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FEDERAL REGULATION OF ZOOS

By Paula Rosin*

"Man is the only animal that keeps other animals in captivity."1

INTRODUCTION

The experience of going to a zoo is one common to hundreds of millions of people in this country and all over the world. The first encounter with wild animals is often a memorable one. Yet the viewing public rarely recognizes the underlying deficiencies of these institutions. For, while illustrating man's eternal fascination with wild species, the zoo also exemplifies the conflicts between man and his environment. Many of the animal inhabitants have been taken from their natural environment to be placed on display for the "benefit" of human society. Urbanized man, unable to recapture his intimate relationship with nature, brings wildlife to the overpopulated and polluted city so that he might "learn" about that which is lost to him. A great number of species viewed in zoological gardens have been driven from their habitats by hunters and developers, as man seeks to subjugate more and more of the earth's resources to his own uses. Thus, the psychology of man's fascination with zoos is very complex. Zoo inhabitants may receive our respect or our abuse. Zoos symbolize at once man's love for nature and man's destruction of wildness. They can provide educational insights into the behavior of the animal kingdom, or merely display wild species in a stultifying environment, devoid of any means for the expression of natural instincts and activity.

Beyond their potential educational value, zoological gardens and aquaria have become focal points in the drive for conservation of threatened and endangered species. As an increasing number of animals are driven from their territories, zoos may become the final

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refuge for many forms of life. Animal exhibitions have existed for thousands of years, and yet it is only recently, in light of their growing importance to the animal conservation movement, that their quality and potential contribution have been given serious political and legal consideration in the form of regulatory legislation. Another cause of this re-evaluation is a growing awareness of the plight of the animals themselves, both in and outside the zoo. Wildlife, like forests, rivers, and oceans, has been recognized as having an intrinsic value separate and apart from how it can directly benefit mankind.

Concern for the quality of zoos and aquaria has grown because of their educational potential and important role in species protection. This article will focus on the movement to provide better zoos, institutions that are indeed capable of fulfilling the important goals of education, conservation, and research. Specifically, the discussion will focus on legislation which has been introduced in Congress which would provide major changes in the regulation and administration of animal exhibitions.

I. The Changing Role of the Modern Zoo

In the Western world, the public zoo existed as far back as 1793.\(^2\) Thousands of years before, the ancient Greeks and Egyptians kept animals on display.\(^3\) Not only were indigenous creatures the subjects of curiosity but, with expeditions to foreign lands, people came into contact with strange and exotic animals. Naturally, these animals were treasured for their very strangeness, and later for their commercial potential. A great public demand developed for the exhibition of wild species. Thus, the "menagerie," a conglomeration of cages bearing wide varieties of mammals, birds, and reptiles, was born.\(^4\) The facilities generally consisted of stark enclosures with no attempt to simulate the animals' natural environments. The purpose of these displays was limited to a superficial observation of the creatures they housed. The prevailing philosophy was that people could "know" an animal merely by seeing what it looked like.\(^5\)

\(^2\) G. Carson, Men, Beasts and Gods 141 (1972).
\(^4\) For an informative discussion of these early zoos, see id.
\(^5\) The science of ethology (the study of animal behavior and psychology) had not yet developed. Not until the pioneering works of Charles Darwin, Konrad Lorenz and other scientists did animal behavior and its relationship to human activity achieve recognition and concern. Darwinian theory triggered speculation about the similarities between humans and various species in their physical as well as their psychological make-up. Konrad Lorenz was
The menagerie, with all its limitations, continues to exist today. Roadside zoos, which for the most part consist of highly inferior facilities, often exhibit animals to draw tourists to commercial businesses. Such exhibitions do extremely little for the animals, or for visitors in terms of providing an educational experience. The past century, however, has witnessed the development of a growing number of zoos conceived of as cultural institutions, i.e. zoological gardens. Operating on the premise that animals have cultural value, these zoos are dedicated to providing a level of recreation for human beings higher than just a careless display of wildlife. Their value lies in three functions: education, conservation, and research.

Many directors and administrators of these zoological gardens view them as institutions which provide a “unique medium for the dissemination of environmental education.” For the urban dweller particularly, zoos may offer the only opportunity for contact with wild species. The visitor to a well planned and operated zoological garden can gain insight into the behavior of various forms of wildlife and the interrelationship of animals and humans. The ultimate goal of such education is the teaching of respect for life in general. By promoting feelings of sympathy and understanding of animals, zoos may foster this concept of respect. True appreciation of the interconnection of different species with one another, and with their environment, may lead to a greater understanding of people themselves.

Those who view zoos as instruments of education hope that this educational promise will create a public that is more aware of the intrinsic value of animals. Such an awareness is important in the drive for greater protection of threatened and endangered species. Any legislation aimed at preserving and fostering wildlife must seek support from a populace educated in the belief that animals are indeed valuable, and deserve protection. If a majority of the public encounters wild species only in a zoo, then that institution must

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one of the pioneers who brought together the two streams of behavior and psychology, observing the natural instinctual processes of wildlife and translating that information in terms of psychological drives. Id. at 201.

HEDIGER, supra note 1, at 8.


Id. at 42. Conway went on to state that zoos are basically urban phenomena; 70% of the people served live in cities. Id.

T. Carding, Better Zoos or No Zoos at All, 2 Animalia 1 (1975).
make the viewing experience meaningful by instilling respect for animal life. Such an achievement is impossible in an exhibition run solely as public entertainment.

Along with their educational value, zoos can contribute significantly to wildlife conservation. Propogation of endangered species is a top priority consideration in many zoological gardens. In furtherance of this policy several zoos have established "survival centers." Critics have challenged the general insufficiency of these programs, pointing out that little effort has been made toward establishing resettlement programs aimed at reinstating animals from survival centers back into their wild state or within the confines of a wildlife refuge. This lack of substantial resettlement effort has led anti-zoo groups to argue that a species ought to become extinct if the only alternative is survival in captivity. The value they see in wildlife is intimately connected to its wild state, thus any animal relegated to life in captivity has lost its essential nature. Zoos have often played an ambiguous role in the animal conservation movement. Since emphasis remains on diversity in collections, zoos on the whole have remained "consumers of wildlife rather than producers." While these institutions are striving to successfully reproduce endangered and threatened species, they also contribute to the alarming drain on wildlife. Many zoo animals are taken from the natural environment, a process which often involves killing adult animals to trap young ones. Once the animal is caught it must endure the horror of shipping. Countless animals have died due to negligent treatment in the process of importation. Admittedly, zoos are in no way major consumers of wildlife. The industries which most significantly deplete wild animal populations are pet traders, the hide and skin trade and medical researchers.
and food hunting also results in an immense drain on wild species.\textsuperscript{19} Finally, as the world population expands, animals disappear because man destroys their natural habitats. Ultimately, this latter threat presents the gravest danger to the existence of wild animals.\textsuperscript{20} As far as zoos are concerned, the development of successful breeding techniques ought to preclude the need to take animals from their natural environment.\textsuperscript{21}

