

Negligent Death of Plaintiff's Canine Companion: Pain-and-Suffering Damages Awarded

EDITOR'S NOTE: Judge Kaye Tertzag of Wayne County Circuit Court may very well have made landmark law in Michigan when he addressed an issue of first impression, namely, whether a plaintiff may seek emotional distress damages for the negligent death of a companion animal. In a brilliant Opinion, widely reported in the general press as well as in *Lawyer's Weekly*, Judge Tertzag answered that question in the affirmative. Special thanks to Royal Oak attorney Steven H. Wilen who wrote the winning brief. Judge Tertzag's written Opinion and Order are reproduced below.

ORDER DENYING DEFENDANT'S MOTION FOR PARTIAL SUMMARY DISPOSITION

At a session of said Court, in the City of Detroit, County of Wayne, State of Michigan on July 14, 1997

PRESENT: KAYE TERTZAG, Circuit Court Judge

Defendant filed a Motion for Partial Summary Disposition, asking that Plaintiff's claim for emotional distress damages resulting from the death of her pet be excluded from consideration by the jury. Plaintiff and Defendant filed briefs and oral argument was heard on April 26, 1996, with additional briefs and additional oral argument being heard on May 19, 1996.

The Court, for the reasons set forth in the Opinion dated April 29, 1997, the same being incorporated herein by reference, and the Court being fully apprised of the premises;

IT IS ORDERED that Defendant's Motion for Partial Summary Disposition is denied for the reasons set forth in the attached opinion.

KAYE TERTZAG
CIRCUIT COURT JUDGE

OPINION

At a session of said Court, held in the City-County Building, City of Detroit, County of Wayne, State of Michigan
on APRIL 29, 1997

PRESENT: HONORABLE KAYE TERTZAG

Recently, a firefighter was cited for heroism for entering a burning home to save a pet dog from certain death. It did not go unnoticed that the firefighter braved the flames and heavy smoke by entering the home. Smiles of relief crossed the faces of the onlookers as the firefighter walked out cradling the whimpering dog in his arms.

As one watched the events unfold on television, it became apparent that the tears running down the cheeks of family members were real, not feigned. The cheers of neighbors greeting the rescuer were genuine, not phony. Needless to say, everyone seemed to exhibit a "good feeling" at the scene about what they had just witnessed and those folks were not ashamed to wear their emotions on their sleeves.

This sort of scenario is played out every day—in different ways—throughout the land. Whether an animal that has fallen through an icy pond, or an animal that languishes afraid to come down from a tall tree, or an animal walking around aimlessly as a stray, human beings react in a special, unique way to such situations.

One can readily understand and appreciate the special relationships existing between an owner and his/her pet. One can, therefore, readily understand and appreciate that human beings will go to great lengths to protect and/or save such an animal.

The relationship existing between a pet and its owner is special, unique, and far different than the relationship (if that is what you want to call it) which an individual might have with inanimate objects like a

piece of furniture, a car, or other types of personal property.

Whether it is a child who playfully hugs or wrestles with a pet, or a homeowner who has a pet for enjoyment and/or protection, or a senior citizen who relies on a pet's daily, loving companionship, one thing is certain—that relationship is different in nature and intensity from that which those individuals might have with their furniture or vehicles or other objects of personal property.

You do not have to be a pet lover to appreciate that there is really something special about the way humans deal with and react to their pet animals.

A question certainly arises as to whether the law should give full recognition of the feelings and emotions human beings have

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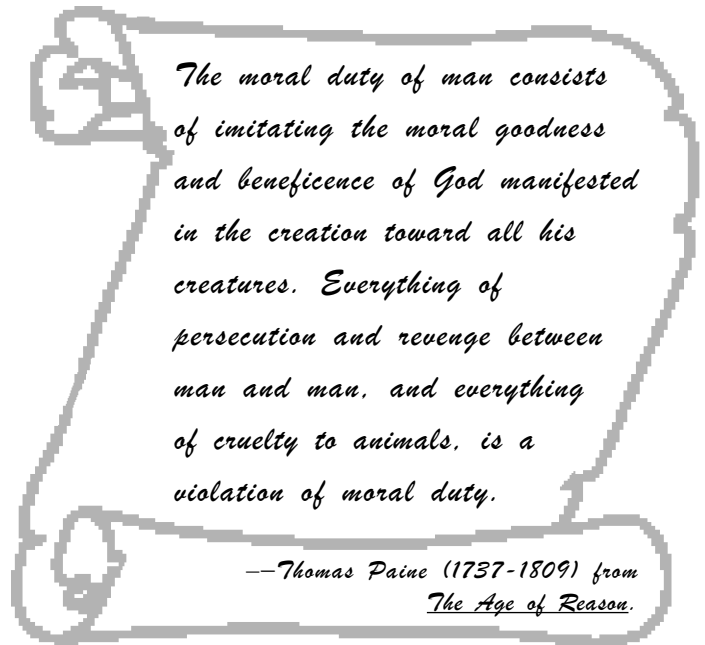
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Mental Distress Damages Awarded in Death of Companion Canine . . . (Continued from page 1)

for their pets. The Plaintiff encourages this Court to understand and appreciate these feelings and emotions. The Defendants urge the Court not to give those feelings and emotions their full range of understanding, appreciation, and recognition.

What we are talking about in this case is a matter of damages. Should a complainant be able to recover damages for mental distress in the event his/her pet animal is killed through the negligent act of another?

If an individual's vehicle is totaled in an automobile accident, the property damage claim is limited to the value of the vehicle. The owner is not permitted to recover damages for mental distress for the vehicle. This limitation on damages is well recognized and no one suggests it should be otherwise. While an individual might enjoy an attachment to a vehicle, the law does not elevate that attachment to a level where recompense for the loss of the vehicle encompasses more than the value of the vehicle. You just cannot collect for mental distress for the loss of the vehicle. That has been the law. That continues to be the law.

But what about a dog—a living, breathing animal? Is not the relationship between an owner and his/her pet different in nature, kind, and intensity from the relationship of an owner and his vehicle? Experience teaches us that the relationship is distinctly different.

Of what importance is this inquiry anyway? Why should the court concern itself with the distinction between the two relationships? It is important because both sides to this dispute agree

that the law in Michigan is silent as to the question of whether an owner may recover damages above and beyond the value of a dog in the event the dog dies as the result of the negligence of a kennel.

DAMAGES SHOULD BE LEFT TO THE JURY TO DECIDE

Admittedly, in some jurisdictions a dog—a living, breathing animal—is equated to an inanimate object like a car fender or a kitchen chair when considering damages. In those jurisdictions, it is said that damages for the loss of a dog is limited to the market value of the dog. If the dog was purchased for One Hundred Dollars (\$100.00), then the owner could recover only One Hundred Dollars (\$100.00) for the loss. The owner would not be permitted to recover anything for emotional distress. The dog is considered chattel for purposes of damages.

This view equating a living, breathing animal to chattel is archaic and does not withstand the test of critical analysis. Slavish adherence to a worn-out doctrine without serious, critical analysis does the law no good and, indeed, engenders public disrespect for the law.

While Michigan courts have not voiced an opinion on the question of mental distress damages for the negligent killing of

an animal, this case squarely presents the issue for thoughtful consideration.

The Defendants have filed a Motion for Summary Disposition. Arguing that the Plaintiff's damages are limited to the value of the animal, the Defendants seek this Court's stamp of approval on the doctrine that a dog is equated to chattel for purposes of determining and limiting damages. This Court refuses to do that.

Why should a jury be deprived of making the decision on this type of important case? After all, are not the jurors best-positioned to determine damages? Why adhere to an arbitrary and outdated

doctrine to limit damages under circumstances in this case? Why limit damages to the value of the dog? Why not permit the fact-finders to actually determine whether an owner suffered additional damages? Isn't that what the jury system is all about? Isn't that what jurors are supposed to do?

The Michigan Constitution does not expressly forbid a jury from awarding damages for mental distress for the loss of an animal. Nor does any statute or court rule expressly preclude a jury from making such an award. The doctrine that damages are limited to the value of the dog (the chattel) has worn out its welcome in many states where it was once recognized. It is an outmoded doctrine deserving neither respect nor devotion. Blind adherence to such a doctrine is unbecoming for an enlightened people.

The common sense of jurors should hold sway on this issue. Referral to the innate wisdom of the community is preferable than fidel-

ity do a doctrine which no longer mirrors reality and unfortunately provides sanctuary to the negligent.

