last visited Oct. 24, 2018).

¹³ "The Common Fisheries Policy is a set of rules for managing European fishing fleets and for conserving fish stocks. Designed to manage a common resource, it gives all European fishing fleets equal access to EU waters and fishing grounds and allows fishermen to compete fairly." A detailed discussion of the Policy is not necessary for the purposes of this paper. European Commission, *The Common Fisheries Policy*, https://ec.europa.eu/fisheries/cfp_en (last visited Oct. 24, 2018).

¹⁴ *Id.*

¹⁷ International Union for Conservation of Nature, *Species of the Day: Angel Shark* (2017), available at <https://nc.iucnredlist.org/redlist/species-of-the-day/squatina-squatina/pdfs/original/squatina-squatina.pdf>.

One of the biggest threats the angel shark faces is being caught as “by-catch” by commercial fisherman.¹⁸ The term by-catch refers to the unwanted animals caught by fisherman (when fishing for other animals) who cannot be sold or kept and are thus thrown away.¹⁹ Commercial fisherman in the region often utilize techniques that result in by-catch, such as bottom trawling. Bottom trawling is designed to herd and capture target species along the ocean floor. Large nets connected to fishing boats are dropped to the ocean floor and dragged along with a boat as fish and other animals are trapped in the nets.²⁰ Because angel sharks sleep, hunt, and breed along the ocean floor, they are particularly susceptible to being caught in these types of devices. This practice is common among Irish fisherman, and when combined with the reluctance of Irish fisherman to limit fishing in the region, impedes the UK’s efforts to revitalize angel shark populations in the region.

Additionally, regional cooperation between Ireland and the UK is desirable because they share similar environmental goals. This is evidenced by their common membership in several international and regional organizations and the commitments they have made within them. For example, both Ireland and the United Kingdom are party to the OSPAR convention and the EU’s Habitats Directive, both will be discussed in further detail below. The goals of each include aquatic species protection and bringing low species populations into GES.

By agreeing to the OSPAR convention, Ireland has committed itself to OSPAR’s guiding principle: the **precautionary principle**. Under the precautionary principle, “preventive measures are to be taken when there are reasonable grounds for concern that human activities may bring about hazards to human health, harm living resources and **marine ecosystems**, damage amenities or interfere with other legitimate uses of the sea, *even when there is no conclusive evidence of a causal relationship*” (emphasis added).²¹ The essence of the precautionary principle is that failing to take protective measures, even if there is a lack of full scientific evidence proving they are necessary, will result in higher costs to society, nature, and future generations. Providing legislative protection for aquatic fish species, as the UK has, would be consistent with this theory because we now know that significant damage has been done to Ireland’s marine and freshwater ecosystems as a result of human activity. As Ireland has committed itself to the precautionary principle by being party to OSPAR, it should be making tangible efforts to protect its threatened aquatic species.

¹⁸ *Id.*

¹⁹ National Oceanic and Atmospheric Administration, *Bycatch*, <https://www.fisheries.noaa.gov/topic/bycatch> (last visited Nov. 5, 2018).

²⁰ National Oceanic and Atmospheric Administration, *Fishing Gear: Bottom Trawls*, <https://www.fisheries.noaa.gov/national/bycatch/fishing-gear-bottom-trawls> (last visited Nov. 5, 2018).

²¹ OSPAR Commission, *Precautionary Principle*, <https://www.ospar.org/about/principles/precautionary-principle> (last visited February 10, 2019).

Another area of importance in both OSPAR and the Habitats Directive is biological diversity, or **biodiversity**. Biodiversity, according to the United Nations Convention on Biological Diversity,²² can be defined as “the variability among living organisms from all sources including, terrestrial, **marine and other aquatic ecosystems** and the ecological complexes of which they are part; this includes diversity **within species, between species** and of ecosystems” (emphasis added).²³ OSPAR’s main goal is to limit human activity in the North-East Atlantic that is putting pressure on the marine ecosystem and to preserve biodiversity.²⁴ Similarly, the Habitats Directive is primarily focused on maintaining biodiversity in Europe by conserving rare, threatened, and endemic animal and plant species.²⁵ Both of these agreements emphasize the importance of regional cooperation in meeting these goals. Thus, Ireland should be committed to taking the necessary steps in order to protect its biodiversity, including its marine and freshwater fish species.

In order to honor the commitments Ireland has made under these international agreements, it is crucial that Ireland take legislative steps to protect the aquatic species that are at risk of extinction in its waters. In doing so, Ireland would be committing to maintain a healthy marine environment for its own citizens and the nations with which it shares its waters. Restoring and maintaining a healthy marine environment would also ensure that Ireland could rely on its marine resources for years to come at sustainable levels.

²² This definition has been accepted by the Environmental Protection Agency of Ireland in its report on Ireland’s Biodiversity Action Plan 2014-2018.

²³ <http://www.epa.ie/pubs/reports/biodiversity/EPA%20Biodiversity%20Action%20Plan%202014-2018.pdf>

²⁴ OSPAR Commission, *Introduction from the Executive Secretary*, <https://www.ospar.org/about/introduction> (last visited Oct. 24, 2018).

²⁵ European Commission, *The Habitats Directive*, http://ec.europa.eu/environment/nature/legislation/habitatsdirective/index_en.htm (last visited Oct. 26, 2018).

LEGAL FRAMEWORK

There are a number of laws at the international, regional, and national level that affect species protection in Ireland and the UK. Below is a discussion of the EU's Habitats Directive, the OSPAR convention, and the laws in each nation addresses, including Northern Ireland, that pertain to species protection, as well as the specific aquatic species that are covered. While these are not the only laws pertaining to species protection in the region, they provide a basis for understanding the existing framework at each level.

The European Union: Habitats Directive

The Habitats Directive (the Directive) was adopted by the European Union (EU) in 1992 as part of Europe's nature conservation policy.²⁶ Its primary objective is to promote the conservation of biodiversity by requiring Member States to maintain or restore natural habitats and wild species at a favorable conservation status.²⁷ The species and habitats that require protection are listed in the Annexes to the Directive. Each Member State is required to take protective measures, such as national legislation, to ensure the protection of the species listed in the Annexes. Protection for species and sites is focused on preventing damage from development and other human activities. Ireland and the UK are both members of the Habitats Directive. Thus, they have both committed to implementing national measures to ensure species conservation.

There are three annexes to the Directive that require different levels of protection and cover over 1,000 animal and plant species and 200 habitat types.²⁸ These annexes are Annex II, Annex IV, and Annex V.

Annex II covers about 900 species and the "core areas" of their habitats are listed as Sites of Community Importance (SCI). These are the major sites that make up the **Natura 2000** network of protected areas throughout Europe and must be managed according to the ecological needs of each species.²⁹

Annex IV covers over 400 species, some overlapping with Annex II. These sites are subject to a strict protection regime that covers each species' entire natural range within the EU.³⁰³¹ The

²⁶ *Id.*

²⁷ Joint Nature Conservation Committee, *Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora*, <http://jncc.defra.gov.uk/page-1374> (last visited February 19, 2019).

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ "Articles 12 and 16 of the Habitats Directive are aimed at the establishment and implementation of a strict protection regime for animal species listed in Annex IV(a) of the Habitats Directive within the whole territory of Member States." *Id.*

European Commission provides guidance documents on how member states should go about developing a strict protection regime to protect Annex IV species.³²

Annex V covers over 90 species and requires that EU Member States balance the exploitation and taking of these species with ensuring they are maintained in a favorable conservation status.³³

The Natura 2000 network makes up an essential part of the Directive. Under the Directive, the EU is divided into nine “ecologically coherent biogeographical regions.” These are the: Atlantic, Continental, Alpine, Mediterranean, Boreal, Macaronesian, Pannonian, Steppic, and Black Sea regions.³⁴ Ireland and the UK are both part of the **Atlantic** region.

The process for Natura 2000 site designation starts with each member state submitting a list of proposed SCIs. The European Commission will then adopt a list of SCIs for each biogeographical region to become part of the Natura 2000 network. Finally, at the national level, the designated sites are to be listed as Special Areas of Conservation (SAC) under national law.³⁵

The responsibility of site proposal and implementation lies with each Member State. Site selection is based on a standard selection criteria specified in the Directive developed by the European Council.³⁶ Once a site has been designated a SCI, each member state has up to 6 years to designate the sites as a SAC at the national level.³⁷ After this, it is up to each Member State to take whatever steps are necessary to ensure the favorable conservation of the sites.³⁸ Article 17 of the Directive requires member states to monitor the conservation status of habitats and species covered by the Directive and report findings to the European Commission every 6 years.³⁹

International

OSPAR

The Convention for the Protection of the Marine Environment of the North-East Atlantic, more commonly known as OSPAR, was signed by 15 contracting parties in 1992. The parties include Belgium, Denmark, the European Union, Finland, France, Germany, Iceland, Ireland, the Netherlands,

³² European Commission, *EC guidance on species protection*, http://ec.europa.eu/environment/nature/conservation/species/guidance/index_en.htm (last visited Oct. 26, 2018).

³³ *Id.*

³⁴ European Commission, *The Habitats Directive*, http://ec.europa.eu/environment/nature/legislation/habitatsdirective/index_en.htm (last visited Oct. 26, 2018).

³⁵ European Commission, *Natura 2000: Habitats Directive Sites according to Biogeographical Regions*, http://ec.europa.eu/environment/nature/natura2000/sites_hab/biogeog_regions/index_en.htm (last visited Oct. 26, 2018).

³⁶ European Commission, *The Habitats Directive*, http://ec.europa.eu/environment/nature/legislation/habitatsdirective/index_en.htm (last visited Oct. 26, 2018).

³⁷ *Id.*

³⁸ *Id.*

³⁹ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

Norway, Portugal, Spain, Sweden and the United Kingdom of Great Britain and Northern Ireland.⁴⁰

OSPAR sets out to protect the marine environment by limiting human activity that puts pressure on the marine ecosystem. These activities include pollution, maritime activities, nuclear energy, and oil and gas extraction.⁴¹

The OSPAR Commission adopted protection strategies in 1998 and now has five annexes that direct its contracting parties.⁴² Annex I focuses on the prevention and elimination of pollution from land-based sources; Annex II addresses the prevention and elimination of pollution by dumping or incineration; Annex III focuses on the prevention and elimination of pollution from offshore sources, Annex IV addresses the assessment of the quality of the marine environment, and Annex V focuses on the protection and conservation of the ecosystems and biological diversity of the maritime area. **Annex V** is the most relevant for the purpose of species protection.

OSPAR is separated into five regions: the Arctic, the Greater North Sea, the Celtic Sea, the Bay of Biscay, and the Wider Atlantic, all falling within the North-East Atlantic Region.⁴³ Ireland falls in the **Celtic Sea** region and the UK falls in both the Celtic Sea and the **Greater North Sea** regions.⁴⁴ The OSPAR Commission has established a list of threatened and/or declining species and habitats in the North-East Atlantic Region which have helped guide the setting of priorities under Annex V.⁴⁵ The list of species and habitats is based on proposals by contracting parties that are examined by the Commission. The criteria used in determining species and habitats is known as the Texel-Faial Criteria and are set out in Annex V.⁴⁶

Like the Habitats Directive, the contracting parties to OSPAR are responsible for establishing and implementing their own national measures to protect and conserve ecosystems in compliance with the Annexes. Using the threatened species lists, the Commission has adopted recommendations that are to be considered by the contracting parties when developing national measures. Relevant recommendations include protecting listed species under national laws, developing a monitoring strategy for the assessment of the status of threatened species, and working with organizations to

⁴⁰ OSPAR Commission, *OSPAR Convention*, <https://www.ospar.org/convention> (last visited Oct. 27, 2018).

⁴¹ *Id.*

⁴² *Id.*

⁴³ OSPAR Commission, *Species & Habitats*, <https://www.ospar.org/work-areas/bdc/species-habitats> (last visited Oct. 26, 2018).

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ The specific criteria are not relevant for this discussion, but can be found here: OSPAR Commission, *Criteria for the Identification of Species and Habitats in need of Protection and their Method of Application* (2013), available at http://jncc.defra.gov.uk/pdf/ANNEX05_Texel_Faial%20criteria.pdf.

obtain regular advice and to coordinate monitoring and research programs.⁴⁷ There are 48 recommendations to be applied by each member nation.

The OSPAR listed species are separated by the five regions in which they exist. Ireland is in **region III** and the OSPAR listed fish in this region are the (by common name): Allis shad, European eel, Portuguese dogfish, leaf scale gulper shark, basking shark, common skate, spotted ray, cod, long-snouted seahorse, short-snouted seahorse, porbeagle, sea lamprey, Thornback skate, white skate, salmon, spurdog, and angel shark.

IUCN

The International Union for Conservation of Nature (IUCN) is a membership union that provides scientific information and tools to its members to, in part, conserve nature worldwide. It is made up of both government and private organizations.⁴⁸ There are approximately 1,300 members, and approximately 13,000 experts. The IUCN is not a governmental body, but has become a respected global authority on the environment and measures needed ensure its health.

Part of what the IUCN does is create the IUCN Red Lists Categories and Criteria. Using some of the 13,000 experts that comprise the IUCN, the lists are assembled to objectively assess most species for conservation worldwide.⁴⁹ The lists are developed using strong scientific criteria⁵⁰ and have become recognized as one of the most authoritative guides on biological diversity and species conservation status. The IUCN Red Lists are commonly used by government agencies, wildlife departments, conservation-related non-governmental organizations (NGOs), natural resource planners, educational organizations, students, and the business community.⁵¹ These lists are not binding law, however, and act solely as a guide to countries determining which species to protect. The Red List fish for the UK and overall EU region is too long to share for the purposes of this paper, but the Irish-specific Red Listed fish will be discussed in the next section.

Ireland

Moving away from the international realm, we look at the national laws of Ireland. Ireland has no statutory protections for fish under its current laws. It does, however, grant some protections,

⁴⁷ OSPAR Commission, *Implementation of species and habitat Recommendations*, <https://www.ospar.org/work-areas/bdc/species-habitats/implementation-of-species-and-habitat-recommendations> (last visited Oct. 26, 2018).

⁴⁸ IUCN, *About*, <https://www.iucn.org/about> (last visited February 10, 2019).

⁴⁹ IUCN, *IUCN Red List of Threatened Species*, <https://www.iucn.org/resources/conservation-tools/iucn-red-list-threatened-species> (last visited Oct. 30, 2018).