The federal government closely regulates the importation of endangered and threatened species pursuant to the Endangered Species Act of 1973.\textsuperscript{22} Zoos must apply for permits in order to bring an endangered or threatened animal into the country and, once in the United States, any sale or transfer of that animal must be to one who has acquired a permit for that particular transaction. Zoos themselves have attempted to mitigate some of the damage inflicted on wildlife populations. Through a self-regulatory agreement, zoo directors have agreed not to import certain of the rarest vanishing species—for example, the orangutan.\textsuperscript{23}

The promotion of research is the third major goal of the modern zoological garden. Fundamentally, the purpose of research programs in zoos ought to be to benefit the animal collection.\textsuperscript{24} Unfor-

\begin{footnotesize}
\textsuperscript{19} Conway, supra note 17, at 22.

\textsuperscript{20} It is not necessary for us to shoot, snare or collect a single tiger, quetzal or an alligator to completely annihilate the species. We need only to destroy its forests, drain its swamps, introduce strange animals or diseases with which it cannot compete or survive. We need only alter the chemical balance in its environment or destroy the plants and animals upon which it depends and which in turn depend on it. Conway, supra note 17, at 23.

\textsuperscript{21} D. Morris, Must We Have Zoos?—Yes, But . . ., 65 LIFE 78 (1968); 120 CONG. REC. 3399 (daily ed. May 30, 1974).


\textsuperscript{23} The world population of the orangutan diminished rapidly due to exploitation by humans—most significantly by scientific and medical researchers and zoos. As a result of such self-regulatory agreements among exhibitors, and stricter government control of endangered species, the orangutan population has risen. Conway, supra note 17.

\textsuperscript{24} P. Ogilvie, Executive Director, Portland Zoological Gardens, Hearings, supra note 7, at 52. Ogilvie testified that at the Portland Zoo, a number of behavioral research projects have been instituted. One in particular concerned wild gibbons. In the wild these animals live in treetops, seldom descending to the ground. They are constantly active, moving about at all times and feed continually on food collected from the tips of branches. In captivity, this species is usually fed by putting a large quantity of food on the floor of the cage. The animals gorge themselves once and remain inactive. The Portland Zoo surmounted this problem by installing lights and levers in the upper rear corners of the cage. When the first light comes on, the gibbons pull a lever, activating a second light across the cage. They pull the lever on the second and receive small bits of food as a reward. This mechanism now provides their daily diet and the gibbons are in excellent condition. Moreover the public is able to watch this more natural daily activity. Id. at 53.
\end{footnotesize}
fortunately, zoo animals have been used for medical and scientific research wholly unrelated to their lives in captivity. Certain research interests are apparently looking toward zoos as a source of subjects for experiments having nothing to do with the animals’ welfare. Use of animals for research has been a topic of great controversy for many years. Most individuals involved in the operation of zoos are willing to accept research which is dedicated to a better understanding of the animals’ physical and psychological needs in captivity. New insights into animal behavior have found expression in the change from stark, sterile enclosures to the creation of more natural surroundings for animals. Breeding programs necessitate intensive study of reproductive behavior and all the various environmental inputs contributing to an animal’s successful propagation. Several zoo directors regard such research as one of the primary justifications for the very existence of zoos themselves.

Animal exhibitions have the potential to fulfill the goals of education, conservation, and research, and several zoological gardens and aquaria are striving to offer far more to the viewing public than the menagerie and the roadside zoo. Once these goals are realized, zoos can then make significant contributions to both humans and wildlife with which they are concerned.

II. DIFFICULTIES FACING ZOOS TODAY

Modern zoos face many obstacles to the goal of becoming valuable community resources. These obstacles center around inadequate financial resources, with resultant poor operational facilities. Atten-

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25 See text at notes 131-34, infra.
26 Certain animal welfare organizations sharply oppose the use of animals for research purposes. Anti-vivisectionists argue that medical and scientific researchers are highly irresponsible in their use of wildlife for experiments and employ grossly inhuman procedures that torment the animals. Among the proponents of this view are United Action for Animals, Inc. and the Society for Animal Rights, both located in New York City. Supporters of research counter by saying that animals are required if any major scientific breakthroughs are to be achieved to benefit mankind. Among those espousing this latter view is the Institute of Laboratory Animal Resources. See 18 ILAR News 4 (1975).
27 Pressman, supra note 12; P. Ogilvie, Executive Director, Portland Zoological Gardens, Portland, Oregon, Hearings, supra note 7, at 53.
28 Lublin, supra note 11, at 20.
29 The captive environment must meet certain conditions to ensure successful propagation. For example, the Milwaukee Zoo discovered that a female polar bear needs absolute privacy when cubs are born and becomes distraught if she does not get it—often killing her offspring as a result. By providing a hiding place, the zoo found it could have a sufficient supply of polar bears. See Hunt, supra note 11, at 52.
30 HEDIGER, MAN AND ANIMAL IN THE ZOO 8 (1969); P. Ogilvie, Executive Director, Portland Zoological Gardens, Portland, Oregon, Hearings, supra note 7.
dance at zoos in the United States is approximately 112 million a year, easily surpassing the annual combined attendance of professional baseball, basketball, football, and hockey. Yet despite their overwhelming popularity most zoos suffer from grossly inadequate financial support. "Squeezed by rising costs and static budgets, zoos are caught in a mesh of mounting financial demands." Basic operating expenses have risen (e.g., food, medicine, repairs), keepers are asking for higher salaries, and animal welfare groups are pressing for modernization of antiquated facilities. Zoo administrators, furthermore, want funds to establish wildlife breeding centers. Underlying the static budgets is the financial crisis faced by many cities, since most nonprofit zoos are supervised by city agencies which themselves are facing severe fiscal difficulty. The zoos in New York City illustrate this problem. New York, currently undergoing a grave financial crisis, spends some $3.5 million annually to operate its zoos, as well as contributing an estimated 40-50% of the Bronx Zoo's annual budget of $9 million. Substantial sums will be required to provide the much needed renovation and remodeling of the city's zoos, while adequate maintenance and operating costs continue to rise. Given the grim fiscal status of the city, New York's zoos cannot realistically hope for a significant increase in expenditures. During periods of financial crisis, spending on zoos tends to remain static.