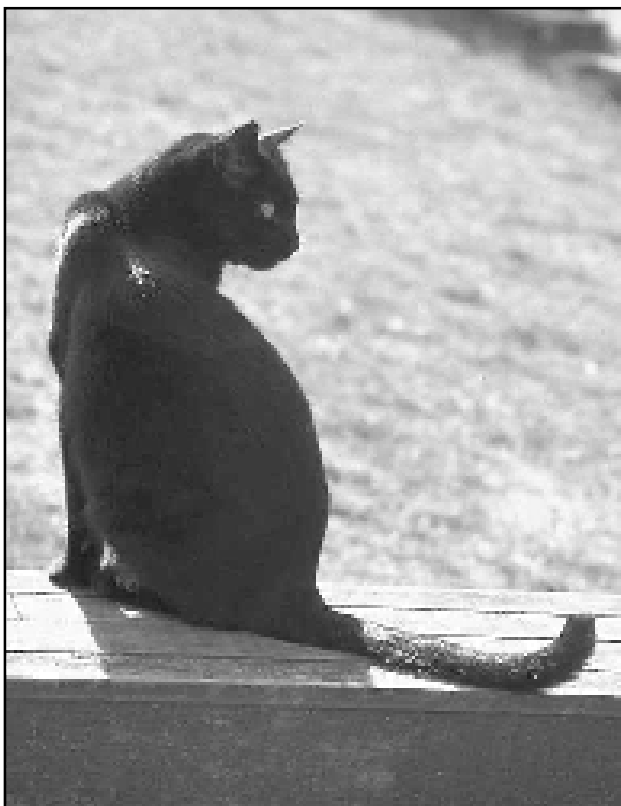
Owners of kennels and veterinarians can be negligent just like anyone else. Just as other professionals have to face the full measure of responsibility for their negligent acts, so should kennel owners and veterinarians. The defendant suggests the existence of an arbitrary, artificial cap, i.e., the value of the chattel, as the full measure of damages. This view just does not recognize the hurt one undergoes as the result of losing a pet through the negligent acts of another.

THE LAW

The Court is also aware, and the attorneys agree, that no statute in Michigan provides for or precludes mental distress damages for the killing of an animal. However, it is not a new or novel idea. It is not revolutionary. It is imbedded in law elsewhere. Many jurisdictions have dealt with this question and a quick review of some of the decisions demonstrates that such damages are clearly recognized. One court stated:

In ruling that a pet such as a dog is not just a thing, I believe that plaintiff is entitled to damages beyond the

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Mental Distress Damages Awarded . . . (Continued from page 3)

market value of the dog. A Pet is not an inanimate thing that receives affection; it also returns it. *Corso v Cranford Dog and Cat Hospital, Inc.*, 97 Misc 2d 530, 531, 415 NYS2d 182, 183 (1979).

The *Corso* court made the point of distinguishing between cases where damages are permitted for the loss of a pet but not for the loss of certain kinds of personal property which—while valuable—are distinctly different than an animal which can return love and affection. The court said:

This decision is not to be construed to include an award for the loss of a family heirloom which would also cause great mental anguish. An heirloom, while it might be a source of good feelings, is merely an inanimate object and is not capable of returning love and affection. It does not respond to human stimulation; it has no brain capable of developing emotions which in turn causes a human response. Losing the right to memorialize a pet rock, or a pet tree, or losing a family picture album is not actionable. But a dog—that is something else. To say it is a piece of personal property and nor more is a repudiation of our humaneness. This, I cannot accept. *Id.*

In New York, a court recognized “loss of companionship” as an element of damages for the loss of a pet animal. The court exclaimed: . . . the court must assess the dog’s actual value to the owner in order to make the owner whole. *Brousseau v Rosenthal d/b/a/ Metropolitan Dog & Cat Hospital*, 110 Misc 2d 1054, 1055, 443 NYS2d 285, 286 (1980) (citing *Blauvelt v Cleveland*, 198 App Div 229, 190 NYS 881 (1921).

A Florida court which commented on the legal issue of mental distress damages stated that it was proper to include the element of mental pain and suffering for the jury’s consideration. The court stated:

. . . we hold that the [lower] court did not commit error by including for consideration of the jury the element of the mental pain and suffering of the plaintiff as owner of the dog. *Knowles Animal Hospital, Inc v Wills*, 360 So2d 37, 38 (Fla App 1978).

Another Florida court reviewed the question which is before this Court and stated succinctly:

The restriction of the loss of a pet to its intrinsic value . . . is a principle we cannot accept. Without indulging in a discussion of the affinity between ‘sentimental value’ and ‘mental suffering’, we feel that the affection of a master for his dog is a very real thing and that the malicious destruction of the pet provides an element of damage for which the owner should recover, irrespective of the value of the

animal because of its special training such as a Seeing Eye dog or sheep dog. *La Porte v Associated Independents, Inc.*, 163 So2d 267, 269 (Fla 1964).

A decision by the supreme court of Hawaii recognized that damages for injured feelings and mental distress suffered through loss of a family dog were proper items of recovery in an action arising from the death of a family dog due to defendant’s alleged negligence. The court responded to concerns voiced by others that such a ruling would lead to an ever-increasing expansion of lawsuits by pronouncing:

Hawaii has devised a unique approach to the area of recovery for mental distress. *Rodrigues v State*, [472 P2d 509 (Haw 1970)], decided by this court ten years ago, allowed recovery for mental distress suffered as a result of the negligent destruction of property. Since our holding in *Rodrigues*, there has been no ‘plethora of similar cases’; the fears of unlimited liability have not proved true. Rather, other states have begun to allow damages for mental distress suffered under similar circumstances. *Campbell v Animal Quarantine Station*, 632 P2d 1066, 1071 (Haw 1981) (footnote omitted).

This Court is aware a split of authority exists throughout the country concerning the issue being discussed. Many states refuse to recognize the right to mental distress damages under circumstances outlined above. However, as we have seen, many courts do recognize such damages.

Lawyers and litigants need guidance in this area of law. The guidance can come from the courts in providing a framework for such damages. Or, the guidance can come from the legislature in providing for such damages through the legislative process.

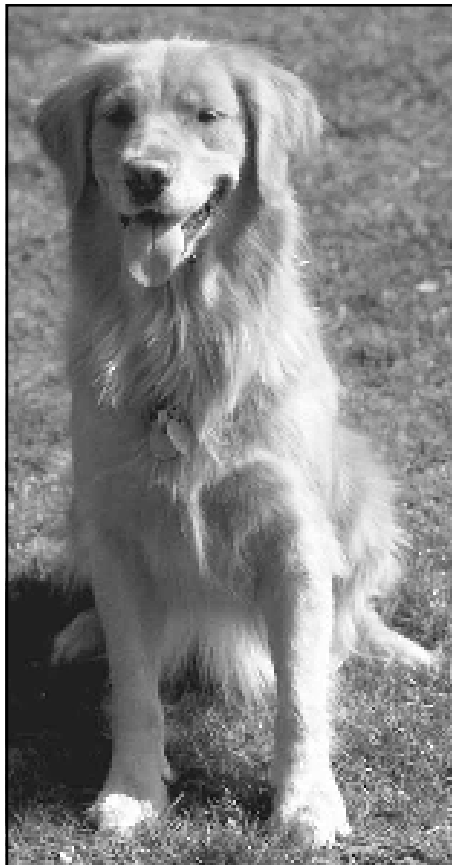
Unless and until the Legislature acts, this Court believes that mental distress damages should be fully recognized and that jurors should be given the responsibility to determine same.

EPILOGUE

The state legislature has the option of speaking out on this issue if it so desires. Legislative hearings around the state will provide lawmakers with the opportunity to learn from the people whether the public policy of the State of Michigan should or should not provide for mental distress damages to pet owners. Until then, courts will have to deal with this issue on a case-by-case basis.

In view of this Court’s opinion, Defendants’ Motion for Partial Summary Disposition will be DENIED. An order reflecting this opinion shall be submitted by the parties within fourteen (14) days.

HON. KAYE TERTZAG



FEDERAL ANIMAL PROTECTION STATUTES

By Henry Cohen

This report contains brief summaries of federal animal protection statutes, from the African Elephant Conservation Act to the Wild Free-Roaming Horses and Burros Act. While not including treaties, it does include statutes enacted to implement treaties. It includes statutes concerning animals that are not entirely, or not at all, animal protection statutes. For example, it includes a statute authorizing the eradication of predators, because one of the statute's purposes is to protect domestic and "game" animals; and it includes statutes to conserve fish, although their ultimate purpose may not be for the fishes' benefit. It also includes statutes that allow the disabled to use service animals, and even includes statutes aimed at acts of animal rights advocates.

Among recent statutes included in the report are the 1992 and 1994 amendments to the Marine Mammal Protection Act of 1972, section 404C of the Public Health Service Act, the 1994 amendments to the Twenty-Eight Hour Law, and the Wild Bird Conservation Act of 1992.