⁵⁰ The specific criteria used is not relevant for this discussion, but can be found here: <https://portals.iucn.org/library/sites/library/files/documents/RL-2001-001-2nd.pdf>

⁵¹ IUCN Red List, *Background & History*, <https://www.iucnredlist.org/about/background-history> (last visited February 9, 2019).

mainly in the form of site designations, to fish habitats based on its obligations under the EU Habitats Directive and OSPAR (discussed further below). Additionally, Ireland recognizes the ICUN's red lists as providing a basis for endangered species listings. Thus, Ireland recognizes that certain fish require protection in some form.

Not only does Ireland recognize that fish need protection, it has the law in place that can be used to protect them. This law is known as the Wildlife (Ireland) Acts 1976 and 2000. This law is designed generally for species and habitat protection and covers both marine and fresh water species. However, it has not yet been used to protect fish species. Below is a discussion of the Habitats Directive, the OSPAR Convention, and the ICUN lists as they pertain to Ireland, as well as the Wildlife (Ireland) Acts 1976 and 2000.

Habitats Directive

Under the Habitats Directive, Ireland is required to establish Special Areas of Conservation (SACs) to protect the designated species. This process has been transposed into national law as the **European Communities (Birds and Natural Habitats) Regulation 2011**.⁵² This law empowers the Irish Minister for Arts, Heritage and the Gaeltacht (the Minister) to designate SACs⁵³ and authorizes public authorities to prohibit actions in the SACs that have significant or adverse impacts on them.⁵⁴ “Public authority” refers to any “public authority having or exercising functions, including consent functions, which may have implications for or effects on nature conservation.”⁵⁵ All functions of a public authority must be carried out in compliance with the requirements of the Habitats and Birds Directives.

The major focus of this statute is the prevention of the destruction of habitats and bringing habitats and species into “favorable conservation status,” as required by the Habitats Directive. The status of a species is considered “favorable” when a species is “maintaining itself on a long-term basis as a viable component of its natural habitats, and the natural range of the species is neither being

⁵² National Parks & Wildlife Service, *Special Areas of Concentration (SAC)*, <https://www.npws.ie/protected-sites/sac> (last visited Oct. 26, 2018).

⁵³ “The Minister shall establish priorities for the designation of sites, pursuant to Regulations 14 and 18, in the light of— (a) the importance of the sites for the maintenance or restoration at a favourable conservation status of— (i) a natural habitat type or types in Annex I to the Habitats Directive, (ii) a species in Annex II to the Habitats Directive, (b) the conservation status of natural habitat types and or priority species, (c) the coherence of Natura 2000, and (d) the threats of degradation or destruction to which those sites are exposed.” European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011).

⁵⁴ European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011).

⁵⁵ *Id.*

reduced nor is likely to be reduced for the foreseeable future, and there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis.”⁵⁶

Under the Regulation, no person shall perform an operation or activity on or significantly impacting a SAC without approval from the Minister.⁵⁷ The Minister is to assess proposed operations in light of the site’s conservation objectives and should consent to an operation or activity only after finding it will not adversely affect the SAC.⁵⁸ If approved, the Minister will grant a permit which would allow for potentially species damaging activity to occur. The Regulation does not specifically prohibit actions against individual species such as killing, injuring, or taking. It instead focuses on preventing development of land that is crucial to a species.

SACs in Ireland cover approximately 13,500 sq. km., with approximately 47% of this area being marine and freshwater habitats.⁵⁹ The fish that are included in these sites are the (by common name): sturgeon, Allis shad, twaite shad, Killarney shad, river lamprey, brook lamprey, sea lamprey, Pollan, and salmon.⁶⁰ These fish are not specifically protected under the European Communities (Birds and Natural Habitats) Regulation 2011, but their habitats are as SACs.

OSPAR

Ireland is obligated to protect certain species of fish under its commitment to the OSPAR convention. In pursuing this, Ireland has designated a total of 19 OSPAR Marine Protected Areas (OSPAR MPAs).⁶¹ However, there is currently no legislation to legally enforce any protected areas designated under international conventions.⁶² As a result, Ireland has designated all 19 of these sites as SACs under the Habitats Directive. The fish that are meant to be protected by OSPAR include the (by common name): sturgeon, Allis shad, sea lamprey, salmon, **European eel, Portuguese dogfish, gulper shark, leafscale gulper shark, basking shark, common skate, spotted ray, cod, orange roughy, porbeagle, white skate, spurdog, angel shark, and bluefin tuna.**⁶³

⁵⁶ National Parks & Wildlife Service, *The Status of EU Protected HABITATS AND SPECIES in Ireland 2013* (2013), available at <https://www.npws.ie/sites/default/files/publications/pdf/Art17-Vol1-web.pdf>.

⁵⁷ European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011).

⁵⁸ *Id.*

⁵⁹ National Parks & Wildlife Service, *Special Areas of Concentration (SAC)*, <https://www.npws.ie/protected-sites/sac> (last visited Oct. 30, 2018).

⁶⁰ Kingston, N., *Checklist of protected & rare species in Ireland* (2012), available at https://www.npws.ie/sites/default/files/general/Listed_species_checklist_Dec12.pdf.

⁶¹ For a full list, see here: National Parks & Wildlife Service, *Marine Protected Areas submitted to OSPAR Convention*, available at <https://www.npws.ie/sites/default/files/general/OSPAR%20MPAs.pdf>.

⁶² Atlas of Marine Protection. <http://www.mpatlas.org/region/country/IRL/> (last visited April 9, 2019).

⁶³ Kingston, N., *Checklist of protected & rare species in Ireland* (2012), available at https://www.npws.ie/sites/default/files/general/Listed_species_checklist_Dec12.pdf.

Unfortunately, there are more species entitled to coverage by OSPAR than are offered protection by the Habitats Directive. The fish in bold are the fish that are listed under OSPAR, but are not protected by the Habitats Directive SACs in Ireland. This leaves gaps that need to be filled by further protection. Because there is no national legislation implementing OSPAR, and the Habitats Directive only protects habitats, these fish are offered no individual protection in Ireland.

IUCN

In addition to the Habitats Directive and OSPAR, Ireland recognizes the Red Lists of Threatened Species developed by the International Union for the Conservation of Nature and Natural Resources (IUCN). Ireland recognizes the fish listed by the IUCN for Ireland as those at most risk of extinction within the foreseeable future.

The fish species in Ireland that the IUCN has deemed either critically endangered, endangered, or vulnerable, based on available data, include the (by common name): angel shark, common skate, flapper skate, porbeagle shark, Portuguese dogfish, white skate, basking shark, leafscale gulper shark, spurdog, undulate skate, cuckoo ray, kitefin shark, shagreen ray, tope shark,⁶⁴ European eel, Pollan, Arctic char, twaite shad, Killarney shad, and Atlantic salmon.⁶⁵ Despite Ireland's recognition of these lists, it does not take any additional precautions to protect the fish listed in them.

Wildlife (Ireland) Act

While the above listings have provided some protections in Ireland in the form of habitat protection, they do not have the force of law required for protection of individual fish species. Ireland's major law that designates and protects threatened species is the Wildlife Act 1976 and the Wildlife (Amendment) Act 2000 (together as the Act). The Act provides for the protection of wildlife and regulates activities that impact wildlife, such as hunting.⁶⁶ All bird species in Ireland are currently protected under this Act (as it replaced the Wild Birds Protection Act 1930) as well as 22 other animal species and 86 species of flora.⁶⁷ However, no aquatic fish species are covered under the Act.

The Act is more expansive in the type of protection offered to species than the Habitats Directive or OSPAR as it regulates not just development of habitats, but individual activities that impact a listed species as well. The Act makes it an offense to hunt a protected animal without a permit

⁶⁴ IUCN, *Ireland Red List No. 11 Cartilaginous fish* (2016), available at <https://www.npws.ie/sites/default/files/publications/pdf/Red%20List%2011%20Sharks%20et%20al.pdf>.

⁶⁵ IUCN, *Ireland Red List No. 5 Amphibians, Reptiles & Freshwater Fish* (2011), available at <https://www.npws.ie/sites/default/files/publications/pdf/RL5.pdf>.

⁶⁶ National Parks & Wildlife Service, *Wildlife Act 1976*, <https://www.npws.ie/legislation/irish-law/wildlife-act-1976> (last visited Nov. 1, 2018).

⁶⁷ *Id.*

or a specific exemption, to injure a protected wild animal unless under a hunting permit, or to willfully interfere with or destroy the breeding place of any protected animal.⁶⁸ It also restricts the ways in which animals may be hunted once a permit is granted. For example, it prohibits the use of certain traps and snares.⁶⁹ The Act also makes it an offense to possess or trade a protected wild animal without a license.

The Irish Minister for Arts, Heritage, Gaeltacht and the Islands is responsible for carrying out the Act and is granted wide latitude in passing regulations in furtherance of the provisions of the Act.⁷⁰ Permits may be granted by the Minister, with whatever conditions are deemed appropriate, through the National Parks and Wildlife Service (NPWS).⁷¹ The NPWS is a part of the Heritage Division of the Department of Culture, Heritage, and the Gaeltacht.⁷²

The 2000 Amendments to the Act broadened the scope of animals covered and added a biological diversity section. This section makes it the responsibility of the Minister to promote the conservation of biological diversity.⁷³

Unfortunately, there are **no** aquatic fish species covered by the Act. The only marine animals covered are mammals including dolphins, porpoises, seals, and whales.⁷⁴ These animals are protected in the Fifth Schedule of the Act. Under the original Act, the Minister had the authority to authorize protection to all wild species of fauna and flora **except fish and aquatic invertebrates** without prior consultation with the Minister of Marine and Natural Resources.⁷⁵ The Amendments of 2000 broadened the scope of the Act to allow the protection of most animals. It also requires the Minister to consult with the Minister for the Marine and Natural Resources *before* a regulation can be promulgated that excludes fish and aquatic invertebrates.⁷⁶ Despite this language promoting the protection of fish, there are still no fish or other aquatic non-mammal species protected under the Act.

There are additional drawbacks to the Wildlife Act 1976. While the Amendments largely expanded the Act to grant the Minister more discretion, there are still broad exemptions that leave many animals exposed. The Minister may grant a permit for the humane trapping or killing of a protected animal for educational, scientific, or other approved purpose.⁷⁷ There is also an exemption

⁶⁸ Wildlife (Ireland) Act 1976 (S.I. No. 39 of 1976).

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ National Parks & Wildlife Service, *Wildlife Act 1976*, <https://www.npws.ie/legislation/irish-law/wildlife-act-1976> (last visited Nov. 1, 2018).

⁷² Department of Culture, Heritage and the Gaeltacht, *National Parks and Wildlife Service*, <https://www.chg.gov.ie/heritage/national-parks-wildlife/> (last visited Nov. 1, 2018).

⁷³ <http://www.irishstatutebook.ie/eli/2000/act/38/section/9/enacted/en/html#sec9>

⁷⁴ Wildlife (Amendment) Act, 2000 (S.I. No. 38 of 2000).

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Wildlife (Amendment) Act, 2000 (S.I. No. 38 of 2000).

for those engaged in agriculture, fishing, forestry, zoology, or any other scientific pursuit who accidentally injure or kill a protected wild animal or interfere with their breeding sites.⁷⁸ Another exemption exists for those engaged in road construction or other building operations.⁷⁹

Over 6,000 licenses for hunting, or the import and export, of protected species are granted each year and are usually issued for free.⁸⁰ Regardless of the problems associated with these broad exemptions, this is the most extensive wildlife protection law Ireland currently has.

United Kingdom

The United Kingdom has numerous laws affecting wildlife protection. Two of the most expansive are the Wildlife and Countryside Act of 1981 and the UK Post-2010 Biodiversity Framework. Both authorize countries within the UK to develop their own strategies and statutes to fulfill the requirements of the laws. A description of these laws and the fish that are protected under them is included to emphasize the severity of the need for protection and to show the importance of regional cooperation among the jurisdictions.

The Wildlife and Countryside Act 1981

The Wildlife and Countryside Act 1981 (the Act) is the major species protection law in the UK. It makes it an offense to kill, injure, or take any wild bird, (or any wild bird's nest and egg) as well as an offense to intentionally kill, injure, or take any other protected wild animal.⁸¹ It also provides protection for certain plants and habitats.

The Act has been amended by numerous country statutes that have enlarged protection. Some of these are the Countryside and Rights of Way (CROW) Act 2000 (in England and Wales), the Nature Conservation (Scotland) Act 2004 (in Scotland), and the Natural Environment and Rural Communities Act 2006 (in England and Wales).^{82,83}

Schedule 5 of the Act contains a list of animal species other than birds that are covered by the Act.⁸⁴ The fish covered by this list are the (by common name): Allis shad, twaite shad, burbot, short snouted sea horse, spiny seahorse, basking shark, angel shark, white skate, vendace, sturgeon, and Pollan. There is a statutorily required review every five years for the animals listed in Schedule 5, to be

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ National Parks & Wildlife Service, *Wildlife Act 1976*, <https://www.npws.ie/legislation/irish-law/wildlife-act-1976> (last visited Nov. 1, 2018).

⁸¹ *Id.*

⁸² Joint Nature Conservation Committee, *Wildlife and Countryside Act 1981*, <http://jncc.defra.gov.uk/page-4341> (last visited Nov. 2, 2018).

⁸³ A deeper discussion of these laws is not necessary for the purpose of this paper.

⁸⁴ Wildlife and Countryside Act 1981.

conducted by the respective country's agencies and the Joint Nature Conservation Committee (JNCC),⁸⁵ a statutory advisor to the UK.⁸⁶

The UK Post-2010 Biodiversity Framework

In 1992, the UK published the UK Biodiversity Action Plan (UK BAP) in response to the Convention on Biological Diversity (CBD), an international committee tasked with providing a global framework to protect biodiversity.⁸⁷ A list of priority species was developed under the UK BAP to promote recovery and to help the UK meet its obligations under the CBD.

In 2011, the UK Post-2010 Biodiversity Framework (the Framework) was developed and succeeded the UK BAP. This came on the heels of the CBD publishing the Strategic Plan for Biodiversity 2011-2020,⁸⁸ which included the 20 Aichi Biodiversity Targets,⁸⁹ and the launch of the EU Biodiversity Strategy.⁹⁰

The Framework is concentrated on the four UK countries: England, Northern Ireland, Scotland, and Wales, and identifies steps for each country to develop their own biodiversity strategies. As a result, most of the work currently done within the UK Post-2010 Biodiversity Framework is done at the country level, thus the list of UK BAP priority species and habitats has lost some value. It does remain important, however, in helping the countries develop their own statutory lists of priority species and habitats.