Zoos and aquaria have received some financial support from zoological societies, which make up in a small way for insufficient funding from cities. These societies are private associations com-

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31 W. Gilbert, Whose Zoo?, SPORTS ILLUSTRATED, September 15, 1975, at 87.
32 Lublin, supra note 11, at 1.
33 Id.
34 W. Conway, Director of the Bronx Zoo, New York, Hearings, supra note 7, at 44-45.
35 The zoos referred to here as New York City zoos are the Central Park Zoo, Prospect Park Zoo, Flushing Meadow Park Zoo, and the Staten Island Zoo.
36 SOCIETY FOR ANIMAL RIGHTS REPORT 5 (June 1975). The Society is an animal welfare organization based in New York City.
38 Lublin, supra note 11, at 1 noted that "San Francisco zoo's annual budget has hovered at about $1 million for the past eight years while operating expenses have soared." John Prescott, Vice President and Managing Director of the New England Aquarium in Boston has stated that: Cities for years have considered zoos and aquaria as recreational frills. Their budgets for these facilities have remained static, our personnel have been grossly underpaid and capital improvement programs have remained unfunded.
J. Prescott, Hearings, supra note 7, at 50.
prised of persons interested in the continued operation of zoos in their localities. Unfortunately, the societies themselves often suffer from large deficits. Competition for money from private sources is fierce among cultural institutions, and zoos often lose out. The possibility of relieving this financial crunch by continued dependence on municipal funding and aid from zoological societies remains slim. Perhaps zoos could increase admissions or charge entrance fees, but this could "result in those persons who could use the facilities best being less able to participate in an important cultural resource." Another alternative is to drastically reduce the number of zoos supported by municipalities. For example, New York could dismantle its zoos and direct what monies it could allot toward improving the Bronx Zoo. Animals currently inhabiting the city zoos would all be transferred to the Bronx facilities. As each species that is transferred dies, they would not be replaced, thus the population at the Bronx Zoo would eventually return to its original size. Although this answer might be adequate in some situations, most of the surviving zoological gardens and aquaria would still require large sums in order to repair and reconstruct their inadequate facilities and, of course, many municipalities have only one zoo to begin with. A number of zoo advocates are now looking to the federal government for financial aid to maintain and improve their zoos.

38 Lublin, supra note 11, at 1.
39 J. Prescott, Vice President and Managing Director, Hearings, supra note 7, at 51.
40 This solution is being proposed by the Society of Animal Rights (see, supra note 36) in its suit against New York City. The Society is taking civil action, charging the City and various officials with violations of New York's anti-cruelty statute, alleging that the deplorable conditions in the City's zoos constitute cruelty to the animals housed there. The Society asserts that the inhumane treatment of animals in the City's zoos offends the organization and its members' moral, aesthetic, recreational, environmental, economic, and social values. The Society has put itself forth as being clearly injured by the treatment accorded the animals in question and argues further that if it is not accorded standing, then no one can come forward to protect the animals' rights. It is also charging the City with wasting assets in maintaining substandard zoos.

The doctrine of standing is part of the general doctrine of justiciability. A plaintiff must prove not only that a real controversy is involved, but, for purposes of standing, that s/he has a protected interest that has suffered or is going to suffer an injury. The Supreme Court established a test for standing in environmental cases in Sierra Club v. Morton, 405 U.S. 727 (1972). Plaintiffs must show that the interest asserted is within the zone of interest protected by the relevant statute, and that an injury in fact has or will occur. The Society of Animal Rights contends first that the anti-cruelty statute was enacted as much for the protection of those who are particularly disturbed by such cruelty as it was for the security of the animals themselves. Secondly, the Society contends that its members have been clearly injured by the treatment accorded to the animals confined in the city's zoos as such treatment is deeply offensive to their personal, moral, aesthetic, environmental, economic, and social values.
Such federal assistance would be available under recently proposed zoo legislation.\textsuperscript{42} Due in large part to insufficient funding, as well as a lack of understanding about animal behavior, many zoos operate with grossly inadequate and poorly designed facilities. A city zoo usually covers a small area and houses a wide selection of species in the belief that variety is essential to attract visitors.\textsuperscript{43} In zoos administered by persons who know little about animal behavior, cages are often merely blocks of concrete with almost no consideration given to diversion or stimulation. Where funding is small, facilities fall into disrepair. Inadequate staffing and veterinary attention results in poor care and substandard health conditions.\textsuperscript{44}

The poor environment provided in many zoos has a devastating effect on the animals living there. Animal behavior researchers have found that lack of sufficiently stimulating surroundings creates psychological disturbances in many species. Scientists believe that the stress of such confinement not only results in neurotic symptoms such as chronic depression and sexual obsession but that emotional illnesses resulting from captivity may lead to physical injury and even death.\textsuperscript{45} "Emotional development of an animal is likely to be disturbed when it is deprived of its customary relationship with parent, siblings, strangers of its own and other species, mates and offspring."\textsuperscript{46} The viewing public rarely realizes that the behavior it is observing in zoo animals is actually abnormal and results from tremendous frustration.\textsuperscript{47} This extreme deprivation has been condemned by pro-zoo as well as anti-zoo groups: "There is something biologically immoral about keeping animals in enclosures where..."
their behavior patterns, which have taken millions of years to evolve, can find no expression.\textsuperscript{48}

In many ways, of course, a zoo which consists of bare cages is easier to operate. Providing an intricate, imaginative environment involves not only money but expert advice and a great deal of planning. Some zoo operators appear to believe that if the animals are adequately fed and housed the environment will be sufficient for their needs. This view, however, ignores both the findings of ethologists and a recognition of the value of animals that goes far beyond their physical requirements. "A zoo animal without a challenge, with all its problems neatly solved or eliminated, is a travesty of evolution."\textsuperscript{49} The proper goal of a zoological garden or aquarium should be to preserve the natural instincts of the animal (with the exception of the urge to escape).\textsuperscript{50} In order to achieve this goal, natural surroundings which offer adequate stimulation must be provided.\textsuperscript{51} This effort might entail cutting back on the variety of species exhibited, but as yet few zoos are willing to move toward greater specialization.\textsuperscript{52}