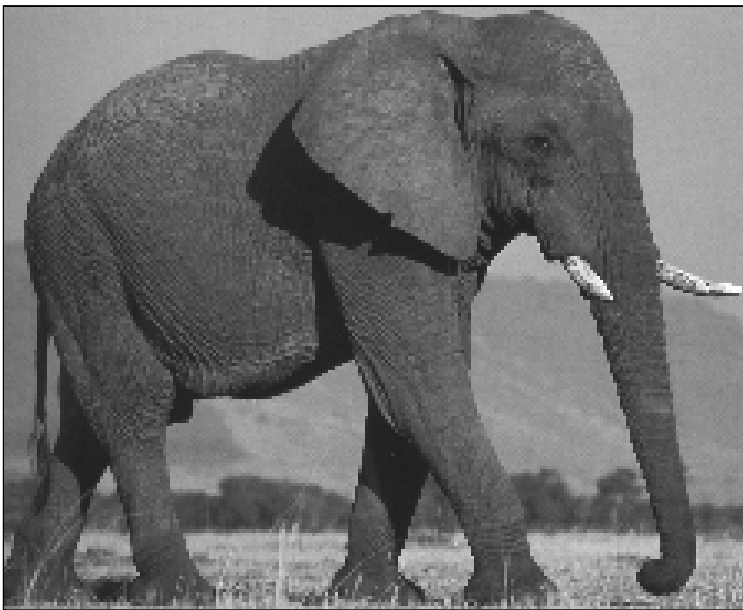
AFRICAN ELEPHANT CONSERVATION ACT, 16 U.S.C §§ 4201-4245

This statute establishes an African Elephant Conservation Fund, from which the Secretary of the Interior may provide financial assistance "for approved projects for research, conservation, management, or protection of African elephants." It requires the Secretary to establish a moratorium on the importation of raw and worked ivory from an ivory producing country that does not meet specified criteria, including being a party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and adhering to the CITES Ivory Control System.

The Act imposes civil and criminal penalties on any person who, among other things, imports raw ivory from any country other than an ivory producing country, or from a country for which a moratorium is in effect, or who exports raw ivory from the United States. A person who furnishes information that leads to a civil penalty or a criminal conviction under the act may be rewarded up to one-half of any criminal or civil penalty or fine, or \$25,000, whichever is less.

AIRBORNE HUNTING ACT, 16 U.S.C. § 742j-1

This statute makes it a crime: (1) while in an aircraft, to shoot any bird, fish, or other animal, or (2) to use an aircraft to harass any bird, fish, or other animal. These prohibitions do not apply to persons employed by or licensed by a state or the federal government to administer or protect "land, water, wildlife, domesticated animals, human life, or crops."



ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT, 16 U.S.C. §§ 3201-3202

Sections 1313-1314 of this Act, authorize the Secretary of the Interior to designate zones within national preserves in Alaska "where and when no hunting, fishing, trapping, or entry may be permitted," and prohibit "the taking of fish and wildlife" in national parks or national park system monuments in Alaska, except as specified in the Act.

Section 1005 of the Act, as amended in 1990, 16 U.S.C. § 3145, provides that the Secretary of the Interior "shall work closely with the State of Alaska and Native Village and Regional Corporations in evaluating the impact of oil and gas exploration, development, production, and transportation and other human activities on the wildlife resources of these lands, including impacts on the Arctic and Porcupine caribou herds, polar bears, muskox, grizzly bear, wolf, wolverine, seabirds, shorebirds, and migratory waterfowl."

AMERICANS WITH DISABILITIES ACT, 42 U.S.C. §§ 12101-12213

This statute (together with the Rehabilitation Act of 1973, 29 U.S.C. §§ 791-794) prohibits discrimination against people with disabilities in employment, public services, and public accommodations.¹ Discrimination includes refusing to make reasonable accommodations for individuals with disabilities, and a reasonable accommodation generally includes permitting the use of service animals, such as seeing eye dogs.²

ANIMAL DAMAGE CONTROL ACT, 7 U.S.C. §§ 426-426c

This statute directs the Secretary of Agriculture: to conduct investigations, experiments, and tests as he may deem necessary

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FEDERAL ANIMAL PROTECTION STATUTES . . . (Continued from p. 5)

in order to determine, demonstrate, and promulgate the best methods of eradication, suppression, or bringing under control on national forests and other areas of the public domain as well as on State, Territory, or privately owned lands of mountain lions, wolves, bobcats, prairie dogs, gophers, ground squirrels, jack rabbits, and other animals injurious to agriculture, horticulture, forestry, animal husbandry, wild game animals, fur-bearing animals, and birds.

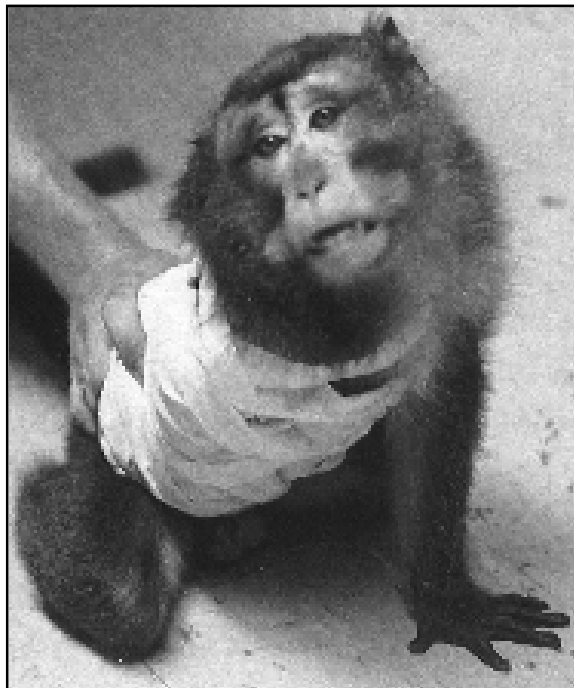
The statute was enacted in 1931. The functions of the Secretary of Agriculture under it were transferred to the Secretary of Interior in 1939, and back to Agriculture in 1998.³ In 1987, Public Law No. 100-202, 101 Stat. 1329-331, added the following provision to the Act: The Secretary of Agriculture is authorized, except for urban rodent control, to conduct activities and enter into agreements with States, local jurisdictions, individuals, and public and private agencies, organizations, and institutions in the control of nuisance mammals and birds and those mammal and bird species that are reservoirs for zoonotic diseases, and to deposit any money collected under any such agreement into the appropriation accounts that incur the costs to be available immediately and to remain available until expended for Animal Damage Control activities.

ANIMAL ENTERPRISE PROTECTION ACT OF 1992, 18 U.S.C. § 43

This statute makes it a federal crime to intentionally cause "physical disruption to the functioning of an animal enterprise by intentionally stealing, damaging, or causing the loss of, any property (including animals or records) used by the animal enterprise, and thereby cause economic damage exceeding \$10,000 to that enterprise, or conspire to do so." It defines "animal enterprise" as: (a) a commercial or academic enterprise that uses animals for food or fiber production, agriculture, research, or testing; (b) a zoo, aquarium, circus, rodeo, or lawful competitive animal event; or (c) any fair or similar event intended to advance agricultural arts and sciences.

ANIMAL HEALTH AND DISEASE RESEARCH, 7 U.S.C. §§ 3191-3201

This statute is designed to promote "the improved health and productivity of domestic livestock, poultry, aquatic animals, and other income-producing animals which are essential to the Nation's food supply..."⁴ It was amended in 1990 to require the Secretary of Agriculture to commission the National Academy of Sciences "to conduct a study of the delivery system utilized to provide farmers...and ranchers with animal care and veterinary medical services, including animal drugs." The study shall assess opportunities to, among other things, "advance the well-being and treatment of farm animals."⁵



The statute also requires the Secretary to establish the Animal Health Science Research Advisory Board, to expire September 30, 1995. The Committee is to advise the Secretary with respect to the implementation of animal health and disease research programs, and shall have twelve members, one of whom shall be a "person representing an organization concerned with the general protection and well-being of animals."⁶

ANIMAL WELFARE ACT, 7 U.S.C. §§ 2131-2159

This statute authorizes the Secretary of Agriculture to "promulgate standards to govern the humane handling, care, treatment, and transportation of animals by dealers, research facilities, and exhibitors."⁷ Such standards must include requirements "for animal care, treatment, and practices in experimental procedures to ensure that animal pain and distress are minimized"⁸ The Act's definition of "animal" makes the Act applicable to any warm-blooded animal "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 horses not used for research purposes and other farm animals...."⁹ Nevertheless, the Secretary promulgated regulations that exclude birds, and rats and mice bred for use in research, from coverage under the Act.¹⁰ A federal court found

this exclusion to violate the Act,¹¹ but the decision was overturned on appeal on the ground that the plaintiffs lacked standing to bring the suit.¹²

The Act requires every research facility to establish an Institutional Animal Committee of at least three members, at least one of whom shall not be affiliated in any way with the facility and who is intended to represent "general community interest in the proper care and treatment of animals." The Committee's responsibilities include reviewing practices involving pain to animals and filing a report with the Secretary.¹³

The Act also provides for the licensing of dealers and exhibitors¹⁴ and prohibits research facilities from purchasing dogs or cats from unlicensed dealers or exhibitors.¹⁵ It

defines "exhibitor" to include carnivals, circuses, and zoos, but to exclude retail pet stores, state and country fairs, livestock shows, rodeos, and purebred dog and cat shows.¹⁶ The Act prohibits "animal fighting ventures" involving animals moved in interstate or foreign commerce, or promoted by mail or any interstate instrumentality. However, this prohibition does not apply to "fighting ventures involving live birds" that take place in a state that allows them.¹⁷

The Act prohibits dealers and exhibitors from selling or otherwise disposing of any dog or cat within five business days after they acquire it, except that this requirement does not apply to

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FEDERAL ANIMAL PROTECTION STATUTES . . . (Continued from p. 6)

operators of auction sales.¹⁸ A 1990 amendment also requires public and private pounds and shelters, and research facilities licensed by the Department of Agriculture, before selling a dog or cat to a dealer, to keep it for at least five days in order to enable its original owner to recover it.¹⁹ The 1990 amendment apparently does not prohibit a pound, shelter, or licensed research facility from euthanizing an animal before five days are up, as that would not be selling such animal to a dealer. It also apparently does not prohibit a pound, shelter, or licensed research facility from selling an animal directly to a laboratory before five days are up, as a laboratory is not a "dealer" under the Act's definition.

