



## **REPORT BY THE ANIMAL LAW COMMITTEE**

### **POLICY RECOMMENDATIONS RESPECTFULLY SUBMITTED TO THE BIDEN-HARRIS ADMINISTRATION REGARDING NON-HUMAN ANIMALS**

The New York City Bar Association's Animal Law Committee welcomes the opportunity to submit recommendations for consideration by the Biden-Harris Administration as it develops its administration's objectives. We also applaud President Biden for becoming the first president to make the White House a shelter dog's home.

The City Bar is an independent non-governmental organization of more than 25,000 lawyers, law professors, and government officials, principally from New York City but also from throughout the United States and 50 other countries. The Animal Law Committee — the first committee of its kind in the nation — has a 30-year history of commenting on federal, state, and local rulemaking and legislation affecting non-human animals.

In this report we make some recommendations based on positions that the City Bar has taken recently on federal bills and rulemaking and in letters to federal agencies. These recommendations cover a broad range of issues, including animal welfare, human health and safety, and endangered species protection. We hope that your administration will adopt them and, in all its actions impacting non-human animals, recognize that these creatures have interests too and that the United States, as a global leader, is in a unique position to set a high standard for government actions and enforcement in these areas.

#### **I. REVERSE ADMINISTRATIVE ACTIONS WEAKENING THE ENDANGERED SPECIES ACT**

In 2019 the U.S. Fish and Wildlife Service and National Marine Fisheries Service amended the Endangered Species Act (ESA) and implemented regulations to weaken protections for endangered and threatened species.<sup>1</sup>

---

<sup>1</sup> Endangered and Threatened Wildlife and Plants; Regulations for Listing Species and Designating Critical Habitat, 84 Fed. Reg. 45020 (Sept. 26, 2019) (codified at 50 C.F.R. 424); Endangered and Threatened Species: Revision of Regulations for Prohibitions to Threatened Wildlife and Plants, 84 Fed. Reg. 44753 (Sept. 26, 2019) (codified at 50 C.F.R. 17); Endangered and Threatened Wildlife and Plants; Regulations for Interagency Cooperation, 84 Fed. Reg. 44976 (Sept. 26, 2019) (codified at 50 C.F.R. 402).

#### **About the Association**

*The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.*

These changes have significant and negative consequences. For instance, they potentially let economic and other impacts — rather than just biological considerations — influence the determination of whether to list a species as “endangered” or “threatened” under the ESA.<sup>2</sup> That in turn risks spurring a “battle of the economists” for each new listing, where interested parties use the listing process to weigh and dispute the commercial costs and benefits of determinations. The changes also specifically weaken protections for “threatened” species — that is, species “likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.”<sup>3</sup> Whereas these species have historically received almost all of the same protections as endangered species, recent revisions require that a “species-specific rule” be required to accord such protections.<sup>4</sup> Our 2018 letter to the Secretary of Interior and Secretary of Commerce outlines other ways these administrative actions may harm wildlife, including by making it easier for the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Services to withhold designating critical habitats for listed species and by potentially minimizing longer-term threats to species — like climate change — in making listing determinations.<sup>5</sup>

We urge you to reverse these changes, which stand at odds with the goals of the ESA — a law that enjoys broad public support across the political spectrum.

## **II. ADDRESS THE GLOBAL PUBLIC HEALTH RISKS POSED BY LIVE ANIMAL MARKETS**

As we continue to battle the COVID-19 pandemic, we ask you to take action to address the global public health risks posed by live animal markets. Marketplaces where fresh fish, meat, and other foods are sold present particular risks of viruses, especially where there is live animal slaughter involved. The World Health Organization (WHO) has warned those visiting such markets to limit contact with animals to avoid contamination of uncooked foods, and to avoid consuming raw or undercooked animal products. These basic principles are familiar to us, as evidenced by the safety instructions for handling animal products listed on food labels everywhere. The extensive and prevalent guidelines for handling animal products are also indicative of the risks involved in live animal markets. It is virtually impossible to take precautions in settings where cages of different species of animals are stacked on top of one another and the same chopping block is used to slaughter different animals — these conditions are a breeding ground for disease. Considering what we know about animal-to-human disease transmission and prevention, it should come as no surprise that the novel coronavirus came from animals and that our actions play a key role in the spread of the virus.