Poor conditions in the zoo environment are not the sole disturbance to the animals' well-being. Vandalism has increased significantly, primarily in urban zoos. Instances of sadistic maiming and killing of zoo animals are all too numerous, and occur throughout the country. In July, 1975, twenty-seven animals were beaten, stabbed, and crushed to death by vandals who broke into the Burnet Park Zoo in Syracuse, New York.\textsuperscript{53} In 1974, five fallow deer housed in the Central Park Zoo were brutally beaten with heavy sticks.\textsuperscript{54} In 1971, a man, tormenting a polar bear at the Central Park Zoo in New York, stuck his arm into the cage. The bear tore at the arm, and as a result was shot by a policeman.\textsuperscript{55} Vandalism resulting in

\begin{itemize}
\item \textsuperscript{48} Id.
\item \textsuperscript{49} Id.
\item \textsuperscript{50} HEDGER, supra note 1, at 23.
\item \textsuperscript{51} B. Ford, \textit{Creature Comforts at the Zoo}, 55 SATURDAY REVIEW 40 (1972). An example of the developments in natural zoo environments is the "World of Darkness" at the Bronx Zoo in New York. Nocturnal animals and birds are housed in glass-walled enclosures bathed in red or blue light simulating darkness. The overall effect is a transformation of day into night, Rocks and vegetation, mostly artificial, decorate the enclosures.
\item \textsuperscript{52} See Morris, supra note 21, at 84. Morris is a proponent of greater specialization in zoos. "By specializing ruthlessly a zoo could become so expert, so knowledgeable about its one group of closely related species that an entirely new level of zoo keeping would emerge." One of the most significant results of specialization, as Morris sees it, would be the contribution of such an institution toward serious scientific observation and study.
\item \textsuperscript{53} Syracuse Examiner, July 1, 1975, at 15.
\item \textsuperscript{54} C. AMORY, \textit{MAN KIND? OUR INCREDIBLE WAR ON WILDLIFE} 320 (1974).
\item \textsuperscript{55} Id. A newspaper reporting the incident headlined the story "Cop Shoots Vicious Bear."
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injury or death of zoo animals is one of the most serious problems facing zoos today. While zoos have taken various measures to protect their animals, inadequate funding often has made it difficult to achieve effective security.

III. EXISTING LEGISLATION

If financial problems have been the most crippling blow to modern zoos, the maze of government regulation has been the most frustrating. State laws often provide inadequate protection for zoo animals. Federal legislation, suffering from the same type of inadequacy, has also created highly complex and costly procedures.

Prior to 1970, many zoos were established and regulated solely by the municipalities which provided funds for the purchase of animals and the maintenance and operation of the facilities. Licensing procedures in some states offered a method of evaluating quality, although given the conditions in zoos across the nation these licensing provisions have clearly not supplied adequate protection. Anti-cruelty statutes often provided the sole statutory protection for animals in zoos. Humane societies and other animal welfare associations, employing the sanctions of these statutes, have been somewhat effective in instigating improvements. Unfortunately, these laws come into play only after the animal suffers. Furthermore, they are often poorly written and difficult to enforce.

The regulatory structure changed somewhat in 1970 with the passage of the Animal Welfare Act of 1970 (AWA). The AWA constitutes a series of amendments to the Federal Laboratory Animal Welfare Act of 1966, which was concerned with limited types of animals (primarily dogs and cats), and regulated only animal dealers and medical research facilities.
The stated purpose of the AWA is to provide humane care and treatment for animals intended for use in research facilities, in exhibitions, and as pets. In order to achieve that goal, the AWA seeks to regulate the "transportation, purchase, sale, housing, care, handling and treatment of such animals" by persons using them for the aforementioned purposes. The term "animal" includes only warm-blooded species specified by the Secretary of Agriculture. The two most important provisions vis-à-vis zoos are the licensing provisions and the authorization of the Secretary of Agriculture to promulgate standards to govern the humane handling, care, treatment, and transportation of animals by exhibitors. A zoo may obtain a license only upon demonstrating that its facilities comply with the standards established by the Secretary. Valid licenses are required for any exhibitor wishing to buy, sell, or transport any animal to any other zoo, research facility, or for use as a pet. As authorized under the Act, the Secretary has issued standards, which include minimum requirements with respect to housing, feeding, and ventilation. The Secretary of Agriculture is empowered to make whatever investigations and inspections deemed necessary to determine whether a zoo is complying with all provisions of the AWA and regulations promulgated by the Department of Agriculture.

The penalties provided under the AWA are both civil and criminal in nature. Upon determining that an exhibitor has violated or is violating the AWA or any regulation promulgated thereunder, the Secretary may issue a cease and desist order, and suspend or revoke the exhibitor's license. An exhibitor who knowingly fails to obey the order shall be subject to a civil penalty. Criminal charges can be brought against a violator, who upon conviction is subject to

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64 7 U.S.C. §2143 (1970): The Secretary shall promulgate standards to govern the humane handling, care, treatment and transportation of animals by dealers, research facilities, and exhibitors. Such standards shall include minimum requirements with respect to housing, feeding, watering, sanitation, ventilation, shelter from extremes of weather and temperatures, adequate veterinary care . . . .
70 This section provides that any exhibitor violating an order shall be subject to a civil penalty of $500 for each offense, and each day during which such failure to obey continues shall be deemed a separate offense.
imprisonment up to one year or a fine of not more than $1000 or both.\(^2\)

Initially, the provisions of the AWA appear to make a significant attempt to improve administration of animal exhibitions. In application, however, the AWA has not fulfilled the good intentions of its sponsors, in part because of statutory omissions, and in part because of limited implementation. As an example, the AWA coverage, limited to warm-blooded animals designated by the Secretary, conspicuously excludes reptiles, which are common zoo animals, as well as all those warm-blooded species not included on the Secretary’s list.\(^3\) While some of these animals may be covered under other protective legislation, the situation results in a great lack of coordination and bureaucratic confusion in regulatory procedures. As far as zoos are concerned, one might well ask why the United States Department of Agriculture (USDA) was chosen as the regulatory agency in charge of implementing the AWA. Perhaps the underlying rationale for the choice was the fact that under the old Federal Laboratory Animal Act the animals involved were primarily dogs and cats. The Department of Agriculture normally deals with the supervision of domesticated animals; indeed, that is where its expertise lies. Wild species are quite another matter, however, and many critics of the AWA believe that here the USDA is not the appropriate agency to provide knowledgeable supervision.\(^4\)

In addition, the AWA fails to adequately address the problem of roadside zoos and menageries that cannot meet licensing requirements. A close reading of the relevant provisions indicates that an exhibitor unable to secure a license might still remain in business. The statute provides that “every exhibitor not licensed . . . shall register with the Secretary in accordance with such rules and regulations as he may prescribe.”\(^5\) Thus, the AWA does not effectively provide for the dissolution of all exhibits that do not meet regulations promulgated in accordance with its provisions. Although both civil and criminal penalties apply in such situations, failure to meet the standards does not necessarily result in an order to terminate operation.