The fish included in the UK BAP priority species list for England, Scotland, Wales, and Northern Ireland are the (by common name): common sturgeon, Allis shad, twaite shad, European eel, spined loach, vendace, Pollan, river lamprey, burbot, smelt, sea lamprey, Atlantic salmon, brown/sea trout, Arctic char, lesser sand eel, black scabbardfish, gulper shark, leafscaper shark, Portuguese dogfish, basking shark, herring, roundnose grenadier, kitefin shark, cod, long-snouted seahorse, short-

⁸⁵ The JNCC was established under the Environmental Protection Act of 1990 (revised by the Natural Environment and Rural Communities Act 2006) and now serves as the public body that advises the UK government on UK and international nature conservation. Joint Nature Conservation Committee, *Who we are*, <http://jncc.defra.gov.uk/default.aspx?page=5287> (last visited February 19, 2019).

⁸⁶ Joint Nature Conservation Committee, *Wildlife and Countryside Act 1981*, <http://jncc.defra.gov.uk/page-4341> (last visited Nov. 2, 2018).

⁸⁷ "The Convention on Biological Diversity provides a global legal framework for action on biodiversity. It brings together the Parties in the Conference of the Parties (COP) which is the Convention's governing body that meets every two years, or as needed, to review progress in the implementation of the Convention, to adopt programmes of work, to achieve its objectives, and provide policy guidance." Convention on Biological Diversity, *Introduction*, <https://www.cbd.int/convention/bodies/intro.shtml> (last visited Nov. 2, 2018).

⁸⁸ The Strategic Plan for Biodiversity 2011-2020 is a plan agreed upon by the UN parties to CBD to implement a framework on biodiversity in 2010 in Nagoya, Japan. It included 20 "Aichi Biodiversity Targets" to be achieved by each of the parties. *Id.*

⁸⁹ See link for a full list of the Aichi Biodiversity Targets: <https://www.cbd.int/sp/targets/>

⁹⁰ Joint Nature Conservation Committee, *The UK Post-2010 Biodiversity Framework*, <http://jncc.defra.gov.uk/page-6189> (last visited Nov. 2, 2018).

snouted seahorse, Atlantic halibut, orange roughy, shortfin mako, porbeagle shark, sandy ray, sea monkfish, whiting, European hake, blue whiting, blue ling, ling, blue shark, undulate ray, Greenland halibut, white or bottlenosed skate, mackerel, sole, spiny dogfish, angel shark, bluefin tuna, and horse mackerel.⁹¹⁹²

Northern Ireland

In Northern Ireland, most of the species protection exists in the Wildlife (Northern Ireland) Order 1985 and the Northern Ireland Priority Species List. The Northern Ireland Priority Species List will be the focus of the analysis portion in later sections of this paper.

Wildlife (Northern Ireland) Order 1985

Like the UK's Wildlife and Countryside Act, the Wildlife (Northern Ireland) Order 1985 (the Order) prohibits the intentional killing, injuring, or taking of any wild bird, their nests, or eggs. It also prohibits the intentional killing, injuring, taking, possessing, or trading of any wild animal, or its shelter, protected under the Order.⁹³ A person may be exempted under the law if they can show that the action they took that resulted in injury or death to a protected animal was necessary to protect serious damage to livestock or other forms of agriculture and they notify the Department of Environment as soon as possible.⁹⁴

The original Order did not include any fish to be protected. The Act was then amended by the Wildlife and Natural Environment Act (Northern Ireland) 2011 (discussed below) to include more animals for protection, including five fish species. The fish included in this amendment are the (by common name): short snouted sea horse, spiny seahorse, common skate, angel shark, and basking shark.⁹⁵

Northern Ireland Priority Species List & Wildlife and Natural Environment Act (Northern Ireland) 2011

The Northern Ireland Priority Species List (the List) was developed as part of Northern Ireland's biodiversity strategy required by the UK Post-2010 Biodiversity Framework (the Framework). It includes the fish from the UK BAP Lists that inhabit Northern Ireland plus more

⁹¹ Joint Nature Conservation Committee, *UK BAP priority fish species (excluding purely marine species)*, <http://jncc.defra.gov.uk/page-5164> (last visited Nov. 2, 2018).

⁹² Joint Nature Conservation Committee, *UK BAP priority marine species*, <http://jncc.defra.gov.uk/page-5167> (last visited March 28, 2019).

⁹³ The Wildlife (Northern Ireland) Order 1985 No. 171 (N.I. 2).

⁹⁴ *Id.*

⁹⁵ Wildlife and Natural Environment Act (Northern Ireland) 2011.

species that Northern Ireland has chosen to protect. The Framework and the List are enforced in Northern Ireland under the Wildlife and Natural Environment Act (Northern Ireland) of 2011.

This act empowers the Department of Environment to review, revise, and publish any revisions to the list in order to conserve biodiversity.⁹⁶ It requires a public body to take any steps reasonably practicable to further the conservation of listed species.⁹⁷ A public body is: “(a) a Northern Ireland department; (b) a district council; (c) a statutory undertaker within the meaning of the Planning (Northern Ireland) Order 1991 (NI 11); (d) any other body established or constituted under a statutory provision.”⁹⁸

As mentioned above, the Act also amended the Wildlife (Northern Ireland) Order 1985 to include more fish under its prohibition against intentional injury, death, and takings.

The fish protected under the List are the (by common name): Allis shad, twaite shad, lesser sand eel, European eel, basking shark, herring, Pollan, common skate, cod, tope shark, porbeagle shark, river lamprey, sea monkfish, whiting, European hake, ling, smelt, plaice, undulate ray, Atlantic salmon, brown/sea trout, Arctic char, mackerel, sole, spiny dogfish, angel shark, and horse mackerel.⁹⁹

⁹⁶ Wildlife and Natural Environment Act (Northern Ireland) 2011.

⁹⁷ *Id.*

⁹⁸ Wildlife and Natural Environment Act (Northern Ireland) 2011.

⁹⁹ *Id.*

ANALYSIS

Comparison of Legal Frameworks

The Wildlife (Ireland) Act should adopt the fish listed and protected under the Northern Ireland Priority Species List. Threatened fish species should be protected under the Wildlife (Ireland) Act because it is specifically designed to protect individual species from harm, unlike the current protections under the Habitats Directive which focuses solely on habitat loss. The Northern Ireland Priority Species List should be used as a guide because it has the broadest scope in Northern Ireland and encompasses the same goals as those of Ireland, including preserving biodiversity and taking measures to reduce harm.

While the Wildlife (Northern Ireland) Order, 1985 is similar in its statutory provisions to the Wildlife (Ireland) Act, the Northern Ireland Priority Species List is broader in the species it protects, including all the fish species that are protected under the Wildlife (Northern Ireland) Order, 1985. It is also broader in its reach under the Wildlife and Natural Environment Act (Northern Ireland) 2011, as it authorizes any steps reasonably taken to conserve a species included in the List.

The Northern Ireland Priority Species List uses criteria for listing that is scientifically sufficient and can be easily transferred to Ireland's own assessment of fish. In order to receive protection under the List, a species must meet one of the seven criteria:¹⁰⁰

1. Listed as a UK Priority Species;
2. Rapid decline (2% per year);
3. Decline (1% per year) with Northern Ireland being a stronghold consisting of either:
 - a. >50% Irish population, or
 - b. >20% UK population/range

Or with the Irish or UK population restricted to Northern Ireland;

4. Rare (confined to small population of one or two sites in Northern Ireland) with Northern Ireland being a stronghold consisting of either:
 - a. >50% Irish population, or
 - b. >20% UK population/range

Or with the Irish or UK population restricted to Northern Ireland;

5. At least 20% of international population of species or well-recognized subspecies occurring in Northern Ireland;

¹⁰⁰ Department of Agriculture, Environment and Rural Affairs, *Northern Ireland Priority Species List*, available at <https://www.daera-ni.gov.uk/sites/default/files/publications/doc/northern-ireland-priority-species-list.pdf>.

6. Irish Red Data Book species classified as critically endangered, endangered, or vulnerable;
or
7. Red-listed species in either Birds of Conservation Concern in Ireland (BOCCI) or the UK Birds of Conservation Concern (UK BOCC) lists.

The above criteria can provide a basis for protection under Irish law because they cover animals that exist in both Ireland and Northern Ireland and have been recognized as being in danger of species decline. The most relevant criteria are numbers one, two, five, and six, as the others apply to Northern Ireland specifically and number seven applies only to birds. Criteria numbers one and two, listed as UK Priority Species and rapid decline, are relevant to Ireland because many of the environmental pressures that exist in Northern Ireland which have led to either listing under the UK Priority Species list or rapid decline in the region also exist in Ireland. Number five, at least 20% of international population of species or well-recognized subspecies occurring in Northern Ireland, similarly relates to Ireland because Ireland and Northern Ireland share a land mass and coastlines. Thus, most fish species occurring in Northern Ireland will also live in Ireland. Number six, Irish Red Data Book species classified as critically endangered, endangered, or vulnerable, directly relates to Ireland because Ireland has accepted these listings as representing those at most risk of extinction within the foreseeable future.

To be sure that the science supports the listing of these fish under the Wildlife (Ireland) Act, fish should not be listed unless they are also covered by one of the other two, Ireland-accepted agreements: Habitats Directive and OSPAR. The lists included in these various agreements have been specifically tailored to vulnerable fish in Ireland. This makes immediate listing easier because Ireland has already accepted that certain fish require additional protection by supporting these agreements. Ireland itself has determined the need for protection of certain fish under the Habitats Directive and OSPAR when it MPAs and SACs in furtherance of protecting these species. Thus, much of the science is already in place to justify listing fish species under the Act. The next step should be to include them in the Act to prevent direct harm to individuals within the species. Doing so would more thoroughly address some of the human activities that have led to their population decline and endangerment.

Further, the listing of these fish is appropriate under the Act because protection would be consistent with the goals of the statute as evidenced by Section 11. Under this section, the Minister is required to promote the conservation of biological diversity, encompassing all living organisms from all sources, including marine and other aquatic ecosystems.¹⁰¹ Ireland is currently falling short of this

¹⁰¹ Wildlife (Amendment) Act, 2000 (S.I. No. 38 of 2000).

requirement by not protecting any fish species at all and thus not protecting the species, or the biological diversity of their ecosystems,¹⁰² as it is required to do.

The aims of the Northern Ireland Priority List, Habitats Directive, and IUCN are also, at least in part, to protect species in order to conserve biological diversity. The fish protected under these lists represent species important to conserving biological diversity and, as such, should be protected from harm. This is particularly true in light of the precautionary principle, which has been agreed upon by both Ireland and Northern Ireland. Because a significant potential harm has been recognized and resulted in other countries and organizations listing these fish as needing protection, all reasonable steps should be taken to prevent future harm to the survival of these species and their ability to thrive.

Fish to be protected

Fish Name	Wildlife (Ireland) Acts	Wildlife and Countryside Act 1981	Wildlife (Northern Ireland) Order 1985	UK BAP Priority Species	Northern Ireland Priority Species List	Habitats Directive: European Communities (Birds and Natural Habitats) Regulation 2011	IUCN Red List: Ireland	OSPAR: Ireland
Sturgeon				X		X		X
Allis Shad		X		X	X	X		X
Twaite shad		X		X	X	X	X	
Killarney shad						X	X	
River lamprey				X		X		
Brook lamprey						X		
Sea lamprey				X				X
Pollan				X	X	X	X	
Atlantic salmon				X	X	X	X	X

¹⁰² Though protections for some marine mammals might be thought to protect fish species, the biological and ecosystem needs of the species are different even where their territory is shared and thus specific protections for fish species are required.

European eel				X	X		X	X
Portuguese dogfish				X			X	X
Angel shark			X	X	X		X	X
Gulper shark				X				X
Leafscale gulper shark							X	X
Basking shark		X	X	X	X		X	X
Common skate			X		X		X	X
White skate		X						
Spotted ray								X
Cod				X	X			X
Orange roughy				X				X
Porbeagle shark				X	X		X	X
White skate				X			X	X
Spurdog							X	X
Bluefin tuna				X				X
Flapper skate							X	
White skate							X	
Undulate ray				X	X		X	
Cuckoo ray							X	
Shagreen ray							X	

Kitefin shark				X			X	
Tope shark					X		X	
Short snouted seahorse			X	X	X			
Spiny seahorse			X		X			
Spined loach				X				
Vendace		X		X				
Burbot		X		X				
Smelt				X	X			
Brown/sea trout				X	X			
Arctic char				X	X			
Herring				X	X			
Sea monkfish				X	X			
Whiting				X	X			
European hake				X	X			
Ling				X	X			
Plaice					X			
Mackerel				X	X			
Spiny dogfish				X	X			
Horse mackerel				X	X			
Lesser Sand eel				X	X			

The table above compares the fish covered by the various laws discussed in the previous sections.¹⁰³ The fish that should be considered for listing under the Wildlife (Ireland) Act are those that exist in both the Northern Ireland Priority Species List and in at least one of the three lists that pertain to Ireland (Habitats Directive, IUCN Red List, and OSPAR). These fish are the (by common name): Allis shad, twaite shad, Pollan, Atlantic salmon, European eel, angel shark, basking shark, common skate, cod, porbeagle shark, undulate ray, and tope shark. While all threatened fish species are worthy of protection, these fish provide a good starting point because they are recognized as needing protection by both Ireland and its close neighbor, Northern Ireland. Thus, much of the scientific analysis establishing the need for protection is already in place and protection can be implemented quickly under existing Irish law.

Below is a closer look at the fish to be protected under the Wildlife (Ireland) Act.

- The **Allis shad** (scientific name *Alosa alosa*) is a member of the herring family. The fish lives in coastal waters and estuaries for most of its life, but migrates into rivers to spawn. Threats to the Allis shad include the construction of dams/weirs in their migratory paths, habitat degradation, pollution, and overfishing.¹⁰⁴
 - The Allis shad is listed under the Northern Ireland Priority List because it meets the following criteria:
 - Listed as a UK priority species;
 - Irish Red Data Book classified as vulnerable¹⁰⁵
 - The Allis shad is also recognized by the Habitats Directive and OSPAR.
- The **twaite shad** (scientific name: *Alosa fallax*) is a member of the herring family, similar in appearance to the Allis shad. Spending most of its life in coastal waters, the fish migrates upstream in the spring to spawn. Like the Allis shad, threats to the twaite shad include dams/weirs and other migratory route obstructions, habitat degradation, pollution, and overfishing.¹⁰⁶
 - The twaite shad is protected under the Northern Ireland Priority Species List because it meets the following criteria:
 - Listed as a UK priority species;

¹⁰³ For purposes of concision and relevance, the chart excludes fish that are solely listed under the UK BAP priority species list.