---

<sup>2</sup> Specifically, the regulatory changes included the following deletion: “The Secretary shall make [such determinations] *solely* on the basis of the best available scientific and commercial information regarding a species’ status.” 84 Fed. Reg. 45020 (Aug. 27, 2019) (codified at 50 C.F.R. § 424.11(b) (emphasis in original)).

<sup>3</sup> 16 U.S.C. § 1532(20).

<sup>4</sup> Endangered and Threatened Species: Listing Species and Designating Critical Habitat, 84 Fed. Reg. 45020 (Aug. 27, 2019) (codified at 50 C.F.R. Parts 17 and 402).

<sup>5</sup> NYC Bar Association Animal Law Committee, Letter to Secretary of the Interior Ryan K. Zinke and Secretary of Commerce Wilbur Ross (Sept. 20, 2018), <https://s3.amazonaws.com/documents.nycbar.org/files/2018428-EndangeredSpeciesActRules.pdf>. (All links last visited Feb. 12 2021).

Congress recently introduced the Preventing Future Pandemics Act of 2021 (S. 37 / H.R. 151), which, among other things, would prohibit importing, exporting, purchasing, or selling live wild animals in the United States for human consumption as food or medicine. Although the Animal Law Committee has not yet taken any position with respect to this legislation,<sup>6</sup> we urge your administration to focus on this timely issue by advocating for laws that seek to prevent disease emergence and pandemics, and to ensure that enforcement of those laws remains a priority. In addition to the public health benefits, such laws also protect vulnerable animals.

### **III. REQUIRE THE USDA TO PROMULGATE REGULATIONS ON THE HUMANE TREATMENT OF BIRDS UNDER THE ANIMAL WELFARE ACT**

We urge you to direct the United States Department of Agriculture (USDA) to promptly issue regulations concerning the transportation, purchase, sale, housing, handling, humane care, and treatment of birds covered by the Animal Welfare Act (AWA) (7 U.S.C. §§ 2131-2159) and to enforce the AWA with respect to birds.<sup>7</sup> The USDA's failure to issue regulations covering birds for over 16 years affects millions of birds that are sold as pets at the wholesale level, transported in commerce, or used for exhibition, research, teaching, testing, or experimentation purposes.<sup>8</sup>

As background, in 2002 Congress amended the AWA's definition of "animal" to expressly include birds, except those birds bred for use in research or for use as human or animal food.<sup>9</sup> To reflect this new definition, the USDA in 2004 amended the definition of "animal" in the Animal Welfare Regulations and simultaneously published an advanced notice of proposed rulemaking, asking for public comments to aid in developing regulations and standards for birds not bred for use in research.<sup>10</sup> Although the comment period for the advanced notice of proposed rulemaking ended that same year, the USDA has still not proposed or promulgated regulations covering birds.

The USDA's failure to issue regulations covering birds has led to confusion by researchers, universities, and animal welfare organizations, causing many to believe that the AWA does not cover birds.<sup>11</sup> In the interim, there have been several well-publicized allegations of cruelty and neglect against bird dealers and exhibitors that, had the USDA acted, might have been avoided.

---

<sup>6</sup> We have, however published an article on the issue: NYC Bar Association Animal Law Committee, *Zoonotic Transfer of Disease in a Post-COVID-19 Era: In Our Backyards and in Our Future* (Jun. 26, 2020), <https://s3.amazonaws.com/documents.nycbar.org/files/2020705-ZoonoticDiseaseCOVID19.pdf>.

<sup>7</sup> Letter from Lori Barrett, Chair, NYC Bar Animal Law Committee to Thomas J. Vilsack, Secretary, USDA, regarding AWA Regulations for Birds (Apr. 6, 2016), <http://www2.nycbar.org/pdf/report/uploads/20073070-LetteringUSDA-humanetreatmentofbirdsunerAnimalWelfareActANIMALS4.6.16.pdf>.

<sup>8</sup> USDA, APHIS, Fact Sheet: Questions and Answers: Rats, Mice, and Birds to Be Included in the Animal Welfare Act, 2 (Aug. 2011).

<sup>9</sup> Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, 10301, 116 Stat. 491 (2002) (new definition codified at 7 U.S.C. § 2132(g)).

<sup>10</sup> 69 Fed. Reg. 31513-14 (Jun. 4, 2004) (new definition codified at 9 C.F.R. § 1.1).