\(^{3}\) The regulations and the AWA itself raise the question as to why only warm-blooded animals, and then only certain designated species, are covered by this act.
\(^{4}\) See supra note 12.
\(^{5}\) Pressman, supra note 12; See, Christine Stevens, Secretary, Society for Animal Protective Legislation, Washington, D.C., Hearings, supra note 7, at 63.
The regulations promulgated in accordance with the AWA have also been criticized, primarily on the ground that they fail to establish sufficiently strict standards with regard to the care of zoo animals. For example, the space requirements for warm-blooded animals (other than dogs, cats, rabbits, hamsters, guinea pigs, and human primates) are as follows: "Enclosures shall be constructed and maintained so as to provide sufficient space to allow each animal to make normal postural and social adjustments with adequate freedom of movement." Just what the terms "normal postural and social adjustments" mean is unclear, and such a standard may still sanction those spacious but barren cages all too frequently found in zoological gardens. Water quality standards are also difficult to interpret. The animals' drinking water must be "potable" (suitable for drinking), but the level of acceptability required is left undetermined. One recent problem has related to the trend toward establishing "cageless" zoos. Lion Country Safari, Inc., located in Florida, displays its animals in open areas, enclosed by wire fencing and moats. Visitors drive through, observing packs of lions, zebras, giraffes, and other forms of wildlife in what appears to be a very natural setting. Yet, while the animals enjoy a certain amount of freedom during business hours, at night they are locked up in cages. As many as twenty-six lions have been crowded into one 28 by 30 foot enclosure. The regulations have not directly addressed "drive-through-zoos" like Lion Country Safari, where animals are not kept in cages throughout the day.

In issuing standards under the AWA, the USDA has relied on guidelines established by the American Association of Zoological Parks and Aquariums (AAZPA). This organization includes many private and public zoos and personnel who serve on the administrative, scientific, supervisory, maintenance, or animal care staff of zoological parks, aquaria, or related organizations, as well as animal dealers, interested students, and other individuals. The stated purpose of the association is, in part, to gather and disseminate information, aid and foster exchange and importation of zoo specimens, consider and deal with common problems of management, and cooperate with and encourage the conservation and preservation of

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77 9 C.F.R. §3.103 (Jan. 1975).
78 See text at notes 46, 47.
79 D'Antonio, supra note 44, at 1.
80 Id.
81 Id.
wildlife.82 The AAZPA has established an accreditation program for zoos and aquaria. Formal application for accreditation is the first step in the procedure, followed by completion of an extensive questionnaire requiring the applicant to state its resources, purposes, plans, and performance. The Accreditation Committee reviews each questionnaire and decides whether to grant interim approval, to take the application pending further information, or to reject the application outright.83 Accreditation, however, is not a requirement for membership in the AAZPA, and one need not be a member of the AAZPA to operate a zoo. Critics of the AAZPA have charged that its "influence has been used to prevent anything beyond generalities from being adopted under the regulatory power of the Secretary of Agriculture."84 The AAZPA is also criticized as suffering from the common ailment of professional groups: a tendency to overlook the shortcomings of its members.85 As a result, the organization's guidelines have been criticized on the grounds that they do not effectively assure proper care for zoo animals.86 In this regard, concern has been voiced over the inclusion of animal dealers as members of the AAZPA. Many such dealers have reputations for gross mistreatment of animals.87 Zoo personnel depend on these dealers to supply their exhibitions, leading critics to doubt whether the AAZPA will actually impose meaningful restrictions on their activities.88

Lack of specificity in standards would not be so great a problem if the AWA itself were enforced vigorously. The Department of Agriculture, however, has shown little initiative toward effective implementation. Inspections carried out by the Department have often been either ineffective or nonexistent.89 This inadequacy is not only

82 American Association of Zoological Parks and Aquariums, Zoos and Aquariums in the Americas (1968).
83 G. Clarke, Director of the Topeka Zoological Park, Topeka, Kansas, Hearings, supra note 7, at 45-46.
84 C. Stevens, Secretary, Society For Animal Protective Legislation, Washington, D.C., Hearings, supra note 7, at 64.
85 Id. at 61.
86 Id. Ms. Stevens cited an incident at the Los Angeles Zoo involving rare Galapagos tortoises. These animals were put into a storeroom for eight months, where there was a large infestation of rodents. When found, it was discovered that these tortoises were bitten, dying from pneumonia and pneumonia-related diseases and suffering from lack of proper warmth and ventilation. She charged that this neglect and instances like it are covered up by directors of the zoo involved and by other zoo administrators as well.
87 The Shame of the Naked Cage, supra note 16, at 72.
88 C. Stevens, Hearings, supra note 7, at 64-65.
89 C. Stevens, Hearings, supra note 7.
due to lack of motivation within the Department to establish a strict enforcement policy, but is also the result of insufficient funding to implement the necessary procedures. 80

Along with the Animal Welfare Act, zoological gardens and aquaria are regulated by other federal laws aimed at protecting wildlife. The most significant of these controls are the Lacey Act, 91 the Endangered Species Act of 1973, 92 the Marine Mammal Protection Act, 93 and the Migratory Waterfowl Treaty. 94

Section 42 of the Lacey Act prohibits the importation of injurious mammals, birds, fish, amphibia, and reptiles. 95 Any zoo or aquarium wishing to secure these species must appeal to the Secretary of the Interior who, upon a "proper showing of responsibility and continued protection of the public interest and health," 96 is authorized to allow such importation. The Secretary of the Treasury is empowered to prescribe requirements and issue permits deemed necessary for humane transportation of wild animals. 97 Both the Department of the interior and the Department of the Treasury are responsible for the enforcement of this section of the Lacey Act. 98

The Endangered Species Conservation Act of 1973 99 was passed in response to the Convention on International Trade in Endangered Wild Fauna and Flora, 100 signed in Washington in 1973. The purpose of that international agreement was to facilitate worldwide efforts to protect wildlife by means such as requiring that both export and import permits be obtained. The statute directs the Secretary of the Interior to promulgate a list of endangered species as well as a list of "threatened" species. 101 The Act prohibits certain activities, in-

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86 Id., §42 (a)(3).
87 Id., §42 (b)(c).
88 Id., §42 (a)(5).
91 16 U.S.C. §1533(c)(1). Section 1532(4) defines the term "endangered species" as any species in danger of extinction throughout all or a significant portion of its range, other than insects determined by the Secretary to constitute pests presenting tremendous risks to hu-
cluding import and export, possession, sale, transportation, and reception of endangered wildlife. Certain exemptions are allowed, among them importation for scientific purposes or enhancement of the propagation or survival of the affected species. Endangered species in commercial zoos remain under the proscriptions of the Act. Wildlife held in captivity are exempt, unless the holding is in the course of a commercial activity or contrary to the purposes of the Act. Commercial activity is defined as "all activities of industry and trade including, but not limited to, buying and selling of commodities and activities conducted for the purpose of facilitating such buying and selling." Furthermore, no progeny of endangered animals are exempt if born after the effective date of the Act, regardless of whether the holder is a commercial or nonprofit institution. Zoos are therefore required to seek not only permits for importation or transportation of any endangered animals, but for their offspring as well.