¹⁰⁴ National Museums Northern Ireland, *Alosa – allis shad*, <http://www.habitas.org.uk/priority/species.asp?item=5004> (last visited February 21, 2019).

¹⁰⁵ *Id.*

¹⁰⁶ National Museums Northern Ireland, *Alosa fallax – twaite shad*, <http://www.habitas.org.uk/priority/species.asp?item=42767> (last visited February 21, 2019).

- Irish Red Data Book classified as vulnerable.¹⁰⁷
- The twaite shad is also recognized by the Habitats Directive and IUCN in Ireland.
- The **Pollan** (scientific name: *Coregonus pollan*) is a member of the salmonidae family. The fish lives only in Irish (Ireland and Northern Ireland) freshwater lakes, where it also spawns. Threats to the pollan include eutrophication¹⁰⁸ due to industrial runoff, invasive species, and overfishing.¹⁰⁹
 - The Pollan is protected under the Northern Ireland Priority Species List because it meets the following criteria:
 - Listed as a UK Priority Species;
 - Northern Ireland has over 90% of the Irish population and 100% of the UK population;
 - Pollan has declined rapidly in Lower Lough Erne since the 1970s;
 - Irish Red Data Book classified as endangered.¹¹⁰
 - The Pollan is also recognized by the Habitats Directive and IUCN in Ireland.
- The **Atlantic salmon** (scientific name: *Salmo salar*) is a member of the Salmonidae family. The fish is found in the northern Atlantic Ocean and large river systems on the Irish island. In the fall, the Atlantic salmon swims upstream freshwater rivers to spawn. Threats to the Atlantic salmon include pollution in fresh water, habitat degradation, water-abstraction, overfishing, supplemental stocking with non-native salmon, introduction of diseases and parasites from salmon farming and stocking, interbreeding with escaped farm salmon, creation of barriers to upstream migration, predation, and increased mortality at sea.¹¹¹
 - The Atlantic salmon is protected under the Northern Ireland Priority Species List because it meets the following criteria:
 - Declining population;
 - Listed in Annexes II and V of the Habitats Directive.¹¹²

¹⁰⁷ *Id.*

¹⁰⁸ Eutrophication refers to the excessive richness of nutrients in a lake.

¹⁰⁹ National Museums Northern Ireland, *Coregonus autumnalis pollan – pollan*, <http://www.habitas.org.uk/priority/species.asp?item=42768> (last visited February 21, 2019).

¹¹⁰ *Id.*

¹¹¹ National Museums Northern Ireland, *Salmo salar – atlantic salmon*, <http://www.habitas.org.uk/priority/species.asp?item=5006> (last visited February 19, 2019).

¹¹² *Id.*

- The Atlantic salmon is also recognized by the Habitats Directive, IUCN, and OSPAR in Ireland.
- The **European eel** (scientific name: *Anguilla Anguilla*) is the only freshwater eel on the Irish island – the eel migrates between the ocean and freshwater. The eel is found in coastal waters and lowland lakes and rivers. Threats to the European eel include changes in water temperature, overfishing, habitat loss, barriers to upstream migration, invasive species, and pollution.¹¹³
 - The European eel is protected under the Northern Ireland Priority Species List because it meets the following criteria:
 - Declining population;
 - Irish Red Data Book listed as “critically endangered.”¹¹⁴
 - The European eel is also recognized by the IUCN and OSPAR in Ireland.
- The **angel shark** (scientific name: *Squatina squatina*) is a bottom-dwelling shark that spends most of the day buried in the sand. The angel shark has been declared extinct in the North Sea and locally extinct over part of its former range in the Irish Sea. Threats to the angel shark include being killed as bycatch and habitat degradation. The angel shark’s long life span and low birth rate make it particularly susceptible to species decline.¹¹⁵
 - The angel shark is protected by the Northern Ireland Priority Species List because it meets the following criteria:
 - Irish Red Data Book listed as “critically endangered.”¹¹⁶
 - The angel shark is also recognized by the IUCN and OSPAR in Ireland.
- The **basking shark** (scientific name: *Cetorhinus maximus*) is a large shark that feeds exclusively on plankton. The shark is known for its large mouth that it leaves open while catching plankton. Threats to the basking shark include being hunted for body parts (fins, meat, and cartilage), being caught as bycatch, collision with boats, and disturbance by the public. Their slow growth and reproductive rates make them particularly vulnerable to population decline.¹¹⁷

¹¹³ National Museums Northern Ireland, *Anguilla anguilla – european eel*, <http://www.habitas.org.uk/priority/species.asp?item=100015> (last visited February 19, 2019).

¹¹⁴ *Id.*

¹¹⁵ National Museums Northern Ireland, *Squatina – angel shark*, <http://www.habitas.org.uk/priority/species.asp?item=100027> (last visited February 19, 2019).

¹¹⁶ *Id.*

¹¹⁷ National Museums Northern Ireland, *Cetorhinus maximus – basking shark*, <http://www.habitas.org.uk/priority/species.asp?item=40787> (last visited February 19, 2019).

- The basking shark is protected under the Northern Ireland Priority Species List because it meets the following criteria:
 - Listed as a UK Priority Species.¹¹⁸
- The basking shark is also recognized by the IUCN and OSPAR in Ireland.
- The **common skate** (scientific name: *Dipturus batis*) belongs to the family of cartilaginous fish known as skates and rays. These flat, bottom dwelling fish are found throughout the north-east Atlantic Ocean, however, their numbers have significantly declined in recent decades. The main threat to the common skate is overfishing, by both meat and trophy fisherman. Their low rate of growth and reproduction make them particularly vulnerable to the effects of overfishing.¹¹⁹
 - The common skate is protected under the Northern Ireland Priority Species List because it meets the following criteria:
 - Listed as a UK Priority Species;
 - Declining population.¹²⁰
 - The common skate is also recognized by the IUCN and OSPAR in Ireland.
- The **cod** (scientific name: *Gadus morhua*) is a member of the gadoid fish family. The fish lives and reproduces in the Irish Sea. Cod is one of the most popular seafood dishes in the UK, and as a result has suffered greatly due to overfishing. Overfishing is the main threat facing the cod.¹²¹
 - The cod is protected under the Northern Ireland Priority Species List because it meets the following criteria:
 - IUCN Red List status is “vulnerable;”
 - Listed as a UK priority species;
 - Declining population.¹²²
 - The cod is also recognized by OSPAR in Ireland.
- The **porbeagle shark** (scientific name: *Lamna nasus*) is a deep-water shark that feeds on fish and cephalopods. The porbeagle shark is a migratory shark, but the North East Atlantic population has significantly declined due to unregulated fishing. The main

¹¹⁸ *Id.*

¹¹⁹ National Museums Northern Ireland, *Dipturus batis* – common skate, <http://www.habitas.org.uk/priority/species.asp?item=40795> (last visited February 19, 2019).

¹²⁰ *Id.*

¹²¹ National Museums Northern Ireland, *Gadus morhua* – cod, <http://www.habitas.org.uk/priority/species.asp?item=100017> (last visited February 19, 2019).

¹²² *Id.*

threats to porbeagle sharks are overfishing for meat and being caught as bycatch. Their low birth rates make them particularly vulnerable to population decline.¹²³

- The porbeagle shark is protected under the Northern Ireland Priority Species List because it meets the following criteria:
 - Listed as a UK Priority Species;
 - Declining population.¹²⁴
- The porbeagle shark is also recognized by the IUCN and OSPAR in Ireland.
- The **undulate ray** (scientific name: *Raja undulata*) is a member of the skate and ray family. The flat, bottom dwelling fish is found throughout the Irish Sea, mostly in the southern region. Threats to the undulate ray include overfishing, being caught as bycatch, and habitat degradation from human activity.¹²⁵
 - The undulate ray is protected under the Northern Ireland Priority Species List because it meets the following criteria:
 - IUCN Red List status is “endangered;”
 - Listed as UK Priority Species¹²⁶
 - The undulate ray is also recognized by the IUCN in Ireland.
- The **tope shark** (scientific name: *Galeorhinus galeus*) is a type of hound shark found in the temperate waters surrounding Ireland. They are small sharks that live close to the shore. Threats to the tope shark include overfishing, being caught as by-catch, and habitat degradation in nursery areas. Their long life span and low birth rate make them particularly susceptible to species decline.¹²⁷
 - The tope shark is protected under the Northern Ireland Priority Species List because it meets the following criteria:
 - IUCN Red List status is “vulnerable;”
 - Declining population.¹²⁸
 - The tope shark is covered by the Northern Ireland Priority Species List and IUCN.

¹²³ National Museums Northern Ireland, *Lamna nasus – porbeagle shark*, <http://www.habitas.org.uk/priority/species.asp?item=100018> (last visited February 19, 2018).

¹²⁴ *Id.*

¹²⁵ National Museums Northern Ireland, *Raja undulata – undulate ray*, <http://www.habitas.org.uk/priority/species.asp?item=100024> (last visited February 19, 2019).

¹²⁶ *Id.*

¹²⁷ National Museums Northern Ireland, *Galeorhinus galeus – tope*, <http://www.habitas.org.uk/priority/species.asp?item=704> (last visited February 19, 2019).

¹²⁸ *Id.*

Application under the Wildlife (Ireland) Act

While the Habitats Directive and OSPAR are intended to protect species that are at risk of extinction, they fall short in Ireland. This is because neither agreement protects individuals within the species, but rather only the habitats in which they exist. They do not prevent harmful action against the animals themselves, such as fishing, but rather prohibit development and other indirect hazards to the fish. Harmful activities may proceed so long as the areas deemed to be Special Areas of Conservation remain in “favorable conservation status.” According to the most recent report to the EU Commission of the status of Ireland’s habitats and species, a species’ conservation status is determined by looking at “the *sum of the influences acting on the species* concerned that may affect the long-term distribution and abundance of its populations within the territory of the member states” (emphasis added).¹²⁹ This means that if the overall area is doing well, it may meet the criteria even when one species is still significantly at risk.

These protections are certainly important to the conservation of the species, but one could argue that looking at the “sum of the influences... that may affect the long-term distribution” of a species is not narrowly tailored enough for effective protection. Only focusing on the habitats of species and their long-term distribution does not do enough to prevent the harm that is happening to individual fish in real time. Threatened, endangered, and critically endangered species need protection from all types of harm, including actions taken by individuals, in order to be brought back to sustainable levels.

The gaps in protection can be seen in Ireland’s own assessment of the conservation status of fish under the Habitats Directive. Under the Habitats Directive, Ireland is required to report every 6 years on the conservation status of listed species.¹³⁰ The most recent report for Ireland was done in 2013, entitled *The Status of EU Protected Habitats and Species in Ireland 2013*. The report outlined the conservation status of a number of listed habitats and species, including eight fish species. The conservation status is determined by the rate of loss in the species’ population. The scores given are “favorable,” “unfavorable – inadequate,” “unfavorable – bad,” or “unknown.”¹³¹ These are based on the range, population, habitat for species, and future-prospects of the species.¹³²

¹²⁹ National Parks & Wildlife Service, *The Status of EU Protected HABITATS AND SPECIES in Ireland 2013* (2013), available at <https://www.npws.ie/sites/default/files/publications/pdf/Art17-Vol1-web.pdf>.

¹³⁰ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

¹³¹ National Parks & Wildlife Service, *The Status of EU Protected HABITATS AND SPECIES in Ireland 2013* (2013), available at <https://www.npws.ie/sites/default/files/publications/pdf/Art17-Vol1-web.pdf>.

¹³² *Id.*

Of the assessed species, three fish species were given a score of “bad”: the sea lamprey, twaite shad, and Pollan.¹³³ Three fish were given a score of “favorable”: the river lamprey, brook lamprey, and Killarney shad.¹³⁴ The Atlantic salmon was given a score of “unfavorable – inadequate” due to their low populations.¹³⁵ And the Allis shad was marked as a “unknown” because no juveniles have been found in Irish river waters.¹³⁶

The sea lamprey, twaite shad, Pollan, Atlantic salmon, and Allis shad were all found to have low or declining populations in comparison to past years. All of these fish, except the sea lamprey, are on the Northern Ireland Priority Species List plus one of the three conservation lists that pertain to Ireland. Their listing under the Habitats Directive means that the habitats that these animals rely on are already protected as SACs, yet their populations are still suffering. This is a good indicator that more legal protection is needed.

These fish are faced with serious threats to their survival and require more targeted protection than what is offered by the “sum of the influences acting on the species.” The Atlantic salmon, for example, are suffering in part from barriers to upstream migration like weirs.¹³⁷ As upstream migration is crucial to these fish’s breeding, obstructive structures could be prevented under the Wildlife (Ireland) Acts, 1976 & 2000 as “willful interferences with the breeding place of a protected species.”¹³⁸ At the very least, the existence of these breeding sites would have to be taken into consideration before any structure was built, and mitigation efforts, like fish ladders, might be required.

Considering the angel shark as an example, we can see how lack of protection in Ireland affects populations not only in other jurisdictions, but populations in Ireland as well. The angel shark used to frequent Tralee Bay and Clew Bay off of Ireland but now has all but disappeared from its habitat in Irish coastal waters due to unsustainable fishing practices like bottom trawling.¹³⁹ This could be prevented by listing the fish as “at risk” under the Wildlife (Ireland) Act in order to prevent any harmful commercial or non-commercial activity, i.e. commercial and non-commercial fishing, from occurring without a license from the National Parks and Wildlife Service (NPWS). Where licenses are issued by the NPWS, they would be overseen and conditioned on the regulation of the use of certain gear and fishing during certain times of the year. In addition to protecting the sharks themselves,

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ National Parks & Wildlife Service, *The Status of EU Protected HABITATS AND SPECIES in Ireland 2013* (2013), available at <https://www.npws.ie/sites/default/files/publications/pdf/Art17-Voll1-web.pdf>.

¹³⁸ Wildlife (Ireland) Acts, 1976 & 2000.