<sup>11</sup> See, e.g., Eric Kleiman, *Santa Cruz Biotechnology*, AV Magazine (2006) ("The AWA excludes rats, mice, and birds from protection."); National Research Council et al., *Scientific and Humane Issues in the Use of Random Source Dogs and Cats* 17 (2009) (noting that the AWA definition of "animal" excludes birds).

While the USDA has claimed that bird-specific regulations are a condition precedent to enforcing the AWA with respect to birds,<sup>12</sup> the USDA can in fact already do so. In particular, the USDA already has regulations on the humane handling, care, treatment, and transportation of warm-blooded animals — which include birds.<sup>13</sup>

#### **IV. SUPPORT THE PUPPIES ASSISTING WOUNDED SERVICE MEMBERS FOR VETERANS THERAPY (PAWS) ACT**

PTSD is an epidemic among veterans, one often left untreated. The PAWS Act (H.R. 4305)(116<sup>th</sup> Congress) would fund a pilot program that lets the Department of Veterans Affairs make grants to qualified non-profit organizations providing service dogs to veterans with Post-Traumatic Stress Disorder (PTSD). We ask you to support it.

Veterans often receive inadequate assistance in contending with PTSD and other mental health conditions. Service dogs can help. These dogs provide assistance with a number of trained and untrained tasks, reducing veteran isolation, promoting independence, and allowing veterans with PTSD to succeed in the workplace. The companionship and social support of a PTSD service dog also provide emotional and therapeutic value.

The U.S. Department of Veterans Affairs (VA) currently funds service dogs for only those veterans with mobility, visual or hearing impairments, not for veterans with solely PTSD or other mental health conditions. The VA has limited funding of such treatment due to what it sees as insufficient evidence regarding service dogs' efficacy. Yet several recent studies suggest that service dogs are an effective complementary treatment aid for veterans with PTSD. By establishing a pilot program that helps non-profit organizations offer service dogs to these veterans, the PAWS Act provides an opportunity to learn more about the benefits of PTSD service dogs.

Providing effective and comprehensive PTSD treatment benefits both veterans and the wider public, as veteran PTSD has pervasive and deleterious social and economic consequences. Non-profits that train service animals for veterans regularly use prison-based dog training programs, and these programs have the potential to help reform prisons by providing an effective rehabilitation mechanism.

The PAWS Act benefits animals as well, as many dogs trained as service dogs are rescue/shelter dogs that might otherwise be euthanized. Using such dogs to support veterans is thus a win-win for animals and humans. It also reinforces the human-animal bond and promotes humane education. If the PAWS Act is passed, we would encourage that rescue/shelter dogs be used in the pilot program.

---

<sup>12</sup> USDA, Animal and Plant Health Inspection Service, *Animal Welfare Act* (Jul. 23, 2020), [https://www.aphis.usda.gov/wcm/connect/aphis\\_content\\_library/sa\\_our\\_focus/sa\\_animal\\_welfare/sa\\_awa/ct\\_awa\\_p rogram\\_information](https://www.aphis.usda.gov/wcm/connect/aphis_content_library/sa_our_focus/sa_animal_welfare/sa_awa/ct_awa_p rogram_information) (“Birds (other than those bred for research) are covered under the AWA but the regulatory standards have not yet been established.”)

<sup>13</sup> 9 C.F.R. Subpart F, “Specifications for the Humane Handling, Care, Treatment, and Transportation of Warmblooded Animals Other Than Dogs, Cats, Rabbits, Hamsters, Guinea Pigs, Nonhuman Primates, and Marine Mammals.”

Our report on the Act — co-sponsored by the City Bar’s Military and Veterans Affairs Committee, Corrections and Community Reentry Committee, and Mental Health Law Committee — highlights several other benefits of the Act.<sup>14</sup>

## **V. SUPPORT THE BIG CAT PUBLIC SAFETY ACT**

The Big Cat Public Safety Act (H.R. 263)(117<sup>th</sup> Congress) would prohibit private ownership of tigers, lions, leopards, cheetahs, jaguars, cougars, or any hybrid of these species — so-called “big cats.” By doing so, the Act promotes animal welfare, safeguards the public, and combats illegal wildlife trafficking.