Another 1990 amendment authorized the Attorney General to seek and federal courts to issue, injunctions against dealing in stolen animals or placing the health of an animal in serious danger in violation of the Act.²⁰

ANTARCTIC CONSERVATION ACT OF 1978, 16 U.S.C. §§ 2401-2412

This statute makes it unlawful for any United States citizen, unless authorized by the Director of the National Science Foundation, to engage in commerce in any native animal or native bird taken in Antarctica.

ANTARCTIC MARINE LIVING RESOURCES CONVENTION ACT OF 1984, 16 U.S.C. §§ 2431-2444

This statute implements the Convention on the Conservation of Antarctic Marine Living Resources, and makes it unlawful to harvest, or knowingly to engage in commerce in any Antarctic marine living resource harvested in violation of the Convention.

ATLANTIC SALMON CONVENTION ACT OF 1982, 16 U.S.C. §§ 3601-3608

This statute limits salmon fishing pursuant to the Convention for the Conservation of Salmon in the North Atlantic Ocean.

ATLANTIC STRIPED BASS CONSERVATION ACT, 16 U.S.C. § 1851

This statute authorizes the Secretary of Commerce to declare a moratorium on fishing for Atlantic striped bass within the coastal waters of any state that does not comply with the Interstate Fisheries management Plan for Striped Bass.

ATLANTIC TUNAS CONVENTION ACT OF 1975, 16 U.S.C. §§ 971-971i

This statute authorizes the Secretary of Commerce to promulgate regulations to "limit the size of the fish and the quantity of the catch which may be taken from each area...[and] limit or prohibit the incidental catch of a regulated species...."

BALD AND GOLDEN EAGLE PROTECTION ACT, 16 U.S.C. §§ 668-668d

This statute makes it a crime to possess, buy, sell, or transport any bald or golden eagle, alive or dead, or any part, nest, or egg

thereof. The Secretary of the Interior may issue regulations authorizing exceptions "for the scientific or exhibition purposes of public museums, scientific societies, and zoological parks, or for the religious purposes of Indian tribes, or ...for the protection of wildlife or of agricultural or other interests in any particular locality...."

DEPARTMENT OF DEFENSE APPROPRIATIONS ACTS**Public Law No. 101-511, § 8019 (1990) provides:**

None of the funds appropriated by this Act or hereafter shall be used to purchase dogs or cats or otherwise fund the use of dogs or cats for the purpose of training Department of Defense students or other personnel in surgical or other medical treatment of wounds produced by any type of weapon: *Provided*, That the standards of such training with respect to the treatment of animals shall adhere to the Federal Animal Welfare Law and to those prevailing in the civilian medical community:

This provision, without the words "or hereafter," had been included in Department of Defense appropriations statutes since Public Law No. 98-212, § 791 (1984). However, because of the words "or hereafter" in the language quoted above, this prohibition on the use of funds continues to operate unless it is repealed.

Other Department of Defense appropriations statutes use the phrase "this Act or any other Act" instead of "this Act or hereafter." The Comptroller General has "held that the words 'or any other act' do not indicate futurity, but merely extend the effect of the provisions to other appropriations available in that fiscal year." 65 Comp. Gen. 588, 589 (1986). The following example of the use of this phrase in connection with the use of animals in research appeared in Public Law No. 103-139, § 8044 (1993):

None of the funds provided in this Act or any other Act shall be available to conduct bone trauma research at any Army Research Laboratory until the Secretary of the Army certified that the synthetic compound to be used in the experiments is of such a type that its use will result in a significant medical finding, the research has military application, the research will be conducted in accordance with the standards set by an animal care and use committee, and the research does not duplicate research already conducted by a manufacturer or any other research organization.²¹

Finally, some limitations on the use of Department of Defense funds for animal research apply only to a particular appropriations statute. For example, Public Law No. 103-139 § 8043 (1993), provides:

None of the funds appropriated by this Act shall be available for payments under the Department of Defense contract with the Louisiana State University Medical Center involving the use of cats for Brian Missile Wound Research....



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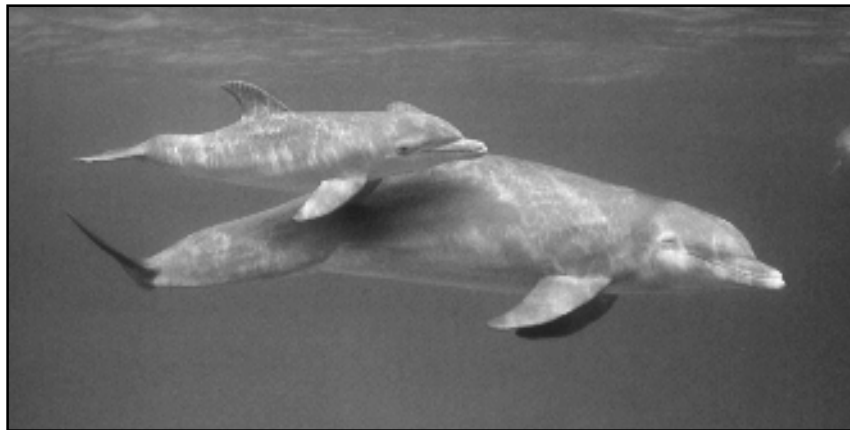
FEDERAL ANIMAL PROTECTION STATUTES . . . (Continued from p. 7)

DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 1993

Public Law No. 102-394, § 213 (1992) provides:

No funds appropriated under this Act or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts shall be used by the National Institutes of Health, or any other Federal agency, or recipient of Federal funds on any project that entails the capture or procurement of chimpanzees obtained from the wild. For purposes of this section, the term "recipient of Federal funds" includes private citizens, corporations, or other research institutions located outside the United States that are recipients of Federal funds.

This provision appeared, without the reference to subsequent acts, in Public Law No.s 101-166, § 214 (1989), 101-517, § 211 (1990), and 102-170, § 213 (1991).



DINGELL-JOHNSON FISH RESTORATION ACT, 16 U.S.C. §§ 777-777k

This statute is also known as the "Federal Aid in Fish Restoration Act" and the "Fish Restoration and Management Projects Act." It directs the Secretary of the Interior "to cooperate with the States through their respective State fish and game departments in fish restoration and management projects." It includes the New England Fishery Resources Restoration Act of 1990, 16 U.S.C. § 777e-1.

DISPOSITION OF UNFIT HORSES AND MULES, 40 U.S.C. § 311b

This statute provides, in full:

Subject to applicable regulations under the Federal Property and Administrative Services Act of 1949, as amended, horses and mules belonging to the United States which have become unfit for service may be destroyed or put out to pasture, either on the pastures belonging to the United States Government or those belonging to financially sound and reputable humane organizations whose facilities permit them to care for them during the remainder of their natural life, at no cost to the Government.

DOLPHIN PROTECTION CONSUMER INFORMATION ACT, 16 U.S.C. § 1385

This statute makes it a violation of section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45,

for any producer, importer, exporter, distributor, or seller of any tuna product that is exported from or offered for sale in the United States to include on the label of that product the term "Dolphin Safe" or any other term or symbol that falsely claims or suggests that the tuna contained in the product was harvested using a method of fishing that is not harmful to

dolphins if the product contains—(A) tuna harvested on the high seas by a vessel engaged in driftnet fishing; or (B) tuna harvested in the eastern tropical Pacific Ocean by a vessel using purse seine nets which do not meet the requirements for being considered dolphin safe under paragraph (2).

DRIFTNET IMPACT MONITORING, ASSESSMENT, AND CONTROL ACT OF 1987, 16 U.S.C. § 1822

This statute finds that "the use of long plastic driftnet is a fishing technique that may result in the entanglement and death of enormous numbers of target and nontarget marine resources in the waters of the North Pacific Ocean, including the Bering Sea." It therefore provides that the Secretary of Commerce, through the Secretary of State, shall negotiate with foreign governments to monitor driftnet fishing, and shall evaluate the feasibility of various methods of reducing the number of driftnets discarded or lost at sea.