¹³⁹ *Id.*

further protection would help Ireland reach and maintain a “coherent network” of MPAs within its borders as required by OSPAR because the angel shark breeds in at least one Special Area of Conservation.

CONCLUSION

Ireland has proved itself to be an environmentally progressive country in a number of aspects. It is party to numerous international and regional agreements to protect its marine environment, and as a result, maintains 192 Special Areas of Conservation in its extensive marine region.¹⁴⁰ This shows its commitment to sustainability and preserving the rich biodiversity that calls its waters home. Unfortunately, time has shown that these protections are not enough to fully protect the threatened species in Ireland. Aquatic fish species are particularly at risk because currently, they are afforded no protections under Ireland's most expansive species protection act, the Wildlife (Ireland) Act.

This is not consistent with the goals of Ireland or of its neighboring countries. Under the Habitats Directive, OSPAR, and its own Wildlife (Ireland) Act, Ireland has committed itself to maintaining biodiversity within its borders. The goal of biodiversity is shared by Ireland's neighbors in the UK. This makes it especially important for Ireland to take further actions to restore biodiversity to its important waters. One step that would dramatically help Ireland's species is to expand the scope of the Wildlife (Ireland) Act to include both freshwater and marine fish.

Twelve fish should be first to receive this new protection: Allis shad, twaite shad, Pollan, Atlantic salmon, European eel, angel shark, basking shark, common skate, cod, porbeagle shark, undulate ray, and tope shark. These fish are protected under the Northern Ireland Priority Species List, and/or the Habitats Directive, IUCN Red Lists, and the OSPAR convention. These laws share Ireland's goals in maintaining biodiversity and encompass fish that are known to be threatened in Ireland. In order to fulfill Ireland's obligations under the Habitats Directive, OSPAR, and its own laws, Ireland should take legislative steps to protect fish species that desperately need saving. Doing so would ensure sustainable fish populations for future generations in Ireland, and help bring the country into compliance with international agreements.

¹⁴⁰ National Parks & Wildlife Service, *Special Areas of Conservation (SAC)*, <https://www.npws.ie/protected-sites/sac> (last visited Oct. 26, 2018).



AQUATIC ANIMALS

Using the Law to See and Protect Them



Professor Kathy Hessler
Aquatic Animal Law Initiative
Lewis & Clark Law School

1

RESPECT AND INTERSECTION

Land Acknowledgement

- Important to acknowledge the ancestors of this place and to recognize that we are here because of the sacrifices forced upon them.
- In remembering these communities, we honor their legacy, their lives, and their descendants.
- The Illinois tribes included the Illini, Iroquois, Chippewa, Ottawa, and Potawatomi, Kickapoo, Kaskaskia, Miami, Shawnee, Sauk, and Fox.
- We can learn much about respectful relationships with animals from the original inhabitants of this land.

Pronouns - she, her, hers

Warning - Some graphic images



2

OVERVIEW



- Categories
- Science
- Widespread Use
- Legal Issues
- AALI - Seeing Aquatic Animals

Photo credits on file

3

AQUATIC ANIMALS



- Fish
- Amphibians
- Echinoderms
- Mollusks
 - Cephalopods
- Crustaceans
- Reptiles
- Marine Mammals
 - Cetaceans
 - Pinnipeds
- Cnidaria – corals
- Porifera – sponges
- Aquatic birds
- Aquatic Insects & spiders
- Significant differences
 - Biology
 - Capacity
 - Welfare needs
- We treat them similarly under the law - sometimes
 - Law not bound by biological realities
- Likely more than 2 million marine species

4



Overview of issues

Not addressing all uses, animals, or laws

5

CATEGORIES

- Companion/pets
- Food and fiber
 - For humans and animals (even fish)
- Wildlife
- Entertainment - Aquariums, zoos, movies
- Work - Navy dolphins
- Pest
- Research
- Education
- Issues of concern
 - Transportation
 - Breeding
 - Slaughter



6

ANIMALS AS LEGAL PROPERTY



- Animals in the U.S. are legally classified as property
- Some jurisdictions have recognized animals are sentient, but still property, including:
 - France
 - New Zealand
 - European Union
 - Switzerland – dignity
 - Oregon
- UK removed recognition – 2017
2019 – Legislation pending

7



SCIENCE

8

CAPACITIES



- Can feel – sentient
- Consciousness
- Some are proven to be self-aware
- Cooperate across species
- Protect young and each other
- Aware of time
- Pain & adrenal systems
- Recognize human faces
- Emotional responses
- Long/short term memory
- Complex cognition
- Deception
- Tool use
- Social Learning

9

COOPERATION

Moray eel and Trout



10

CLEANER FISH

Cooperation choices



11

CLEANER FISH

No Biting in Front of Potential Clients



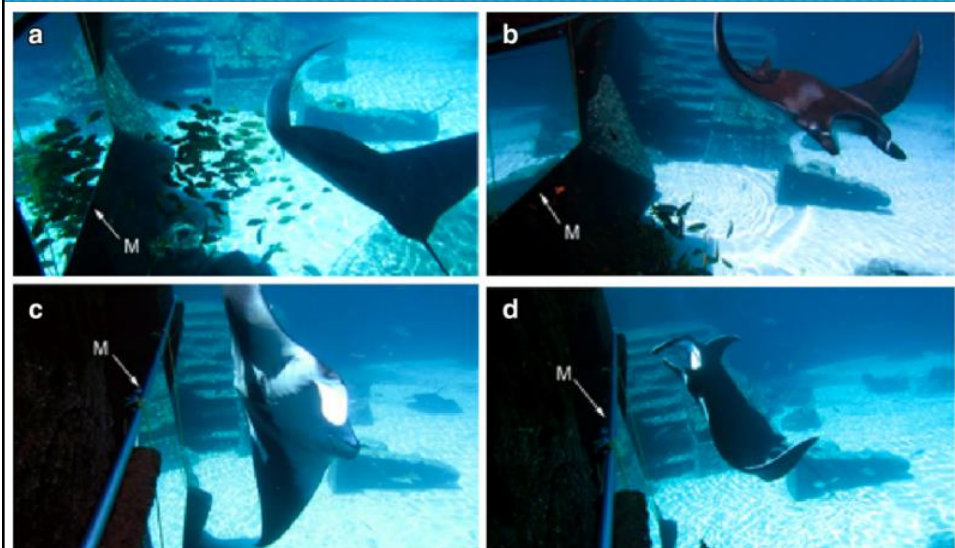
12

CLEANER FISH Working Across Species



13

SELF-AWARENESS Manta Mirror Test



14

SELF-AWARENESS

Cleaner Fish Mirror Test - 2019



- Calls for changing self-awareness test
- Now that more species are "passing"
- Makes sense that animals are self aware
 - Helpful for survival

15

NEW SCIENCE



- Requires a shift in our approach to fish and other aquatic species – from legal perspective
- Use of precautionary principle when considering uses of these animals
- Have enough data that we could (for legal, though not scientific purposes) change our default to assume that these animals are sentient and deserving of protections, unless proven otherwise
 - Won't happen like that
 - But shift in thinking is underway scientifically, socially, and now law (legally) needs to follow and in some respects lead the way by
 - Incorporating scientific findings into regulatory decision making
 - Shouldn't change science to accommodate outcomes we want

16

SCIENCE EVOLVES - LAW MUST

Warm-blooded fish

- Salmon sharks, billfish, blue face tuna
 - Partially warm-blooded
- First truly warm-blooded fish (Opah) – discovered 2015
- Impacts science and law (AWA coverage)



17

FISHING & AQUACULTURE



18



19



20

WILD CAUGHT – SOME REALITY



21

WILD CAUGHT - Even small boats have large impact



22



23



24



A fleet of large boats can have disastrous impact

25

NUMBERS - 2018 FAO Report (2016 Data)

- Worldwide – 170.9 million tons
 - 90.9 million - capture
 - 80.0 million - aquaculture
 - Up to over 1-3 trillion fish a year
- For human and non-human consumption
- \$135 **billion** dollars in annual fish trade worldwide
 - Whole sector is \$500 billion annually
- 20 million tons for fishmeal or fish oil



26

ANIMALS - 2018 FAO Report

- Finfish- 54.1 million tons
- Mollusks – 17.1 million tons
- Crustaceans - 7.9 million tons
- Other Aquatic animals – just under 1 million ton
 - Including: turtles, sea cucumbers, sea urchins, frogs, jellyfish, etc.
- Also, 30.1 million tons of aquatic plants
- Discard - 10% of take wasted, thrown back in sea
 - Wrong animals, poor management
 - 10 million tons annually



27

EXCLUSIONS - 2018 FAO Report

- Reptiles, amphibians, birds
- Entanglements
- By-Catch
- Poaching (illegal fishing)
- Incidental killing
- Intentional killing to reduce competition
- Pollution related to fishing fleets
- Boat strikes



28

HOW ANIMALS ARE USED

- **Human consumption**
 - Decreasingly from wild caught
 - Still 60 billion annually for US market
- **Pet food**
- **Livestock and fish food**
 - 1960 – predominantly for pig and chicken feed
 - 2010 – 73% for aquaculture feed
- **Fish oil** – Over 900 billion killed annually for fish oil and meal
- **Consumer (non-food) use**
 - Fertilizer, Glue, etc.



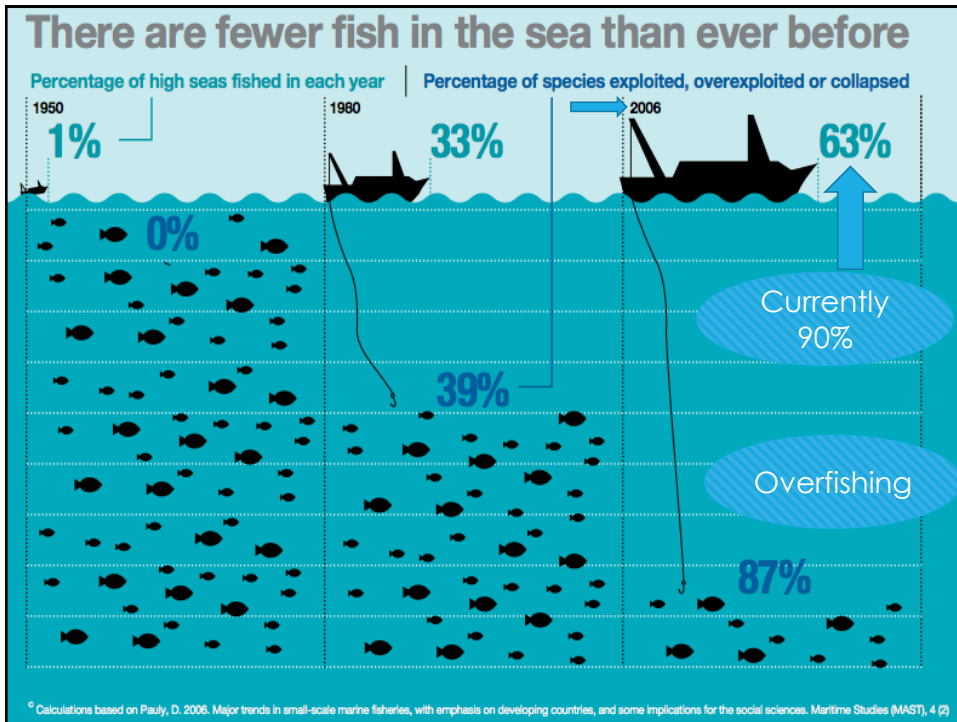
29

THREATS TO OUR OCEANS

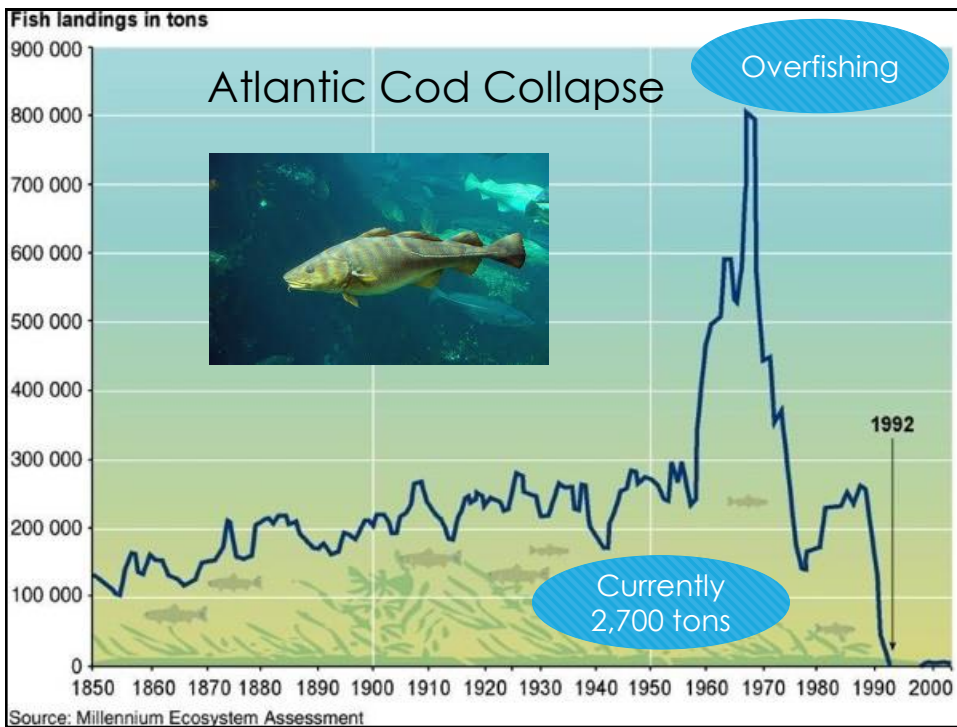


- Many fish species close to collapse/extinction
- Corals – disappearing, huge impact on marine ecosystem
- Bluefin tuna – population reduction since 1960
 - 97% in Pacific
 - 97% in Atlantic
- Vaquitas – **10 left**
- Southern Resident Killer Whale population in PNW
 - **Only 72 left** (73 - Lolita)
- Many types of threat
 - Noise
 - Shipping
 - Pollution
 - Loss of food (e.g. salmon)
 - Climate Change

30



1



2



3



4

REPTILES & AMPHIBIANS

- Not counted in FAO numbers
- Astoundingly high
 - Louisiana – 16 million turtles in 5 years
 - For food, medicinal market and pets
- Little to no regulation
 - No limits in some states (laws changing)
 - Some are “game species”
 - Commercial licenses given to collect
- Thousands killed for target practice, and on roads
- 4,600 sea turtles killed as by-catch each year, 90% reduction