Privately owned big cats suffer neglect and abuse. Most live in unhealthy and unstimulating conditions, deprived of adequate space, exercise, socialization, veterinary care, nutritious diet, and mental enrichment. They experience inhumane treatment too. For instance, tiger cubs — particularly popular in roadside “zoos” —are often separated from their mothers and subjected to defanging and toe-amputation, all to maximize docility to humans.

Not surprisingly, privately owned big cats face significant long-term health problems and high mortality rates, their lives often ending in abandonment or euthanasia. Death rates for the 5,000-7,000 privately owned tigers are particularly staggering, with up to 90% dying within the first two years.

These cats also present a risk to public safety. No amount of training or discipline can make them safe to be human companions: they are wild animals who retain their natural instincts to hunt and attack, and their size and strength can make any attack a lethal event. The danger is heightened when the cats are kept in unnatural environments, in close proximity to humans. Still, hundreds of dangerous incidents involving privately held big cats have been reported, with the real number of incidents likely much higher.

These cats are also targets for black market sales. Wildlife trafficking in turn funds the same criminal networks involved in trafficking drugs, weapons, and humans.

While a patchwork of state laws currently regulates big cat ownership, these laws are inadequate and under enforced; a federal solution is warranted. We therefore urge your support of the Big Cat Public Safety Act. Our report on the Act provides more information on the current problem and how this law helps solve it.<sup>15</sup>

---

<sup>14</sup> NYC Bar Association Animal Law Committee, Report in Support of the Puppies Assisting Wounded Service Members for Veterans Therapy Act (Nov. 4, 2020), <https://s3.amazonaws.com/documents.nycbar.org/files/2020783-PAWSforVeteransTherapyAct.pdf>.

<sup>15</sup> NYC Bar Association Animal Law Committee, Report in Support of Big Cat Public Safety Act (Apr. 30, 2020), <https://s3.amazonaws.com/documents.nycbar.org/files/2020689-BigCatPublicSafety.pdf>.

## VI. MAKE ANIMAL WELFARE A PRIORITY IN THE ADMINISTRATION

The welfare of billions of animals is entrusted to federal agencies. The USDA, for instance, enforces the Animal Welfare Act and Humane Slaughter Act, laws that impact massive numbers of farmed animals and research animals. The Department of the Interior is similarly charged with protecting much of the country's wildlife. And the Department of Justice enforces violations of various animal-related laws.

These departments should have leaders who recognize that the living creatures in their hands have value independent of their economic worth. These leaders should understand the threat that current animal agricultural practices pose to animals, as well as to public health and the environment; they should enforce existing laws regulating animal agriculture practices; and promote greater transparency into the industry.<sup>16</sup> We would also suggest that the administration consider appointing an individual to act as a central liaison for animal welfare-related matter, taking reports on issues, coordinating with respective departments, and taking feedback from animal welfare groups and other interested parties.

Below are some additional recommendations on federal animal welfare issues:

- ***Improve standards for farmed animal welfare.*** In 2017 the Committee commented on a proposed USDA rule that would have provided heightened standards for the living conditions, physical alteration, medical care, handling, transport, and slaughter of organically raised farmed animals.<sup>17</sup> While the USDA ultimately withdrew that rule, we continue to encourage heightening such standards for all farmed animals in the USDA's jurisdiction.
- ***Uplist the African elephant from "threatened" to "endangered" under the Endangered Species Act.*** We recommend that the Secretary of the Interior find the African elephant to be "in danger of extinction throughout all or a significant portion of its range" and, therefore, that listing the African elephant as an "endangered" — rather than its current status, "threatened" — species under the ESA is warranted. The Committee bases its recommendation on its analysis of the work done by established organizations, which demonstrates that the African elephant satisfies the criteria for designation as "endangered" under the ESA. That analysis is set forth in our May 2016 letter to the U.S. Fish & Wildlife Service.<sup>18</sup>

---

<sup>16</sup> See, e.g., Pew Commission on Industrial Farm Animal Production, *Putting Meat on The Table: Industrial Farm Animal Production in America* (2008), <http://www.pcifapia.org/images/PCIFAPFin.pdf>; Food and Agriculture Organization of the United Nations, *Livestock's Long Shadow* (2006), <http://www.fao.org/docrep/010/a0701e/a0701e.pdf>.