The Driftnet Act Amendments of 1990, 16 U.S.C. § 1826, incorporate and expand upon provisions of the Driftnet

Impact Monitoring, Assessment, and Control Act of 1987.

EASTERN PACIFIC TUNA LICENSING ACT OF 1984, 16 U.S.C. §§ 972-972h

This statute makes it unlawful to fish for designated species of tuna within the "Area Agreement" specified in the Act without a license, or in contravention of regulations promulgated by the Secretary of Commerce.

ENDANGERED SPECIES ACT, 16 U.S.C. §§ 1531-1543

This statute authorizes the Secretary of the Interior (the Secretary of Commerce in the case of marine mammals) to promulgate lists of species which are endangered or threatened (defined as "likely to become...endangered") and to designate critical habitats of such species. Among other things, the Act prohibits any person or private or governmental entity from importing, exporting, taking, possessing, selling, or transporting any endangered species.²² It prohibits federal agencies, unless granted an exemption, from taking action "likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat of such species."²³ The Act also requires the Secretary to develop and implement recovery plans for the conservation and survival of endangered and threatened species.²⁴

In 1988, Public Law No. 100-478 amended the Act to require the Secretary to develop and implement recovery plans for the conservation and survival of endangered species and threatened species, and to implement a system in cooperation with the states to monitor the status of recovered species. It

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FEDERAL ANIMAL PROTECTION STATUTES . . . (Continued from p. 8)

also directed the Secretary of Commerce to contract for an independent review, by the National Academy of Sciences, of scientific information pertaining to the conservation of sea turtles.

EXPORT ADMINISTRATION AMENDMENTS ACT OF 1985, 46 U.S.C. APP. § 466c

This statute provides that "no horse may be exported by sea from the United States, or any of its territories or possessions, unless such horse is part of a consignment with respect to which a waiver has been granted" by the Secretary of Commerce. Such waivers may be granted only "if the Secretary of Commerce, in consultation with the Secretary of Agriculture, determines that no horse in that consignment is being exported for purposes of slaughter."

FAIR HOUSING ACT, 42 U.S.C. § 3604

This statute, as interpreted by the Department of Housing and Urban Development (HUD), requires that all public and private housing (except as exempted in 42 U.S.C. § 3603(b) and § 3607) allow seeing eye dogs, even if they otherwise have a "no pets" policy.²⁵ The Act prohibits discrimination "in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection" with such a dwelling, because of race, color, religion, sex, familial status (living with children), national origin, or handicap. One form of discrimination based on handicap is "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [a handicapped] person equal opportunity to use and enjoy a dwelling." HUD has determined that allowing seeing eye dogs is a reasonable accommodation.

FEDERAL HAZARDOUS SUBSTANCES ACT,**15 U.S.C. § 1261-1275**

The Consumer Product Safety Commission, which administers this statute, adopted a policy statement on animal testing "intended to minimize the number of animals tested and to reduce the pain associated with such tests." The statement notes "that neither the FHSA nor the Commission's regulations require any firm to perform animal tests," although it adds that "animal testing may be necessary in some cases."²⁶

FISH AND WILDLIFE CONSERVATION ACT, 16 U.S.C. §§ 2901-2912

This statute authorizes the Secretary of the Interior to approve state conservation plans for "nongame fish and wildlife," which are defined as "wild vertebrate animals that are in an unconfined state and that - (A) are not ordinarily taken for sport, fur, or food.; (B) are not listed as endangered species or threatened species... and (C) are not marine mammals...." A 1988

amendment (adding 16 U.S.C. § 2912) requires the Secretary to undertake research and conservation activities concerning population trends of, and the effects of environmental changes and human activities on, "migratory nongame birds."

FISH AND WILDLIFE COORDINATION ACT, 16 U.S.C. §§ 661-667d**This statute authorizes the Secretary of the Interior:**

to provide assistance to, and cooperate with, Federal, State, and public or private agencies and organizations in the development, protection, rearing, and stocking of all species of wildlife, resources thereof, and their habitat, and in controlling losses of the same from disease or other causes, in minimizing damages from overabundant species, in providing public shooting and fishing areas...

FISHERY CONSERVATION AMENDMENTS OF 1990, PUBLIC LAW NO. 101-627

In addition to containing numerous amendments of the Magnuson Fishery Conservation and Management Act and the Atlantic Tunas Convention Act of 1975, this statute includes the Dolphin Protection Consumer Information Act, summarized separately in this report.

FOOD, AGRICULTURE, CONSERVATION, AND TRADE ACT OF 1990, U.S.C. § 5801(a)(5)

This statute funds "research designed to increase our knowledge concerning agricultural production systems that" serve six specified purposes, one of which is to "promote the well-being of animals."

FUR SEAL ACT OF 1966, 16 U.S.C. §§ 1151-1175

This statute prohibits the "taking" (defined as to "harass, hunt, capture, or kill") of fur seals in the North Pacific Ocean or on any lands or waters under the jurisdiction of the United States, or engaging in commerce in fur seal skins taken contrary to the Act

or in the Interim Convention on the Conservation of North Pacific Fur Seals.

The Act contains an exception allowing taking by Indians, Aleuts, and Eskimos who dwell on the coasts of the North Pacific Sea, and authorizes the Secretary of Commerce to permit taking for "educational, scientific, or exhibition purposes." The Act also directs the Secretary to administer the fur seal rookeries on the Probilof Islands to "ensure that activities on such Islands are consistent with the purposes of conserving, managing, and protecting the North Pacific fur seals and other wildlife...." The 1983 amendments to the Act repealed the Protection of Sea Otters on the High Seas Act, formerly 16 U.S.C. §§ 1171-1172, as unnecessary because of the enactment of the Marine Mammal Protection Act of 1972.



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FEDERAL ANIMAL PROTECTION STATUTES . . . (Continued from p. 9)

HORSE PROTECTION ACT, 15 U.S.C. §§ 1821-1831

This statute makes it a crime to exhibit, or transport for the purpose of exhibition, any "sore" horse, which is a horse whose feet have been injured in order to alter the horse's gait. The Secretary of Agriculture is authorized to enforce the Act.

HUMANE SLAUGHTER ACT, 7 U.S.C. §§ 1901-1906

The central provision of this statute reads:

No method of slaughter or handling in connection with slaughtering shall be deemed to comply with the public policy of the United States unless it is humane. Either of the following two methods of slaughtering and handling are hereby found to be humane: (a) in the case of cattle, calves, horses, mules, sheep, swine, and other livestock, all animals are rendered insensible to pain by a single blow or gunshot or an electrical, chemical or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut; or (b) by slaughtering in accordance with the ritual requirements of the Jewish faith or any other religious faith that prescribes a method of slaughter whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument and handling in connection with such slaughtering.

The Humane Slaughter Act is enforced by the Secretary of Agriculture under provisions of the Federal Meat Inspection Act, 21 U.S.C. §§ 603(b), 610(b), 620(a). It does not apply to chickens and other birds.

**LACEY ACT,
18 U.S.C. §§ 41-47**

This statute makes it a crime to:

(1) willfully disturb or kill any bird, fish, or wild animal, or take or destroy the eggs or nest of any bird or fish, on any lands or waters set apart or reserved under federal law as sanctuaries, refuges, or breeding grounds for such birds, fish, or animals; (2) import species of wild animals, wild birds, fish (including mollusks and crustacea), amphibians, reptiles, or the offspring or eggs or any of the foregoing which the Secretary of the Interior prescribes by regulation to be injurious to human beings or to the interests of agriculture, horticulture, forestry, or wildlife, except that the Secretary may permit importation for zoological, education, medical, or scientific purposes; (3) trap, capture, shoot, kill, possess, or detain a carrier pigeon owned by the United States or bearing a band owned and issued by the United States; or (4) use an aircraft or a motor vehicle to hunt, or to pollute a watering hole of any wild unbranded horse, mare, colt, or burro running at large on any public land or ranges.

**LACEY ACT AMENDMENTS OF 1981,
16 U.S.C. §§ 3371-3378**

This statute, as emended in 1988, makes it unlawful to engage

in commerce in any fish or wildlife or plant taken, possessed, transported, or sold in violation of any treaty, or any federal or state law or regulation, or any Indian tribal law.

**MAGNUSON FISHERY CONSERVATION AND
MANAGEMENT ACT, 16 U.S.C. §§ 1801-1882**

This statute provides that, except with respect to highly migratory species of fish, "the United States claims, and will exercise in the manner provided for in this Act, sovereign rights and exclusive fishery management authority over all fish, and all Continental Shelf fishery resources, within the exclusive economic zone."