5

FISH FARMING IMPACT ON WILD

- Only need to report “major” escapement events
 - 10% or more cultured fish escaping pen
- No protections for
 - Interbreeding
 - Escapes
 - Pharmaceutical impacts
 - Pollution
 - Diseases and viruses
- August 2017 – Puget Sound escape
 - Over 305,000 non-native Atlantic salmon escaped fish farm
 - 160,000 not recovered
 - Producer knew pens needed replacing
 - State put a hold on permits for any new pens and expansions
 - Significant Tribal concerns
 - Bill to ban farming of non-native species unsuccessful
- Other Washington releases – one over 369,000 fish



6



“SPECIALIZED” HUNTING

7

FAROE ISLANDS DOLPHIN HUNTS



8

FISHING PRACTICES

Shark Fins



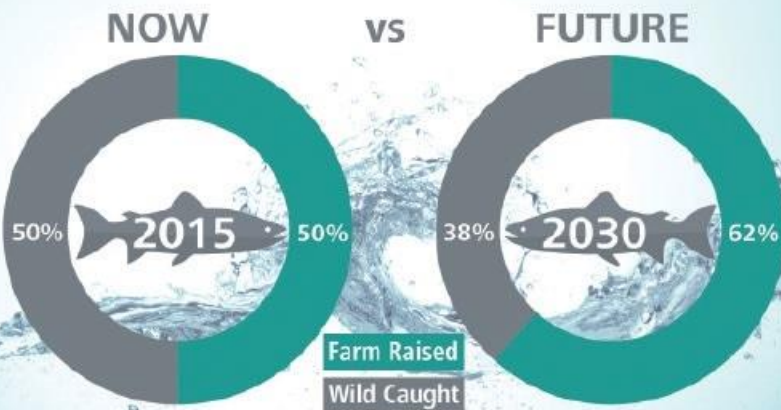
Blue Sharks, Japan



9

WILD CAUGHT & AQUACULTURE

GLOBAL SEAFOOD CONSUMPTION



Sources: FAO The State of World Fisheries and Aquaculture (2016) // Fish to 2030 (2013)

10



AQUACULTURE

11



IMPACTS MARINE & ECOSYSTEM

12

ECOSYSTEM & CONSUMER HARM

- Pollution from aquaculture affects wild animals, fisheries
 - Pesticides, Antibiotics, Pharmaceuticals
 - Fish waste
 - Copper sulfate to keep algae off nets
 - Dry pellet feed
- Most wild-caught fish have some contamination
- More than 50% of US catfish contaminated with dioxin
- 50% of farmed cod are deformed
- Farmed salmon has highest toxic load of any food tested
- Humans living near fish farms have higher incidence of disease related to water pollution
- It takes 2-10 pounds of wild caught fish feed for every pound of farmed salmon



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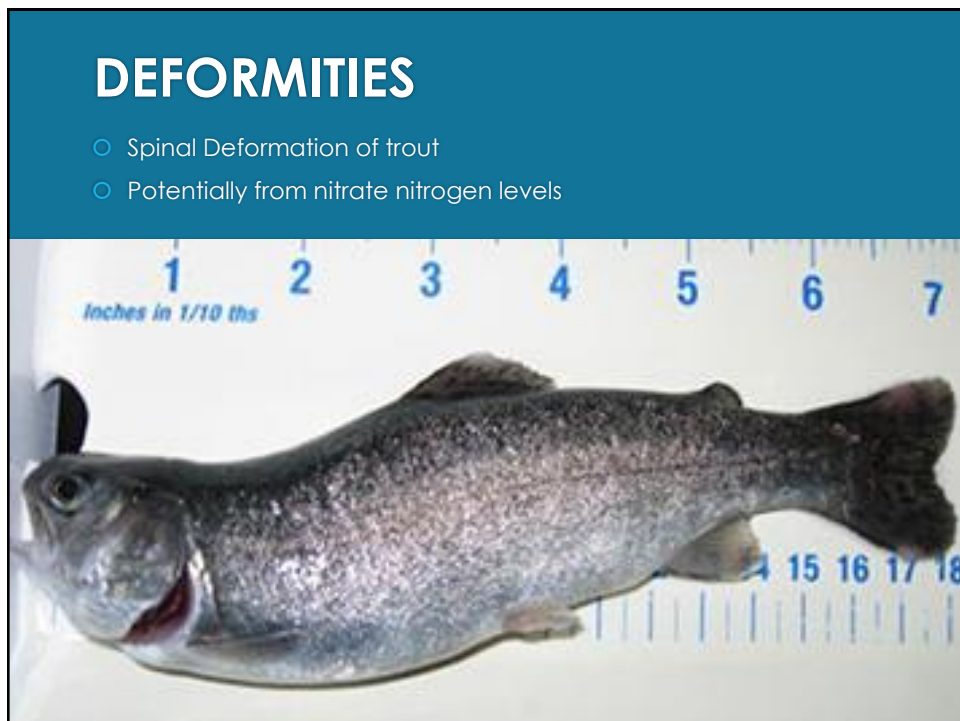
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Numbers

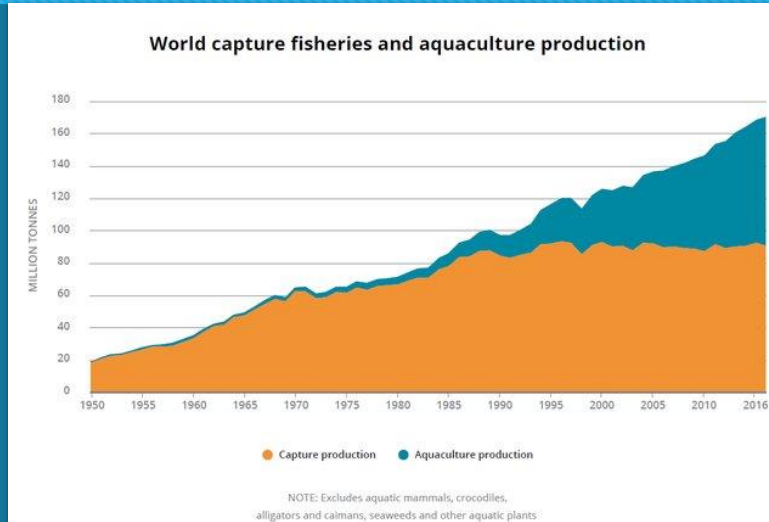
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FOOD & AGRICULTURE ORGANIZATION

- 2014 - 74 million tons – aquaculture globally (308 million meat/poultry)
 - 50 million tons - **farmed** finfish
 - 24 million tons – other **farmed** aquatic animals – mollusks, crustaceans, etc.
- 2017 - 82.5 million tons of farmed aquatic animals
- By 2030 - 62% of all food fish from aquaculture
- 2010-2020 – 33% increase in aquaculture (3% in fisheries)

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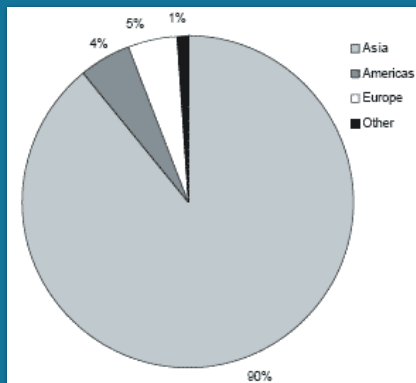
- Fastest growing segment of agriculture
- Annually, 1.3 billion fish in U.S. aquaculture alone



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AQUACULTURE INCREASING

- Globally - half of edible aquatic animals come from aquaculture
- 90 percent comes from Asia (2014)
 - 94% in 2017
 - Fewer regulations



22



23

SYSTEM STYLES

- Marine aquaculture
 - Net pens
 - Rafts, tubes, columns
- Freshwater aquaculture
 - Ponds, tanks, raceways



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OCEAN SYSTEMS



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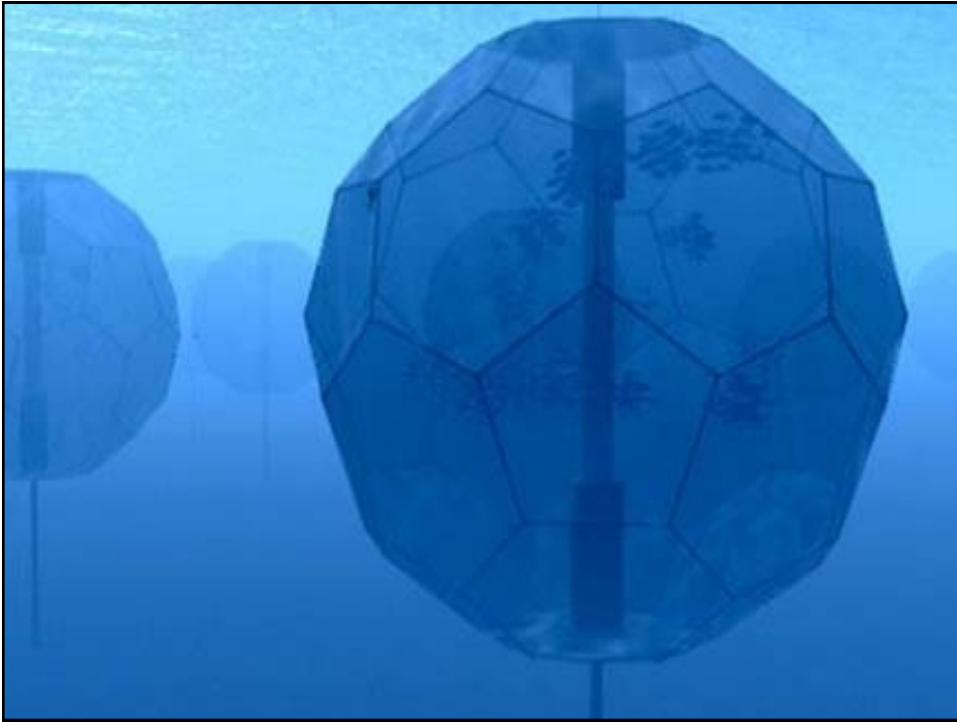
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LAND SYSTEMS



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36

U.S. FISH FARMING

- NOAA approved offshore fish farming
 - Large scale farming in cages deep in ocean
 - In federally regulated waters
 - Requests for permits pending
- Plan for Gulf shore farms to produce up to 64 million pounds of seafood annually
 - 10% of total U.S. production
 - Lawsuit filed on new rules
 - No welfare or humane treatment requirements
- Hubbs-SeaWorld waiting for approval for Rose Canyon Fisheries off San Diego coast
 - Pens one square mile
 - 4 miles off the coast

1



Hubbs-SeaWorld Fish Farm

2



Legal Framework

3

LEGAL EXCLUSIONS



- State anti-cruelty laws
 - Mostly exclude aquatic animals from protection
 - Most exclude agriculture and fishing
- Slaughter laws – no coverage
- AWA – no coverage for food animals
- Transportation laws – no coverage
- Breeding – little to no coverage
- Federal Meat Inspection Act – no coverage

4

LEGAL PROTECTIONS

- Endangered Species Act
 - Not fishing those species for food
- Marine Mammal Protection Act
 - Not hunting/fishing species for food
- Some Anti-cruelty statutes could apply
 - Not used
- NOAA – can protect conservation
- U.N. Convention Law of the Sea
 - Protections for the environment
 - Management of marine natural resources



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U.S. FISH FARMING

- Only need to report "major" escapement events
 - 10% or more cultured fish escaping pen
- No protections for
 - Interbreeding
 - Escapes
 - Pharmaceutical impacts
 - Pollution
 - Diseases and viruses
- August 2017 – Puget Sound escape
 - Over 305,000 non-native Atlantic salmon escaped fish farm
 - 160,000 not recovered
 - Producer knew pens needed replacing
 - State put a hold on permits for any new pens and expansions
 - Significant Tribal concerns
 - Bill to ban farming of non-native species failed
- Other Washington releases – one over 369,000 fish



6

Issues to Consider



7

SLAUGHTER METHODS



- Stunning
 - Percussive
 - Electrical
 - CO₂
 - Baths
 - Salt
 - Ammonia
 - Ice
 - Decapitation
 - Asphyxiation
 - Live Chilling
 - Gutting while alive
 - Pithing
 - Shooting
 - Dynamite
- No Regulation*

8

CAPACITIES



- Can feel – *sentient*
- Conscious
- Some are proven to be self-aware
- Tool use
- Protect young and each other
- Aware of time
- Pain & adrenal systems
- Recognize human faces
- Emotional responses
- Long/short term memory
- Complex cognition
- Deception
- Cooperate across species
- Social learning

9

WELFARE CONSIDERATIONS

- What are the major welfare issues in aquaculture?
- How does aquaculture compare to intensive farming of land-based animals?
- Does poor welfare equate with poor production?
- Issues
 - Disease
 - Parasites
 - Stress
 - In-fighting
 - Pollution
 - Crowding
 - Growth deformities
 - Pharmaceutical impacts
 - 18 types allowed
 - Fish waste
 - Transport
 - Slaughter

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INTENSIVE FARMING

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CROCODILE FARMS

One type of intensive farming

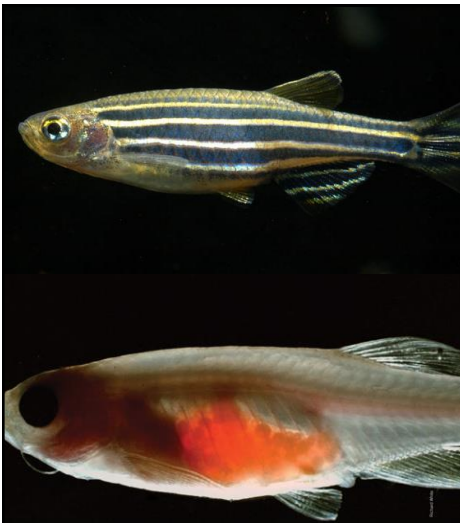
- For:
 - Meat
 - Leather
 - Tourism
- U.S. 2014 - 37 production facilities
 - \$85 million in meat and hides
- Globally - over 1 million skins traded annually