The Endangered Species Conservation Act has been attacked as being counterproductive to the conservation movement. Many zoos have established successful breeding programs, resulting in a surplus of certain species. Zoo administrators naturally seek to sell or exchange these animals with other zoos, in large part to prevent interbreeding. A zoo cannot sell or trade these animals without a permit, however. Given the great amount of delay in securing permission, some institutions separate their breeding stock because of lack of space and large food bills. When these animals could be used to establish new bloodlines, they instead go to waste.

The distinction between commercial and noncommercial activities can be challenged in the light of the drive for effective breeding programs. Zoos have realized the potential to contribute significantly to research for endangered species, and should not be constrained from securing animals simply because money is involved in the transaction. Surely such beneficial programs support the fundamental policies behind the Act. The purpose of the activity

m. Section 1532(15) defines "threatened species" as "any species which is likely to become an endangered species within the foreseeable future."

104 For an extensive discussion of the advisability of the exemption clause, see Palmer, supra note 22, at 272-77.
108 W. Braker, Director, John G. Shedd Aquarium, Chicago, Big Brother is Watching the Animals, text of prepared speech, September 12, 1975 at 8.
108 Id.
should be controlling rather than relying on the commercial/non-commercial distinction.107

A third federal wildlife control statute touching zoo activities is the Marine Mammal Protection Act,108 which seeks to preserve certain species and population stocks of marine mammals that are or may be in danger of extinction or depletion.109 Again, zoos and aquaria must secure a permit from the Secretary of the Interior in order to obtain these mammals. The Act provides for publication in the Federal Register of any permit application, for review of applications by the Marine Mammal Commission, and for protest and judicial review sought by any interested party.110 These procedures can lead to extended waiting periods.

Additionally, pursuant to the Migratory Bird Treaty of 1939, permits issued by the Secretary of the Interior are required before specified birds may be transported or possessed by a zoo.111

Finally, zoos and aquaria seeking the importation of various animal species are subject to quarantine laws established by the USDA. These regulations require veterinary inspection and certification of animals prior to importation from overseas. The species must be quarantined in USDA approved facilities abroad, and again upon arrival in the United States, for a minimum of ninety days each time.112 Once in licensed zoos, the animals cannot be moved without Department approval.

All of these statutes raise administrative and financial difficulties for institutions wishing to acquire animals. Quarantine standards add to costs through quarantine and insurance charges. Delays in processing permits creates overcrowding and leads to added expenditures for animals that zoos are trying to sell or exchange.113 Consequently, zoos and aquaria find themselves subject to a myriad of regulations issued and enforced by a number of federal agencies, among them the Departments of Agriculture, the Interior, and the Treasury, as well as the Federal Aviation Agency, and the Interstate Commerce Commission. This situation does not lend itself to any significant amount of coordination, and many zoo administrators feel overpowered by government standards and procedures.

107 Palmer, supra note 22, at 276-77.
109 Id., §1361(1).
110 Id., §§1374(b),(c),(d)(2),(d)(6).
112 R. Reuther, Director, Philadelphia Zoological Garden, Phila., Pa., Hearings, supra note 7, at 55-56.
113 Braker, supra note 105, at 8.
Thus, zoos and aquaria face serious obstacles in their effort to establish themselves as meaningful cultural institutions. Lack of adequate financial support has hindered efforts to improve facilities and develop effective breeding programs. Progress has been stymied, leaving many innovative zoo directors without the resources to make improvements. This fiscal crisis, coupled with the morass of complex governmental regulations, presents zoos with problems that seem virtually impossible to overcome. Clearly, the situation cries out for remedial measures.

IV. CURRENT CONGRESSIONAL PROPOSALS

Efforts are now underway in Congress to enact legislation aimed at establishing new regulatory measures for zoos and aquaria. Representatives Whitehurst and Dingell, along with Senator Hatfield, have sponsored bills which propose the creation of a federal zoo accreditation board.

A. The Whitehurst/Hatfield Bills

Whitehurst's legislation, H.R. 12047, was not specifically examined in committee hearings, and no further action was taken. Senator Hatfield's companion bill, S.2774, however, was submitted to hearings. Since the two bills are identical, the Senate hearings were pertinent to both.

S.2774 reflects a growing recognition within the political community of the serious problems zoos and aquaria face today, problems which inhibit them from playing their important role as cultural institutions. The bill was designed to encourage improvement in zoos and to aid that goal by providing the opportunity for such institutions to secure grants and loans.

Public hearings were held on January 23, 1974, before the Smithsonian Institution Subcommittee. The legislation sought to create a National Zoological and Aquarium Board whose duties would include: (1) establishing standards for national accreditation of zoos; (2) providing expert technical assistance; (3) granting funds to nonprofit organizations to provide for the training of staff members and humane research into methods to improve the welfare of animals in zoos and aquaria; (4) granting funds to any nonprofit zoo or aquarium or both for projects to assist in the attainment or maintenance of accreditation standards; (5) granting funds for the purpose of

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112 Hearings, supra note 7.
establishing pilot projects to serve as models; and (6) guaranteeing loans for projects assisting in attainment or maintenance of accreditation standards established under the Act. The Board would be made up of thirty-two individuals representing federal agencies, humane societies, directors of zoos and aquaria, and veterinarians.