**MARINE MAMMAL PROTECTION ACT OF 1972,
16 U.S.C. §§ 1361-1407**

This statute imposes a moratorium on the taking ("take" means "harass, hunt, capture, or kill") and importation of all marine mammals of their products, except that the Secretary of Commerce or Interior (depending on the type of animal) may grant permits to allow taking and importation (1) for scientific research and public display, (2) incidentally, in the course of commercial fishing, and (3) "in accord with sound principles of resource protection and conservation." The Act also makes it unlawful, except pursuant to a permit for scientific research, to import a marine mammal that is (a) pregnant, (b) nursing or less than eight months old, (c) taken from a species or population stock designated by the Secretary as depleted, or (d) taken in a

manner deemed inhumane by the Secretary.

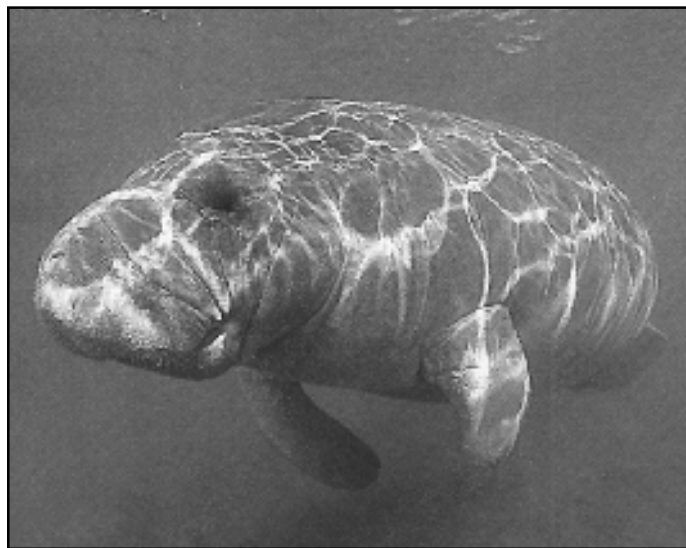
The Act also establishes a Marine Mammal Commission whose duties include undertaking studies and making recommendations as to the protection and conservation of marine mammals.²⁷

An exception to the Act authorizes the Secretary of Defense to "authorize the taking of not more than 25 marine mammals [not a member of an endangered or threatened species] each year for national defense purposes. Any such authorization may be made only with the

concurrence of the Secretary of Commerce after consultation with the Marine Mammal Commission . . ."²⁸

In 1988, Public Law No. 100-711 added "a number of provisions to the Act for the specific purpose of reducing the morality [sic] of porpoise in the course of fishing for yellowfin tuna in the [Eastern tropical Pacific]."²⁹

In 1992, Congress added two new laws to the Act. Public Law No. 102-523 added the International Dolphin Conservation Act of 1992 "to prohibit certain tuna harvesting practices." Public Law No. 102-587, Title III, added the Marine Mammal Health and Stranding Response Act, which directed the establishment of the marine Mammal Health and Stranding Response



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FEDERAL ANIMAL PROTECTION STATUTES . . . (Continued from p. 10)

Program, the purpose of which is to collect data on marine mammal health and to coordinate effective responses to unusual mortality events by establishing a process in the Department of Commerce.

The Marine Mammal Protection Act Amendments of 1994, Public Law No. 103-238, was intended "to improve the program to reduce the incidental taking of marine mammals during the course of commercial fishing operations, and for other purposes . . ." ³⁰ The 1994 statute, among other things, amended 16 U.S.C. § 1374 to authorize the Secretary of Commerce to issue permits "for the importation of polar bear parts (other than internal organs) taken in sport hunts in Canada," but required the Secretary to "undertake a scientific review of the impact of [such] permits . . . on the polar bear population stocks in Canada within 2 years . . ." ³¹

The 1994 statute also amended 16 U.S.C. § 1374 to provide that the Secretary of Commerce may issue permits "to take or import a marine mammal for the purpose of public display only to a person which the Secretary determines . . . is registered or holds a license issued under" the Animal Welfare Act. The effect of this provision apparently is that the Department of Agriculture rather than the National Marine Fisheries Service is authorized to regulate such marine mammals once they are held in captivity. ³²

**MARINE PLASTIC POLLUTION RESEARCH AND CONTROL ACT OF 1987,
PUBLIC LAW NO. 100-220, TITLE II**

This statute amended the Act to Prevent Pollution from Ships, 33 U.S.C. §§ 1901-1912, to, among other things, direct the Environmental Protection Agency, in consultation with the Secretary of Commerce, to study "improper disposal practices and associated specific plastic articles that occur in the environment with sufficient frequency to cause death or injury to fish or wildlife."

MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT OF 1972, 16 U.S.C. §§ 1431-1444

This statute authorizes the Secretary of Commerce to designate national marine sanctuaries.

**MIGRATORY BIRD CONSERVATION ACT,
16 U.S.C. §§ 715-715s**

This statute authorizes the Secretary of the Interior to purchase or rent such areas as have been approved for purchase or rental by the Migratory Bird Conservation Commission "which he determines to be suitable for use as an inviolate sanctuary, or for any other management purpose, for migratory birds."

NATIONAL FISH AND WILDLIFE FOUNDATION ESTABLISHMENT ACT, 16 U.S.C. §§ 3701-3709

This statute created the National Fish and Wildlife Foundation as a non-profit corporation to, among other things, "encourage, accept and administer private gifts of property for the benefit of, or in connection with, the activities and services of the United States Fish and Wildlife Service . . ."

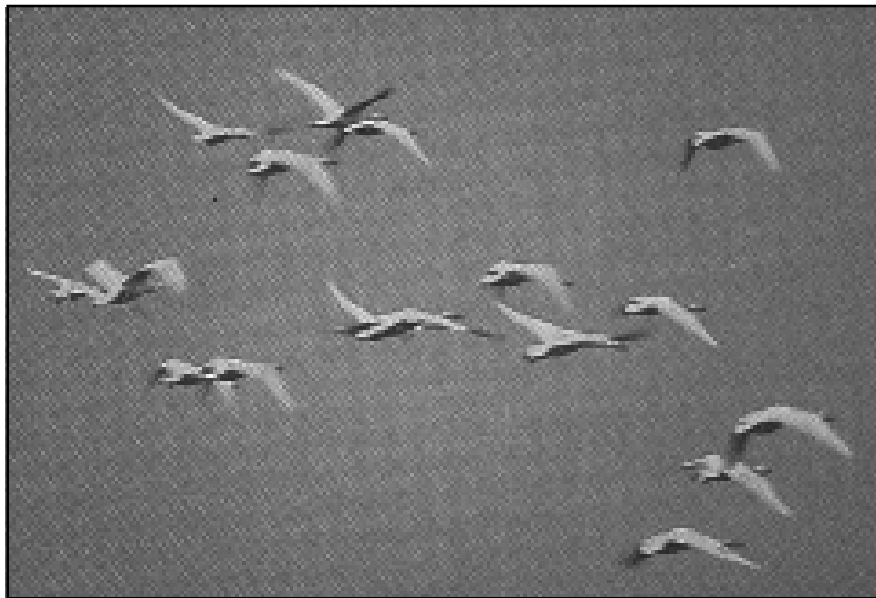
NATIONAL HOUSING ACT, 12 U.S.C. § 1701r-1

A 1983 amendment to this statute prohibits owners or managers of federally assisted rental housing for the elderly

or handicapped to: (1) as a condition of tenancy or otherwise, prohibit, or prevent tenants from keeping "common household pets," or (2) restrict or discriminate against any person in connection with admission to, or continued occupancy of, such housing by reason of the presence of such pets. The Secretary of Housing and Urban Development and the Secretary of Agriculture are authorized to issue regulations establishing guidelines under which housing owners or managers may prescribe reasonable rules for the keeping of pets, including restricting pet size and types of pets. Owners or managers may require the removal of pets "duly determined" to constitute a nuisance or a threat to health or safety.

NATIONAL WILDLIFE REFUGE SYSTEM ADMINISTRATION ACT OF 1966, 16 U.S.C. §§ 668dd-668ee

This statute established the National Wildlife Refuge System, which is administered by the Secretary of the Interior through the United States Fish and Wildlife Service. The purpose of the System is to "consolidat[e] the authorities relating to the various categories of areas that are administered by the Secretary of the Interior for the conservation of fish and wildlife . . ."



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FEDERAL ANIMAL PROTECTION STATUTES . . . (Continued from p. 11)

NONINDIGENOUS AQUATIC NUISANCE PREVENTION AND CONTROL ACT OF 1990, 16 U.S.C. §§ 4701-4751

This statute is intended "to prevent unintentional introduction and dispersal of nonindigenous species into waters of the United States through ballast water management and other requirements." The statute finds that nonindigenous species, such as the zebra mussel, if left uncontrolled, would disrupt the economy and "the diversity and abundance of native fish."

NORTHERN PACIFIC HALIBUT ACT OF 1982, 16 U.S.C. §§ 773-773k

This statute authorizes the Secretary of Commerce to enforce the Convention between the United States of America and Canada for the preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea.

OFFSHORE SHRIMP FISHERIES ACT OF 1973, 16 U.S.C. §§ 1100b-1100b-10

This statute limits fishing in "the area in which United States vessels carry on a shrimp fishery in the vicinity of Brazil."