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NON-FOOD USES

13



RESEARCH

One Quarter of Animals Used in Labs and Education in North America are Fish

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RESEARCH

- Fundamental irony – close enough for use for human research, not close enough to humans to require protection under AWA
- Millions used each year
- Using animals further and further down the taxonomy may seem like a solution
 - Just delays development of full array of alternatives (computational biology, human tissue cultures, bio-informatics, etc.)
- Cambridge Declaration on Consciousness
- 3Rs
 - Replacement
 - Reduction
 - Refinement
 - Re-home – my 4th
- Interestingly, more regulations for research (especially in the UK) than for farmed fish anywhere

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LABORATORY SETTINGS



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VETERINARY DIFFICULTIES

- Few vets with fish or other aquatic species training
- Hard to write guidelines or regulations for so many aquatic species
 - 32,000 species of fish
 - Fewer types of warm blooded mammals used in comparison
 - Zebrafish moving to 50% of animals used in certain types of research
- New understandings of capacity for pain should be factored into legal regulations
 - Especially for welfare and euthanasia

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USES

Aquatic parks
 Zoos
 Television and film
 Pets
 Swim-with-the
 Dolphins programs



Aquatic Animals in Entertainment

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Aquatic Parks



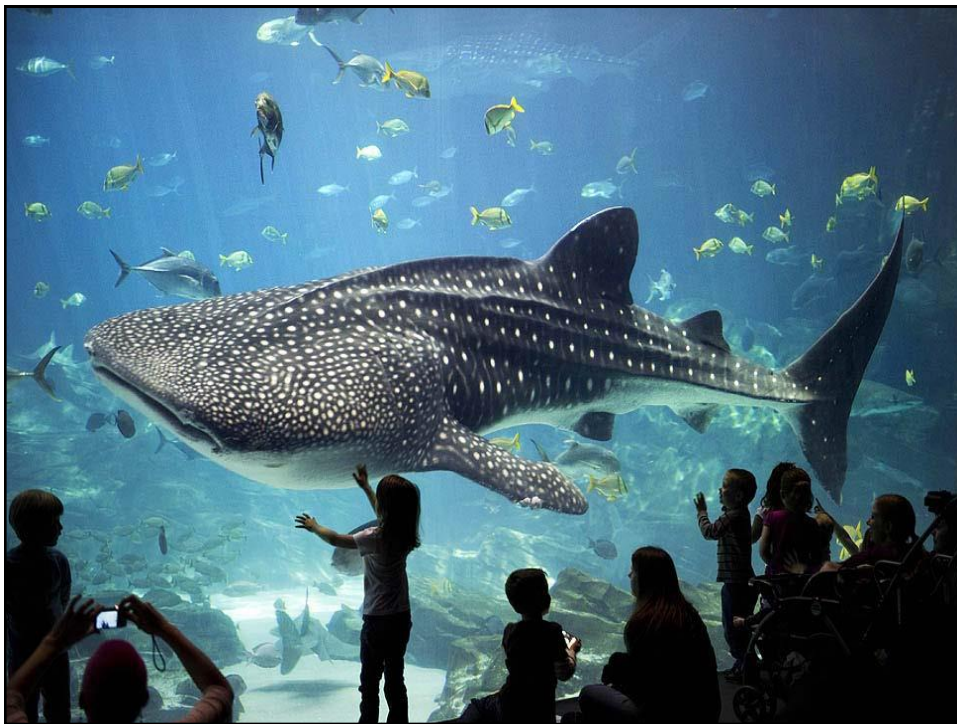
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PROBLEMS OF CAPTIVITY



- Harsh "training"
- Unnatural living conditions cause:
 - Physical harm
 - Psychological harm
- Disease, loss of hearing and teeth, fin collapse
- Aggression to self and other animals
- Can't swim, eat or socialize naturally
- Harsh & inappropriate weather
- Importing animals from the wild
 - Affects wild population
- AWA and AZA not helping
 - 44 orcas have died in SeaWorld parks in 10 years
 - Including 16 stillborn babies
- 4 fatal attacks on humans

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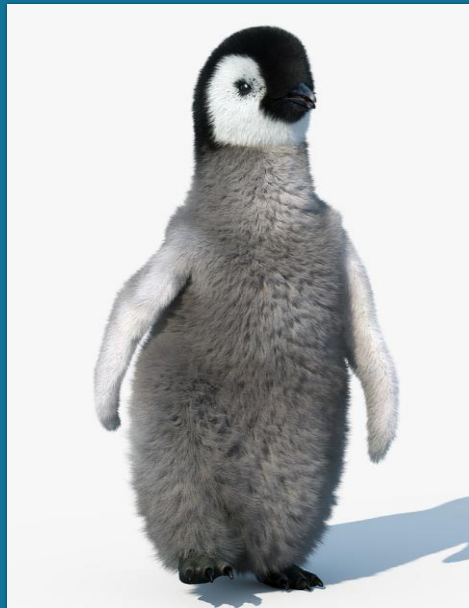
PROBLEMS



- Millions of animals taken from the wild
- Breeding programs problematic
- Over 232 AZA zoos and aquariums in U.S.
- Housing, handling, breeding, record-keeping, and transportation issues
- Not enforcing even basic provisions or addressing violations

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- Billion-dollar industry
 - SeaWorld
 - Miami Seaquarium
 - Marineland (Canada)
- Russia, Cuba, Japan take dolphins & whales and trade them
 - Live capture
 - Russian releasing whales and dolphins captured recently
- Shorter lives
- Stress for highly intelligent animals
- **Doesn't help conserve species**
- CA regulations ending breeding, some shows



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SHED AQUARIUM Room for Improvement

- Animal Encounters – *for an additional fee*
 - Interact with Beluga Whales, Penguins, Sea Otters
 - Shark feeding
 - Touch experiences – Stingrays, Sturgeon
 - Trainer for a day – Belugas, Dolphins, Penguins, Sea Otters, Sea Lions
 - Aquatic presentations – **shows**
 - Marriage proposals
- Already have Virtual Reality – a useful alternative
- Focus on human experience, not animal's experience
- Don't even have warnings about not participating when sick

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POLAR BEARS IN ZOOS

- Many cubs born in captivity die (half?)
- Some live shortened lives and some live longer without challenges of the wild
- Biological changes in captivity
 - Can't bear cold
 - Susceptible to disease
- Territory is almost 60,000 square miles in the wild
- Behavior in zoos is "expression of suffering"



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Arturo – “world’s saddest polar bear”



Died in Argentinian zoo. Partner died of cancer - he became depressed. Efforts to free or move him failed.

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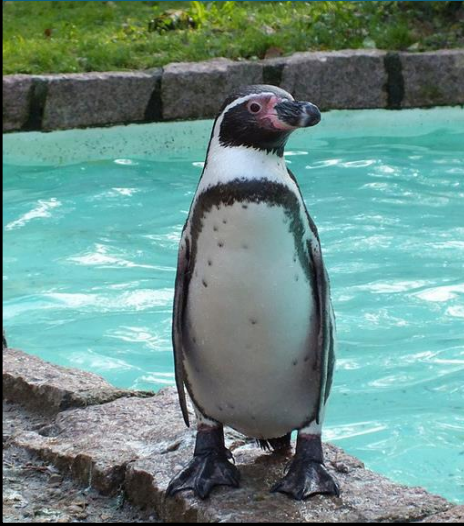


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MANAGING ANIMALS IN ZOOS



- "Training"
 - Similar to circus training in order to have animals comply
 - For medical and other management purposes
- Drugs
 - Anti-depressants
 - Anti-psychotics
 - Tranquilizers

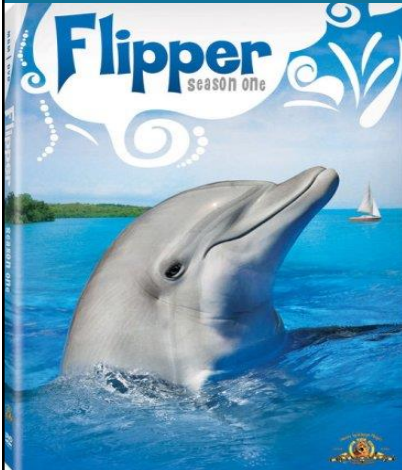
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**TELEVISION
& FILM**

32

TV & Film



- Used in many ways
 - Television
 - Films
 - Marketing - commercials
- Animals removed from families
- Significant travel
- Harsh training techniques
- Bred and traded
- Life-long captivity
- Isolated and inappropriate housing

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ALTERNATIVES

- Computer-generated Imagery (CGI)
- Visual Effects (VFX)
 - Imagery created
 - Not live action
 - Using many styles
 - Animation
 - Computers
- Animatronics
- Where alternatives are available, should they be mandated?



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FISH AS COMPANIONS



- 12.5 million enter U.S. for pet trade annually
- 250 million goldfish bred & sold annually in U.S.
 - Can live 25 years and grow up to two feet in wild
- 13% (2.5 Million) of U.S. homes keep fish
- Cyanide used to catch tropical fish
 - 500 metric tons annually in the Philippines alone
 - 11 million caught this way enter U.S. annually
 - Kills 50% of surrounding species
 - Destroys coral reefs



35

PET TRADE BREEDING 1.5 Billion Fish in Aquariums



36

FISH AS COMPANIONS

- In 2017-2018, U.S. households owned about 139.3 million freshwater fish
 - 90% of freshwater fish sold in stores are farm raised
- Fancy goldfish are all farmed and do not exist in the wild
 - The U.S. produces 250 million a year
- Many aquatic species sold as companions



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WORK



- Frogs and toads
 - Control insects
- Amphibians
 - Control insects
- Dolphins & whales
 - Navy sonar tests
 - Detection of obstacles
 - Learning from their swimming capacity
- Sea lions and Dolphins
 - Navy teaches them to find and retrieve equipment lost at sea
 - Navy teaches them to identify intruders swimming in restricted areas
 - Uses sharks and manta rays as well
- Horseshoe crab blood used for testing toxins

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Medicine

39

SOME OF THE ANIMALS USED

- Frogs
- Salamanders
- Turtles
- Crabs
- Crustacean shells
- Lobster
- Fish
- Fish oil
- Shark
- Oyster
- Sea slug
- Mussel
- Manatee
- Whales
- Dolphins
- Sea snakes
- Crocodiles
- Alligators



40

AQUATIC ANIMALS IN MEDICINE

- Impossible to know the numbers
 - Some data available for certain species
 - Many animals used without any data collection
- Types of medicine
 - Traditional or aboriginal
 - Mainstream culture, but personally collected
 - Industrially produced
- Some newly on market
- Some used for centuries
- Challenges to claims of medicinal benefit

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Breeding & Trading

42

BREEDING AND TRADING

- Zoos breed animals and sell or trade surplus to:
 - Other zoos
 - Research facilities
 - Breeding facilities
 - Pet owners
 - Circuses
 - Roadside zoos
 - Hunting ranches
 - Entertainment industry
- Part of industry
 - Little regulation
- Significant money
- Dolphins
 - \$300 in 1960
 - Now - \$100,000
- Killer whale
 - \$875,000 in 2008
 - Now - \$5,000,000
- Marine parks around the world driving breeding and capture of certain animals

43

BEAUTY AND CULTURE

- Mollusk shells as:
 - Currency
 - Jewelry
 - Religious use
- Conch shells
 - Musical instrument
 - Decoration
- Pearls
 - 4.5 tons from Australia in 2010
- Trade somewhat regulated in countries across the world
 - When endangered, or
 - Considered national patrimony



44



45

Oil and Gas Exploration



- Draft EIS suggests seismic surveys will cause harm or harass up to 31.9 million marine mammals in Gulf of Mexico
 - Includes endangered animals
- Seismic surveys have long been conducted without required permits
- Federal government has allowed permits for vast amounts of testing

1

FISH KILLS

- Results from pesticides and fertilizers – reduces oxygen
- Florida – fishing capital of the world
- One fish kill – 2016 – Indian River, FL
 - Hundreds of thousands of fish died
 - Over 50 miles of river
 - Flounder, crabs, stingray, mullet, etc.
 - Affects sea grass, manatees, etc.



2

ENDOCRINE DISRUPTERS

Intersex Problem

- **One** type of pollution - estrogen
- U.S. Geological Survey studied fish in 19 national wildlife refuges in northeast U.S.
 - 60%-100% of all male smallmouth bass had eggs
- Intersex males found in 37% of species in lakes and rivers throughout North America, Europe and elsewhere
- Also occurs in alligators, turtles, frogs and other aquatic animals
- Other immune issues connected



3



LAW

4

LEGAL EXCLUSIONS



- State anti-cruelty laws
 - Mostly exclude aquatic animals from protection
 - Most exclude agriculture and fishing
- Slaughter laws – no coverage
- AWA – no coverage for food animals
- Transportation laws – no coverage
- Breeding – little to no coverage
- Federal Meat Inspection Act – no coverage

5

LEGAL PROTECTIONS

- Wildlife and endangered
- Pets
- Marine mammals
- Regulatory Protections
 - PHS Policy
 - Guide to Care and Use of Laboratory Animals



6



FEDERAL LAWS

Not addressing Tribal Laws or Treaties

7



Animal Welfare Act

8

ANIMAL WELFARE ACT

- Covers warm blooded vertebrate animals
 - Except mice and rats bred for research, birds, horses and farmed animals
 - **Silent on aquatic animals** even in aquariums and pet stores
 - Has rules for marine mammals, by species
- Focus on humane treatment in
 - Research – 100s of millions of fish used worldwide annually
 - Exhibition – 20 million caught annually for entertainment
 - Transport and breeding for research, exhibition, pets
- PHS policy has new aquatic animal chapter – still developing – uses terrestrial animal standards often

9

DEFINITION OF ANIMAL



...“animal” means any live or dead dog, cat, monkey (nonhuman 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;
- but such term excludes:
 - (1) birds, rats of the genus *Rattus*, and mice of the genus *Mus*, bred for use in research,
 - (2) horses not used for research purposes, and
 - (3) other farm animals, such as, but not limited to livestock or poultry, used or intended for use as food or fiber, or livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber.