Several witnesses at the hearings criticized the composition of the accreditation board. Majority voting power would rest in the hands of zoo directors and members of the AAZPA, effectively resulting in a great deal of self-regulation and the power to grant and loan money to AAZPA member organizations. The necessity of including four representatives from governmental agencies was also questioned. Although each agency represented is somewhat involved in programs concerning endangered species or the administration of the AWA and Marine Mammals Protection Act, doubts have been raised as to the ability of such a panel to intelligently evaluate proposed projects, not to mention the quality of zoos and aquaria seeking accreditation. Ethologists and animal behaviorists are conspicuously absent from membership on the Board and, unless some designated member or members have had training in such fields, the Board will not have any representation from that part of the scientific community most knowledgeable about the psychological and physical needs of animals. This deficiency may be alleviated by §3(b), which authorizes the Board to employ experts to assist any

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116 S.2774, 93d Cong., 1st Sess. §3(a),(b), §4(a),(b),(c) (1973).
117 Id., §2(a) provides:

The Board shall consist of—

(1) the Director of the National Zoological Park;
(2) the Comptroller General of the United States;
(3) fifteen individuals to be appointed by the President, by and with the advice and consent of the Senate as follows:

(A) two officers or employees from the Agricultural Research Service of the Department of Agriculture;
(B) one officer or employee from the Department of State;
(C) one officer or employee from the National Oceanic and Atmospheric Administration of the Department of Commerce;
(D) one officer or employee of the Bureau of Sport Fisheries and Wildlife of the Department of the Interior;
(E) two individuals from among representatives of national humane associations;
(F) four individuals from among directors of zoos;
(G) two individuals from among directors of aquariums;
(H) one official representative of the AAZPA
(I) one official representative of the American Association of Zoo Veterinarians.

118 Stevens, Hearings, supra note 7, at 62, 64.
119 The agencies involved are the State Department, Department of the Interior, the Department of Agriculture and the Commerce Department. See supra note 117.
120 Pressman, supra note 12.
zoo or aquarium in complying with standards for accreditation. Humane associations are included on the Board, but, as will be discussed infra, animal welfare organizations are greatly split as to whether zoos are justified under any circumstances, let alone what standards will most fully insure the animals' welfare.\footnote{121 Pressman, supra note 12.}

Grants are limited to nonprofit zoos or aquaria while loans are not. This funding would give a much needed financial boost to zoological gardens, and could lead to the elimination of roadside menageries. The latter could qualify for a loan only upon meeting accreditation standards.

The promulgation of rigorous, intelligent accreditation standards based on scientific knowledge of animal behavior would be the Board's most crucial responsibility. Given the predominance of zoo administrators on the Board, skeptics argue that should this bill or a similar one be passed, the country would simply witness a continuance of the ineffectual regulation that has been carried out under the AWA.\footnote{122 Stevens, Hearings, supra note 7, at 62.} The director of the Topeka Zoological Park, on the other hand, proposed that the AAZPA accreditation program\footnote{See text at notes 83-88.} be incorporated within the bill.\footnote{123 G. Clarke, Director, Topeka Zoological Park, Topeka, Kansas, Hearings, supra note 7, at 46.} Such action, he believed, would result in three advantages: (1) avoiding duplication of programs; (2) avoiding time delay in implementing such a program, and (3) avoiding expense of study and development necessary in establishing accreditation.\footnote{124 Id.} Critics may well argue that any board established to issue new regulations ought to do so from a clean slate. Given the majority of zoo officials and AAZPA members on the Board under S.2774, adoption of the AAZPA accreditation program could very well be inevitable, possibly with very little intensive evaluation.

The Whitehurst/Hatfield bills have been criticized by certain animal welfare organizations as allowing increased use of zoo animals for medical and scientific research wholly unrelated to the welfare of animals.\footnote{125 One such organization is United Action for Animals, located in New York City.} Some associations fear that the creation of a new agency within the executive branch will give greater license to researchers because the government itself is deeply immersed in experimentation.\footnote{126 Time Runs Out for Zoo Animals, UAA (United Action for Animals) REPORT 2-6 (1975).} Section 4(a)(2) of S.2774 authorizes the Board to
make grants providing for "humane research into methods to improve the welfare of animals at zoos and aquaria and into methods to meet accreditation standards." Breeding programs would also be encouraged. These animal groups charge that this approach would create zoo "recycling plants to produce wildlife in captivity with the ultimate goal of achieving a sustainable yield of animals and their products for man's continued use and consumption." The surplus, they argue, will be turned over to medical and scientific organizations for use in experiments. The bill does not speak to the question of handling surplus animals, nor does it state in unequivocal terms that research is limited only to that concerned with the welfare of animals maintained in captivity.

Some research interests are in fact apparently interested in using zoo species for experimentation. The AAZPA held a series of four symposia devoted to research in zoos on October 7-11, 1973. The Association published a book, containing articles covering such topics as the use of zoo animals for research on longevity and aging, and zoo research topics of comparative medical interest: lead poisoning, sudden infant death, and eschemic heart disease. Any zoo bill encompassing the granting of funds for research purposes should expressly limit the scope of allowed experimentation to that which is designed to benefit the animal while in its captive environment. Wide scale use of zoo animals for other research purposes would conflict with the underlying purpose of zoos, that is to impart respect for animal life. Admittedly, medical and scientific research is necessary for the survival of human beings as well as animal life, and with regard to the general issue of experimentation with wildlife some middle ground should be found between those who advocate no control and those who would completely prohibit such research. As it pertains to zoo inhabitants, however, research must be strictly regulated in order to avoid conflicting goals.

Another UAA report states that experiments have been paid for by such federal agencies as the National Aeronautics and Space Administration, the National Institute of Health and the Food and Drug Administration, *Zoo Animals on the Brink of Disaster*, UAA REPORT (1975) at 2.

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128 This research provision is stated in broader terms than in the Dingell legislation. See text at notes 161-64, infra.
129 UAA REPORT, supra note 127, at 2.
130 See text at notes 161-65, infra.
131 Zoo Animals on the Brink of Disaster, UAA REPORT 14 (1975), cites an advertisement by the AAZPA for its annual conference October 7-11, 1973, stating that its main purpose is "the encouragement of using zoos for biological and biomedical research."
133 See supra note 26.
134 Pressman, supra note 12.
After the January 1974 hearings, no further action was taken on the Hatfield/Whitehurst bill. At this point Representative John Dingell presented his own bill.

**B. Dingell I**

Some of the deficiencies found in the Whitehurst/Hatfield effort were corrected by Representative Dingell in H.R. 16458. The bill proposes the establishment of a zoo accreditation board “in order to insure that zoos and other animal display facilities maintain minimum standards of care for animal inventories, to provide technical and financial assistance to zoos and for other purposes.”

The policy underlying the bill is to encourage facilities to meet adequate standards of care or “to take necessary steps to assure that such animals are transferred to facilities which are able to meet adequate standards of care.”

Unlike the Whitehurst/Hatfield proposal, the bill expressly indicates that any zoo or aquarium that fails to meet accreditation standards will be disbanded. This provision may ultimately lead to the abolishment of roadside zoos and menageries.