<sup>17</sup> NYC Bar Association Animal Law Committee, Comment on National Organic Program; Organic Livestock and Poultry Practices (Jun. 8, 2017), [https://s3.amazonaws.com/documents.nycbar.org/files/2017153-USDA\\_comment\\_national\\_organic\\_standards\\_ANIMALS\\_6.8.17.pdf](https://s3.amazonaws.com/documents.nycbar.org/files/2017153-USDA_comment_national_organic_standards_ANIMALS_6.8.17.pdf)

<sup>18</sup> NYC Bar Association Animal Law Committee, Letter to U.S. Fish and Wildlife Service on Uplisting the African Elephant (May 18, 2016), <https://s3.amazonaws.com/documents.nycbar.org/files/20073097-ElephantESAUplistingCommentANIMALS5162016.pdf>.



- ***Strengthen Animal Welfare Act enforcement.*** We ask that the USDA decline to renew and to suspend or revoke the licenses of those dealers or exhibitors who are guilty of repeated violations of the AWA or who fail to cure cited violations of the AWA. Far too often, the USDA has renewed the licenses of dealers or exhibitors that have repeatedly violated the AWA. This results in animal suffering and discourages licensees' compliance with the AWA because violators can merely pay fines as a cost of doing business without correcting the underlying violations.<sup>19</sup>
- ***Protect downed animals.*** Adopt legislation protecting nonambulatory animals, both for the purpose of alleviating some of the cruelty to animals in agriculture when they become unable to walk and to address the health concerns involved in sending such animals to slaughter. The Committee drafted a 2012 report supporting the Downed Animal and Food Safety Protection Act, which sought to ensure the humane slaughter of nonambulatory livestock and for other purposes.<sup>20</sup>
- ***Ban trade and possession of shark fins.*** Millions of sharks are killed each year for their fins. Shark finning is cruel and inhumane, harms marine ecosystems, reduces species populations that are already threatened with extinction, negatively impacts economies and consuming shark fins poses risks to human health. Federal law prohibits the act of shark finning, and twelve U.S. states and three territories passed laws that ban the trade and possession of shark fins. A federal law to prohibit the trade and possession of shark fins on land is necessary to eliminate any legal trade connected with shark finning that continues to exist. The Animal Law Committee published a 2019 report, supporting, with recommendations, the Shark Fin Sales Elimination Act of 2019.<sup>21</sup>

We accordingly urge you to make animal welfare a priority in selecting your administration.

\* \* \*

The New York City Bar Association appreciates your consideration of the Animal Law Committee's recommendations. We believe that these recommendations, if adopted, would advance animal welfare, human health and safety, and endangered species protection. We would also welcome the opportunity to meet with your administration so that they can learn more about our work and how we might help. Our Director of Advocacy, Elizabeth Kocienda, is happy to

---

<sup>19</sup> Letter from Christine Mott, Chair of the NYC Bar Association Animal Law Committee, to Thomas J. Vilsack, Secretary, USDA (Jul. 31, 2015); <http://www2.nycbar.org/pdf/report/uploads/20072948-USDAAWAEnforcementAnimalReportFINAL7.31.15.pdf>.

<sup>20</sup> NYC Bar Association Animal Law Committee, Report Supporting Downed Animal and Food Safety Protection Act (H.R. 3704) (Jun. 1, 2012), <https://www2.nycbar.org/pdf/report/uploads/20072295-CommentonDownedAnimals.pdf>.

<sup>21</sup> NYC Bar Association Animal Law Committee, Report Supporting, with Recommendations, the Shark Fin Sales Elimination Act of 2019 (H.R. 737) (Mar. 6, 2019), [https://s3.amazonaws.com/documents.nycbar.org/files/2019494-Shark\\_Fin\\_Sales\\_Elimination\\_Act.pdf](https://s3.amazonaws.com/documents.nycbar.org/files/2019494-Shark_Fin_Sales_Elimination_Act.pdf).

coordinate a meeting or answer any questions. Please do not hesitate to contact her at [ekocienda@nycbar.org](mailto:ekocienda@nycbar.org) or (212) 382-4788.

Animal Law Committee  
Christopher Wlach, Chair

February 2021

**Contact**

Mary Margulis-Ohnuma, Policy Counsel | 212.382.6767 | [mmargulis-ohnuma@nycbar.org](mailto:mmargulis-ohnuma@nycbar.org)  
Elizabeth Kocienda, Director of Advocacy | 212.382.4788 | [ekocienda@nycbar.org](mailto:ekocienda@nycbar.org)