10

MARINE MAMMAL RULES

Subpart E



- Specific space requirements
 - By species
 - Dimensions for pools based on size of animal
- Protection of animals from public
- Temperature and water requirements
- Enclosure requirements
- Allows swim-with-the-dolphin programs
 - Lists requirements
- Transport guidelines

11

MARINE MAMMAL PROTECTION

- MMPA Marine Mammal Protection Act
 - National Marine Fisheries Service
- AWA
 - U.S. Dept. of Agriculture
 - APHIS – Animal and Plant Health Inspection Service
- Endangered Species Act
- Some anti-cruelty statutes
- Some species-specific regulation and statutes
- CITES



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Marine Mammal Protection Act

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MARINE MAMMAL PROTECTION ACT

- Passed 1972 due to decline of species from human activities
- Goal to maintain species to preserve ecosystems
- Federal entities
 - NOAA Fisheries
 - U.S. Fish and Wildlife Service
 - Marine Mammal Commission
 - USDA, Animal and Plant Health Inspection Service (APHIS) manages regulations and inspections under the AWA
- All marine mammals are protected under MMPA



14

MMPA

- Requires resource users “to show that proposed taking of living marine resources would not adversely affect the resource or the ecosystem
- “Take” means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal
- Establish “optimum sustainable populations” to ensure healthy ecosystems
 - Rather than producing a “maximum sustainable yield” and adequate harvest

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MMPA - exception to take prohibition

- Incidental take – unintentional
- Authorized takes for non-fishing activities
 - Oil and gas development
 - Military readiness activities
 - Renewable energy projects
 - Construction projects
- Permitted direct take and import for:
 - Scientific research
 - Enhancement
 - Commercial or educational photography
 - Public display



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ENDANGERED SPECIES ACT

- Requires permits for some uses
 - Doesn't ban exhibition or use for commercial gain
- Bans takes and harassment of covered species
 - Exhibitors can apply for permits to avoid this restriction
 - Can get for:
 - Research
 - Education
 - Conservation
- Doesn't apply to captive bred animals
- Restrictions for threatened animals



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LACEY ACT

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LACEY ACT

- Bans trafficking in illegal fish and wildlife (plants and animals) (live or dead)
 - Sell, import, export, acquire, or purchase
 - In violation of U.S. or Indian law
- Bans interstate or foreign commerce involving fish, wildlife or plants taken in violation of state or foreign law (including CITES)
- Civil and Criminal penalties
- U.S Fish & Wildlife manages



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Additional Frameworks

21

MARINE NATIONAL MONUMENTS

- Monuments and Sanctuaries – to protect areas of marine environment
- Atlantic designation reduced by Trump administration
- 13 marine sanctuaries, 4 monuments



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INTERNATIONAL

- CITES - Convention on International Trade of Endangered Species of Wild Flora and Fauna
 - Limits international trade
 - Only for listed species
 - Exemptions under certain circumstances
- U.N. Convention – Law of the Sea, for:
 - Business, the environment
 - Management of marine natural resources
- IUCN Red List – Endangered Species
- Treaties
 - Whaling
 - Fisheries, etc.
- WTO - Trade



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AQUATIC ANIMAL LAW INITIATIVE

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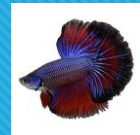
AALI – MISSION STATEMENT

The Aquatic Animal Law Institute (AALI) works to protect and promote the interests of aquatic animals by:

- Advocating on their behalf through the legal system;
- Promoting their value to the public by providing education about their cognitive, emotional, and physiological capacities; and
- Harmonizing human, animal, and environmental interests.

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EXAMPLE OF AALI WORK



- ❖ Betta Fish - national consumer class action
- ❖ Alleging small tank sizes lead to poor welfare and early death
- ❖ Synthesizing science and law
 - ❖ Use science to prove adverse impacts
 - ❖ Law to protect consumers who buy a defective product (not fit for purpose)
- ❖ Case ties animal welfare to consumer welfare
- ❖ Settled
 - ❖ Some parties agreed to change their practices
 - ❖ Some reached monetary settlements
 - ❖ One allowed for input on decision-making

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NEED FOR AALI

- Aquatic animals are generally left out of the legal frameworks of protection and regulation
- Too little understanding about the environmental, public health, consumer, and worker safety issues associated with production, transportation, slaughter, processing, breeding, testing, exhibition, and other activities
- No organization dedicated to legal analysis of these issues
- Without research and consideration of the scientific, economic, and legal contours of these matters, policy development is necessarily constrained and poorly informed
- Without explicit exploration of these issues, opportunities for multi-disciplinary collaboration and problem-solving are lost

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Good for animals

- Learn not to think of them as instrumentalities
- Consider their needs, what is natural

Good for nature and the environment

- Work to better understand the whole system
- Consider individuals within, and apart from, the whole

Good for people

- More deeply consider what it is to be human, and to be a part of nature rather than in control of, or isolated from, it

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SOME GOOD NEWS

- Proposed NOAA ban on swim with dolphin programs
- National Marine Monument in Atlantic and Pacific maintain protection after Trump Administration review
- Sonar case against Navy
- California ban on marine mammal shows
- SeaWorld ending breeding and shows (sort of)
- National Aquarium Dolphins in Baltimore going to sanctuary (first of its kind U.S.)
- Whale Sanctuary Project – Dr. Lori Marino
- NAS report that 77% of world's fisheries could be restored to health in 10 years with changes in fishing practices
- Betta Fish consumer protection case

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NO EASY ANSWERS



- Goals
 - Reducing harm
 - Increasing protections
 - Increase empathy
- How
 - SEE the animals at risk
 - Recognize our role in creating harm
 - Work to change
 - Personal decisions
 - Structural, legal change

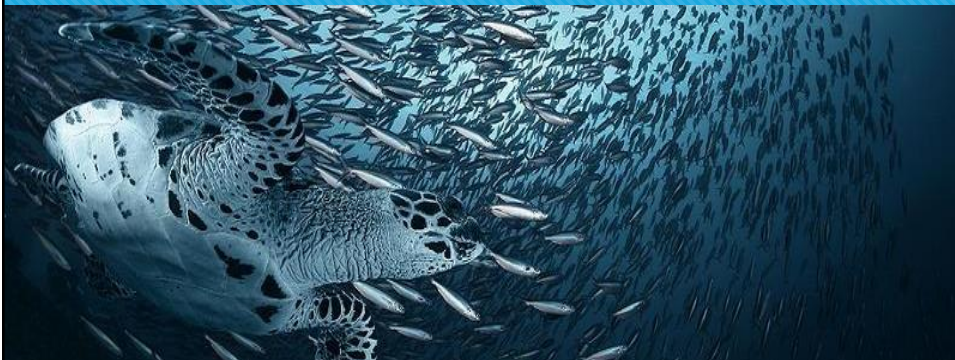
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GOALS



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THANK YOU!



Kathy Hessler
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Mindi Callison is the Founder and Executive Director of the National nonprofit organization, Bailing Out Benji which exists to provide the most current and accurate data surrounding the commercial dog breeding industry. Mindi founded Bailing Out Benji at 21 years old after falling victim to the puppy mill industry by way of a local pet store, who offered her a credit card with high interest. Upon learning about the pet store/puppy mill connection and learning about the predatory lending practices that these stores utilize to take advantage of low-income families, Mindi knew that she needed to act. Bailing Out Benji and its research have been instrumental in passing humane ordinances across the country, they have also been the driving force behind exposing the national puppy laundering scheme that is currently happening in numerous states. What started in small town Iowa has quickly grown into a national nonprofit with volunteer teams all over the country.

Elisabeth Custalow is the Manager of Regulatory Affairs in the Legal and Corporate Affairs Department of the PETA Foundation. She received her B.A. in 2001 from The College of William and Mary and her law degree in 2009 from the University of Virginia School of Law. Prior to joining the PETA Foundation, she was an Assistant Commonwealth's Attorney, prosecuting all manner of misdemeanor and felony offenses, including cruelty to animals. She is a member of the Virginia State Bar.

Tony Eliseuson joined the Animal Legal Defense Fund as a Senior Staff Attorney in 2017 after a 15-year career as a litigation partner with Dentons US LLP. While at Dentons, Tony worked on several pro bono cases with the Animal Legal Defense Fund. Tony handles a broad range of cases at the Animal Legal Defense Fund, from challenges to the waiver of certain animal and environmental protection laws relating to border wall construction to captive wildlife cases pending in several state and federal courts.

Tony graduated from the University of Minnesota Law School in 2002 and obtained a B.A. in political science from Arizona State University in 1999. Tony has spent his entire professional career in Illinois, where he still resides.

Chris Green is the Executive Director of Harvard Law School's Animal Law & Policy Program. He is the former Chair of the American Bar Association's TIPS Animal Law Committee, and previously was the Director of Legislative Affairs for the Animal Legal Defense Fund. Chris's own scholarship has focused on the societal and legal value of companion animals and has been published in the *Animal Law Review*. He still regularly testifies on animal protection legislation and currently is serving on a National Academies of Sciences committee assessing the Veterans Administration's use of dogs in biomedical research. Chris has consulted on animal legal issues for CNN, ABC News, CBS News, NBC News, NPR, Headline News, POLITICO, Vice News, *The Atlantic*, *Bloomberg News*, *Fortune*, *Harper's*, *Huffington Post*, *Medium*, *Science Magazine*, *Smart Money Magazine*, *The Chicago Tribune*, *New York Times*, *San Francisco Chronicle*, *Wall Street Journal*, and *Washington Post*. He is a graduate of Harvard Law School and the University of Illinois, where he created the school's first Environmental Science degree. Chris also spent several decades working in the fine arts, film and music industries, and he currently manages an Illinois farm that has remained in his family for 181 consecutive years.

Kathy Hessler is a clinical professor of law at Lewis & Clark Law School. She is the first faculty member hired to teach animal law full time in a law school. She received her J.D. from the Marshall-Wythe School of Law at the College of William and Mary and her LL.M. from Georgetown University Law Center. She is the Director of the Animal Law Clinic and the Aquatic Animal Law Initiative, as well as the faculty advisor for the Student Animal Legal Defense Fund and Animal Law Review at Lewis & Clark.

Professor Hessler co-authored *ANIMAL LAW IN A NUTSHELL* (with Pamela Frasch and Sonia Waisman), *ANIMAL LAW – NEW PERSPECTIVES ON TEACHING TRADITIONAL LAW* (with Joyce Tischler, Pamela Hart, and Sonia Waisman) and the amicus briefs submitted in the *U.S. v. Stevens* and *Justice v. Gwendolyn Vercher* cases. She has written numerous law review and other articles and teaches and lectures widely across the U.S. and internationally and is working on a new book *AQUATIC ANIMAL LAW*.

Professor Hessler was a board member with the Animal Legal Defense Fund; helped found the Animal Law Committee of the Cuyahoga County Bar; was the chair and a founder of the Animal Law Section and the Balance in Legal Education Section of the American Association of Law Schools (AALS). She was also a co-chair of the Clinical Legal Education Section of the AALS and is on the board of the Center for Teaching Peace.

(Lewis & Clark Law School; Clinical Professor of Law, Director, Animal Law Clinic and Aquatic Animal Law Initiative; George Washington University, BA (1985); William & Mary Law School, J.D. (1987); Georgetown University Law Center, LL.M. (1997); worked at Legal Services of Northern Virginia, and taught at Georgetown University Law Center, Capital University Law School, University of Dayton Law School, Cornell Law School, Case Western Reserve University Law School and Lewis & Clark Law School.)

Justice William E. Holdridge has served on the Illinois Appellate Court since 1994. He is also presiding justice over the court that hears statewide appeals of Workers' Compensation and Occupational Diseases Act cases in Chicago and Springfield. Justice Holdridge is a Fellow of the College of Workers' Compensation Lawyers and his courtrooms are in Ottawa, Springfield, and Chicago, Illinois.

Justice Holdridge has served as Director of the Administrative Office of the Illinois court system and as a Trustee of the Illinois Judicial Retirement System. Prior to serving on the Appellate Court, he was elected a full Circuit Judge in the six counties of the 9th Judicial Circuit, where he presided over criminal and civil trials in western Illinois. Justice Holdridge was awarded a Ph.D from the University of Illinois, teaching at the university level in California and Illinois before entering the practice of law.

Justice Holdridge was chosen Alumnus of the Year of Southern Illinois University School of Law in 1998. He was awarded SIU's Distinguished Alumni Achievement Award 2010.

Jane E. McBride is founder and president of Illinois Humane. Illinois Humane's primary mission is cruelty and neglect investigations, recovery of the animals who are the subject of these cases, and advocacy. Ms. McBride herself has served as an approved humane investigator since 1999. She has been directly involved in the prosecution of a variety of neglect and cruelty matters. Ms. McBride has been active in numerous state animal welfare legislative efforts, as well as work with local governmental units crafting local ordinances and spearheading private/public animal welfare initiatives.

Ms. McBride is currently chair of the American Bar Association's Animal Law Committee. She is a member of the ISBA Animal Law Section Council – serving as CLE chair for the past 8 years. Ms. McBride's career practice area is environmental law. She is licensed in Illinois and Wisconsin. She has a Bachelor's of Science in Fisheries and Wildlife Biology and a Bachelor of Science in Agricultural Journalism from Iowa State University. She earned her J.D. with a Certificate in Environmental and Energy Law from Chicago-Kent College of Law.

Angela E. Peters earned her B.A. in Philosophy at the University of Illinois Chicago in 1973 and her J.D. at IIT-Chicago Kent College of Law in 1985. She is the principal attorney of Buffalo Grove Law Offices where her practice concentrates in international and domestic divorce/family law, criminal, civil and criminal litigation, real estate law, general practice, mediation, and pet litigation and mediation. Ms. Peters is a member of the Illinois State Bar Association, North Suburban Bar Association, Northwest Suburban Bar Association, Buffalo Grove Chamber of Commerce, and the Animal Legal Defense Fund.

Teri Ross is ILAO's Executive Director. She leads ILAO's small but mighty team of 14 staff, which is buoyed by more than 100 volunteers. She fosters strategic partnerships with local and national leaders and groups and oversees development of ILAO's new and transformed products and services. Teri is a graduate of Northwestern University and DePaul University College of Law.

Ledy VanKavage is the Senior Legislative Attorney for Best Friends Animal Society located in Kanab, Utah and a member of the ISBA's animal law section. Before coming to Best Friends Ledy was the Senior Director of Legislation and Legal Training for the ASPCA. She has helped spearhead the passage of over 50 humane state bills during her lobbying tenure and is also a past Chair of the American Bar Association's Animal Law Committee. Ledy is the recipient of the ABA's Excellence in Animal Law award for 2014 and the 2018 Wallace Award from the Wallace the Pitbull Foundation. She is a co-author of the USDOJ publication, "The Problem of Dog Related Incidents and Encounters" and is an instructor for the Illinois Law Enforcement Training and Standards Board. She has been interviewed on MSNBC, NPR, the Chicago Tribune, Time Magazine and the New York Times.

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