PACIFIC SALMON TREATY ACT OF 1985,

16 U.S.C. §§ 3631-3644

This statute implements a treaty between the United States and Canada, the purposes of which were to "prevent over fishing and provide for optimum production" and to "provide for each Party to receive benefits equivalent to the production of salmon originating in its waters." The Act repealed the Sockeye Salmon or Pink Salmon Fishing Act of 1947, formerly 16 U.S.C. §§ 776-776f.

PARTNERSHIPS FOR WILDLIFE ACT, 16 U.S.C. §§ 3741-3744

"The purposes of this title are to establish a partnership among the United States Fish and Wildlife Service, designated State agencies, and private organizations and individuals . . . to carry out wildlife conservation and appreciation projects . . ."³³

PITTMAN-ROBERTSON WILDLIFE RESTORATION ACT, 16 U.S.C. §§ 669-669i

Also known as the "Federal Aid in Wildlife Restoration Act," this statute authorizes the Secretary of the Interior to cooperate with the states, through their respective fish and game departments, in wildlife restoration projects, which are defined and the "selection, restoration, rehabilitation, and improvement of areas of land or water adaptable as feeding, resting, or breeding places of wildlife."³⁴

PUBLIC HEALTH SERVICE ACT, 42 U.S.C. §§ 281-300aaa-13

Section 404C³⁵ directs the Director of the National Institutes of Health (NIH), by October 1, 1993, to prepare a plan for the NIH to conduct or support research into methods of biomedical research and experimentation that do not require the use of animals, that reduce the number of animals used

that produce less pain and distress in animals used, and that involve the use of marine life other than marine mammals.

Section 495³⁶ directs the Secretary of Health and Human Services, acting through the Director of the NIH, to establish guidelines for research facilities as to the proper care and treatment of animals, including the appropriate use of tranquilizers, analgesics, and the like; but such guidelines may not prescribe methods of research. Entities that conduct biomedical and be-

havioral research with NIH funds must establish animal care committees which must conduct reviews at least semi-annually and report to the Director of NIH at least annually. If the Director determines that an entity has not been following the guidelines, he must give it an opportunity to take corrective action, and, if it does not, can suspend or revoke its grant or contract.

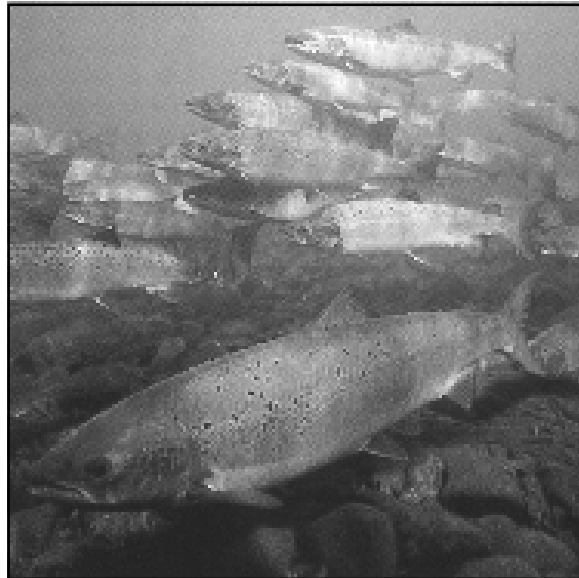
Section 509(a)³⁷ provides that the Administrator of the Alcohol, Drug Abuse, and Mental Health Administration shall establish guidelines for the following: (a) The proper care of animals to be used in research conducted by and through agencies of the Administration; (b) The proper treatment of animals while being used in re-

search . . .; (c) The organization and operation of animal care committee[s] [to assure compliance with the guidelines].³⁸

RECREATIONAL HUNTING SAFETY AND PRESERVATION ACT OF 1994, PUBLIC LAW NO. 103-322, §§ 320801-320807

This statute makes it a violation, subject to a civil penalty of up to \$10,000, "intentionally to engage in any physical conduct that significantly hinders a lawful hunt . . . on Federal lands." The conference report states that, to be a violation, "the conduct must be intentional, and must be done with the intention of significantly hindering a lawful hunt."³⁹

The conference report gives examples of violations of the statute, including "using visual, aural, olfactory, or physical stimuli to affect wildlife behavior."⁴⁰ This suggests the possibility that a court could construe mere words addressed to a hunter as "physical conduct," if such words affected wildlife behavior (or a hunter's concentration) so as significantly to hinder a hunt. This apparently would not violate the First Amendment's guarantee of freedom of speech, provided that the statute's civil penalty were imposed on the speaker for the effect of the *sound* of his words and not for their content. The statute states that "[t]he term 'conduct' does not include speech protected by the first article of amendment of the Constitution" (the statute does not otherwise define "conduct" or "physical conduct"), but this of course would go without saying, as Congress cannot punish speech that is protected by the First Amendment.



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FEDERAL ANIMAL PROTECTION STATUTES . . . (Continued from p. 12)**REHABILITATION ACT OF 1973: see Americans with Disabilities Act****SALMON AND STEELHEAD CONSERVATION AND ENHANCEMENT ACT OF 1980, 16 U.S.C. §§ 3301-3345**

This statute authorizes the establishment of a cooperative program involving the United States, the States of Washington and Oregon, and Indian Tribes, to "encourage stability in and promote the economic well being" of commercial fishing through "coordinated research, enhancement, and management of salmon and steelhead resources and habitat."

SHIPPING CODE, 46 U.S.C. §§ 3901-3902

This statute authorizes the Secretary of Agriculture to "prescribe regulations governing accommodations on board vessels for cattle, horses, mules, asses, sheep, goats, and swine to be carried from the United States to a foreign country. The regulations shall prescribe standards for space, ventilation, fittings, food and water supply, and other requirements to Secretary of Agriculture considers necessary for the safe and proper transportation and humane treatment of those animals."

SIKES ACT,**16 U.S.C. §§ 670a-670o**

This statute authorizes the Secretary of Defense

to carry out a program of planning for, and the development, maintenance and coordination of, wildlife, fish, and game conservation and rehabilitation in each military reservation in accordance with a cooperative plan mutually agreed upon by the Secretary of defense, the Secretary of Interior, and the appropriate State agency designated by the State in which the reservation is located.

SOUTH PACIFIC TUNA ACT OF 1988, 16 U.S.C. §§ 973-973r

This statute implements the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States, signed April 2, 1987.

TUNA CONVENTIONS ACT OF 1950, 16 U.S.C. §§ 951-961

This statute prohibits fishing in violation of any regulation adopted by the Secretary of Commerce pursuant to the Convention for the Establishment of an Inter-American Tropical Tuna Commission, and prohibits commerce in fish taken in violation of such regulations.

TWENTY EIGHT-HOUR LAW, 49 U.S.C. § 80502

This statute was enacted in 1906 and repealed and reenacted in amended form in 1994 by Public Law No. 103-272.⁴¹ It is also known as the "Cruelty to Animals Act," the "Live Stock Transportation Act," and the "Food and Rest Law." As amended in 1994, it provides that "a rail carrier, express carrier, or common carrier (except by air or water), a receiver, trustee, or lessee of one of those carriers, or an owner or master of a vessel trans-

porting animals" across state lines, "may not confine animals in a vehicle or vessel for more than 28 consecutive hours without unloading the animals for feeding, watering, and rest."

It also provides that "[a]nimals being transported shall be unloaded in a humane way into pens equipped for feeding, water, and rest for at least 5 consecutive hours." The statute "does not apply when animals are transported in a vehicle or vessel in which the animals have food, water, space, and an opportunity for rest." The 28-hour period is subject to the following exceptions:

Sheep may be confined for an additional 8 consecutive hours without being unloaded when the 28-hour period of confinement ends at night. Animals may be confined for: (A) more than 28 hours when the animals cannot be unloaded because of accidental or unavoidable causes that could not have been anticipated or avoided when being careful; and (B) 36 consecutive hours when the owner or person having custody of animals being transported requests, in writing and separate from a bill of lading or other rail form, that the 28-hour period be extended to 36 hours.

Upon learning of a violation of this statute, "the Attorney General shall bring a civil action" to collect a penalty of at least \$100 but not more than \$500 for each violation.

**WHALE CONSERVATION AND PROTECTION STUDY ACT, 16 U.S.C. §§ 917-917d**

This statute directs the Secretary of Commerce to "undertake comprehensive studies of all whales found in waters subject to the jurisdiction of the United States."

WHALING CONVENTION ACT OF 1949, 16 U.S.C. §§ 916-916l

This statute prohibits whaling and commerce in whale products in violation of the International Whaling Convention for the Regulation of Whaling or in violation of any regulation of the International Whaling Commission or the Secretary of Commerce.

WILD BIRD CONSERVATION ACT OF 1992, 16 U.S.C. §§ 4901-4916

The purpose of this act is to promote the conservation of exotic birds by assisting wild bird conservation and management programs in the countries of origin of wild birds, and limiting the importation of exotic birds.

WILD FREE-ROAMING HORSES AND BURROS ACT, 16 U.S.C. §§ 1331-1340

This statute makes it a crime, with respect to any wild free-roaming horse or burro, to: (1) remove it from the public lands without authority from the Secretary of the Interior or Agriculture (depending on the public land), (2) convert it to private use, without authority from the Secretary, (3) maliciously cause its death or harassment, (4) process its remains into commercial products, or (5) sell it if it is maintained on private or leased land.

FEDERAL ANIMAL PROTECTION STATUTES by Henry Cohen: References

Harry Cohen is a legislative attorney with the Congressional Research Service, American Law Division, at the Library of Congress. He is also the book review editor for *The Federal Lawyer*. This report was updated on October 24, 1994. It originally appeared in *Animal Law*, Volume 2, Spring 1996, published by Students of Northwestern School of Law of Lewis & Clark College.

¹The Rehabilitation Act applies to federal executive branch agencies, federal contractors, and federal programs receiving federal financial assistance. The ADA applies to legislative branch agencies, the states, and the private sector.

²See 28 C.F.R. § 36.302(c). See also, Fair Housing Act, *infra*.

³The transfer in 1985 did not explicitly appear in any federal statute; rather, Public Law No. 99-190, § 101(a), incorporated H.R. Rep. No. 99-439, and Amendment No. 31 to H.R. Rep. No. 99-439 incorporated a Senate amendment that appears at 131 Cong. Rec. 27449 (Oct. 15, 1985). These provisions are set forth in "Federal Laws Enacted in 1985 Concerning Animals" (Feb. 19, 1985), a CRS report by the present author. These provisions were declared "effective as if enacted into law" by Public Law No. 100-202, § 106, 101 Stat. 1329-433 (1987). The 1985 transfer to the Department of Agriculture was, according to the Washington Post (Jan. 2, 1986), "to the delight of western cattlemen and sheep producers and the dismay of conservationists"; the issue is debated at 131 Cong. Rec. 27459 (Oct. 15, 1985).

⁴7 U.S.C. § 3191.

⁵7 U.S.C. § 3193.

⁶7 U.S.C. § 3194.

⁷7 U.S.C. § 2143(a)(1).

⁸7 U.S.C. § 2143(a)(3)(A).

⁹7 U.S.C. § 2132(g).

¹⁰9 C.F.R. § 1.1.

¹¹*Animal Legal Defense Fund v. Madigan*, 781 F. Supp. 797 (D.D.C. 1992).

¹²*Animal Legal Defense Fund v. Espy*, 23 F.3d 496 (D.C. Cir. 1994).

¹³7 U.S.C. § 2143(b).

¹⁴7 U.S.C. § 2133.

¹⁵7 U.S.C. § 2137.

¹⁶7 U.S.C. § 2131(h).

¹⁷7 U.S.C. § 2156.

¹⁸7 U.S.C. § 2135.

¹⁹7 U.S.C. § 2158.

²⁰7 U.S.C. § 2159.

²¹The bone trauma research involves the use of dogs; see H.R. Conf. Rep. No. 101-345, 101st Cong., 1st Sess. 153 (1989).

²²16 U.S.C. § 1538.

²³16 U.S.C. § 1536(a)(2). No similar prohibition applies to entities other than federal agencies.

²⁴16 U.S.C. § 1533(f)

²⁵24 C.F.R. § 100.204.

²⁶49 Fed. Reg. 22522 (May 30, 1984).

²⁷16 U.S.C. §§ 1401-1402.

²⁸10 U.S.C. § 7524.

²⁹H.R. Rep. No. 100-970, 100th Cong., 2d Sess. 29 (1988); reprinted in 1988 U.S.C.C.A.N. 6170.

³⁰S. Rep. No. 103-220, 103d Cong., 2d Sess. (1994).

³¹108 Stat. 539 (1994).

³²108 Stat. 537 (1994). This provision was opposed by animal rights advocates, who took the position that "NMFS has years of experience in monitoring this Act, as well as other marine mammal issues. In contrast, the USDA has lacked both the commitment and ability.

³³16 U.S.C. § 3742.

³⁴Compare with the Dingell-Johnson Fish Restoration Act.

³⁵42 U.S.C. § 283e.

³⁶42 U.S.C. § 289d.

³⁷42 U.S.C. § 290aa-10(a).

³⁸Another section of the Act, enacted in 1985 and repealed in 1988, authorized the Secretary to make grants to schools of veterinary medicine for "the development of curricula for training in the care of animals used in research, the treatment of animals while being used in research, and the development of alternatives to the use of animals in research. . . ." Pub. L. No. 99-129, § 217(e) (1985), 42 U.S.C. § 295g-8(f); recodified by Pub. L. No. 99-660, § 601(a) (1986), as 42 U.S.C. § 295g-8(g); repealed by Pub. L. No. 100-607, § 613(a) (1988).

³⁹H.R. Rep. No. 103-711, 103d Cong., 2d Sess. (1994); reprinted in 140 Cong. Rec. H 8877 (daily ed. Aug. 21, 1994).

⁴⁰*Id.*

⁴¹It was previously codified at 45 U.S.C. §§ 71-74.

Message from the Chair . . .

This issue of the SECTION NEWSLETTER provides two important opportunities for those attorneys whom I've heard say, "I want to participate, but I don't have the time/inclination/patience to attend meetings."

First, we offer the updated questionnaire originally distributed several years ago. This is designed both to provide you with information as to what programs, projects, and plans the Council has adopted to-date, and to provide the Council with insight into the memberships' interests. Please take a few minutes to complete this survey so that we may contact you to assist in those activities you've selected.

The second questionnaire is one devised by Candace Cavanaugh and involves "AARF"—Animal Attorneys Referral Forum. With your cooperation, the referral network should soon be operational. Please note that this is not necessarily a *pro-bono* program. As many of us already know, there is a large—and largely unmet—need for assistance with myriad legal issues involving animals, some of which are on the cutting-edge of the law: witness the recent case in Wayne County Circuit Court where the jury was allowed to consider plaintiff's non-economic damages for the loss of her companion animal in a negligence action. Others involve providing advice to not-for-profit animal-welfare groups. No matter what your area of expertise, your skills can be put to good use by AARF.

The Animal Law Section is still fairly small, but this can be used to advantage: there is no large, established bureaucracy in place. We can—and we want to be—responsive to you on behalf of animals. Your ideas and energy can help mold and direct the Animal Law Section.

Beatrice Friedlander,
Section Chairperson, 1997-1998

STATE BAR OF MICHIGAN
ANIMAL LAW SECTION
SURVEY OF MEMBERS

Your Name/Address/Phone Number

Does your practice include animal-related legal issues? (e.g., divorce; estate planning; criminal law; vet-med malpractice; work with or represent humane societies; other) ___ Yes ___ No

If yes, please explain/describe:

To which animal-related magazines/journals/newspapers/other periodicals do you subscribe?

Does your undergraduate work enhance your ability to deal with animal-related legal issues? If so, list your majors/minors and/or degree(s):

Would you serve as one of 10 Council members (from among whom the officers are elected)? ___Y ___N

Will you serve on a committee: If "yes," which one(s)?

Ordinance Handbook (compilation of local ordinances) _____

Legislative (research, track, monitor, talk w/legislators) _____

Public Service and Information (press releases; public service information dissemination; educate public concerning animal-related legal issues) _____

Clearinghouse (currently shared with PS&I above) _____

Resource and DataBank (receive, sort, log briefs and other resource materials) _____

Your comments re: issues that you believe should comprise the current and future focus of the Animal Law Section:

ANIMAL ATTORNEY REFERRAL FORUM

Yes! I would be happy to participate as a Volunteer Animal Law Advocate.

Name : _____

Address: _____

Telephone Number: _____

Firm Name: _____

Geographic Area of Practice: _____

Signature: _____

Thank you for your willingness to assist in The Animal Referral Attorney Forum

**State Bar of Michigan
Animal Law Section
306 Townsend Street
Lansing, MI 48933**

GRANT MONEY AVAILABLE

Attorneys for Animals (AfA-a 503(c) organization) has a one-time grant available of up to \$1,000 to any attorney pursuing an animal-protection case in Michigan. The grant may not be used for attorney fees, but may be used to defray costs such as filing fees, depositions, transcripts, records-requests, motion fees, etc. Interested attorneys should contact Beatrice Friedlander at (313)483-4612.

MARK YOUR CALENDAR

NEXT MEETING FOR ANIMAL LAW SECTION COUNCIL MEMBERS

SATURDAY, JUNE 13, 1998 at 11:00 a.m.

**Law Offices of Smith, Haughey, Price & Roegge, Inc.,
250 Monroe Ave., NW #200: Grand Rapids.**

Letters and articles for future newsletters from members of the Animal Law Section are welcome.

Please make submissions to the editor.

**ATTN: Donald N. Perkins, 2 Crocker Blvd., Suite #301,
Mt. Clemens, MI 48043. Telephone: (810) 465-6000**