The Federal Zoo Accreditation Board proposed in the Dingell bill would have a slightly different membership than that previously proposed in S.2774. Out of a total of ten representatives, three would be zoo or aquarium directors, one a member of the AAZPA, and three officers or employees of government agencies. Two representatives of animal welfare organizations would be included, as well as one member of the American Association of Zoo Veterinarians. The Board would be authorized to establish a Committee of Advisors on Veterinary Science, consisting of twelve members—nine veterinarians in private practice and/or in the employ of private or public zoos, and three animal behaviorists “who are experienced in the training of terrestrial and aquatic animals.” The Board would consult the advisory committee with respect to each standard and classification proposed and each accreditation or provisional accreditation to be granted, denied, or revoked by the Board.

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137 Id., §1(a)(3).
138 Pressman, supra note 12.
139 H.R.16458, §103(a)(4).
140 Id., §103(d)(1),(2).

§202(b)(2) sets out the requirements for operating standards prescribed by the Board:

(2) The operating standards prescribed pursuant to this subsection for each category of regulated zoos shall set forth, in addition to such other measures as the Board deems
Criticisms similar to those aimed at the composition of the accreditation board in the Hatfield/Whitehurst bills have been directed at this board. Once again, zoo and aquarium directors and the AAZPA are most heavily represented. In addition, six out of twelve veterinarians on the advisory committee would be zoo employees. According to some sources, this heavy professional membership need not be feared, as zoo professionals are not likely to present a single voice since little general agreement exists among zoo administrators regarding standards and goals for zoos. An increase in the number of representatives from animal welfare organizations might be desirable. Zoo professionals cannot help but be concerned not only with what is best for the animals but also how to provide the greatest degree of entertainment to the public. This concern might lead some to overlook potentially detrimental but commercially desirable operating procedures.

The proposed advisory committee would be too heavily weighted with veterinarians. Veterinarians are not necessarily qualified to offer any expert advice concerning the needs of zoo animals. The background of a veterinary surgeon concentrates primarily on domesticated animals and their diseases, not on wild species. The curricula of veterinary colleges generally passes over ethology and animal behavior. In addition, doctors employed by zoos, public or private, may be hesitant about placing too great a burden on their employers to improve facilities. Thus, increasing the number of field ethologists and animal behaviorists on the advisory committee would be advisable. The bill allows for three individuals experienced in the "training of terrestrial and aquatic animals" (emphasis added). Just what the term "training" means is unclear. The scientists who ought to be represented are those who not only could provide invaluable help in promulgating effective beneficial stan-

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appropriate—.

(A) the minimum space and accommodations necessary to effect acceptable natural or pseudo-natural behavioral adaptation for each species exhibited;
(B) the minimum staff of both professional and nonprofessional personnel required to provide for the proper maintenance of the animal inventory;
(C) the minimum educational and training requirements for professional and para-professional staff personnel; and
(D) the recordkeeping and data collection requirements with respect to the animal inventory.

Pressman, supra note 12.

Id.

HEDIGER, supra note 1, at 10.

Pressman, supra note 12.

dards, but biologists who would best understand projects proposed under Title III, which provides for federal grants and loans for various projects.\textsuperscript{146} Programs which the Board will evaluate may be ones which the public would never see, and a zoo director may find it difficult to understand the value of such a proposal.\textsuperscript{147} A biologist, however, can recognize benefits in terms of the animals themselves, free of concern about the benefits derived by the viewing public.

Of key importance to the bill is the definition of zoos subject to regulation ("regulated zoos") as:

- any facility in or at which one or more animals of the kind usually found in the wild state (and whether or not born in captivity) are exhibited (whether in their natural habitat or otherwise) to the public and whose operations affect commerce, regardless of whether the facility
  - (A) charges a fee to the public
  - (B) is publicly or privately owned
  - (C) is operated for profit, or
  - (D) is operated in conjunction with any other public or private enterprise and whether or not such facility is the primary attraction or feature of the enterprise.\textsuperscript{148}

Exemptions are restricted to facilities with small displays of fish, birds, or smaller reptiles or mammals which are used solely "for decorative or educational purposes in conjunction with and are not the primary attraction or feature of some other public or private enterprise."\textsuperscript{149} The comprehensiveness of this definition brings under the bill's ambit large numbers of animal exhibitors, including both the professional zoological garden and the roadside zoo. It might also cover research facilities which display animals.\textsuperscript{150}

Zoo administrators and research centers have criticized the scope of the definition of "regulated zoo" as being too broad. Charges that it will cover any animal collection are not uncommon.\textsuperscript{151} Researchers are disturbed at what they believe is a serious encroachment on

\textsuperscript{146} Pressman, supra note 12.
\textsuperscript{147} Id.
\textsuperscript{148} H.R.16458, 93d Cong., 2d Sess. §201(a) (1974).
\textsuperscript{149} Id., §201(a)(2).
\textsuperscript{150} Pressman, supra note 12. Ms. Pressman spoke of the need to bring facilities such as Yerkes Primate Center within the ambit of federal regulation. In her investigation of zoos across the country, Ms. Pressman discovered animals in some roadside zoos which had been used in experiments at the Yerkes Center and, when their utility to the Center had ended, they were sold to exhibitors.
\textsuperscript{151} G. Steele, The Threats to America's Zoological Institutions, Zooaction, May, 1975, at 5. (Zooaction is a publication of the Zoological Action Committee Inc., an organization representing persons who support the continued existence of zoos.)
their freedom to deal in animals. Those operations which either display animals or sell animals to zoos for exhibition may in fact be required to satisfy regulations issued by the Board, while research-oriented institutions are less likely to be regulated.

Each regulated zoo in operation before the date of enactment must apply to the Board within six months after operating standards are prescribed. Zoos commencing operation preceding enactment must apply within three months after the Board begins operation. Section 203(c) requires publication of notice of application in the Federal Register, inviting public comment during the thirty day period immediately following the date of publication. Any information received by the Board will be made a matter of public record. The bill also contains provisions for citizen action. Section 208(a) authorizes any interested person to petition the Board for revocation of the accreditation of any regulated zoo. The Board is then obligated to investigate, and if it determines that cause does not exist for instituting an action for revocation, it must publish such findings and reasons in the Federal Register. The citizen can get de novo review by a court of a determination by the Board as well as judicial review of any accreditation or provisional accreditation granted.

Any zoo granted either full or provisional accreditation must pay an annual fee to the Board, not to exceed $500. It must also permit any representative of the accreditation board to enter and inspect the premises at reasonable times, without notice. Upon discovering a violation of any operating standard, the inspector is authorized to serve a notice of violation which may be appealed by the zoo operator. Both civil and criminal penalties are provided; criminal sanctions, however, attach only to certain acts by unaccredited zoos. Accreditation or provisional accreditation can be revoked, but the zoo may at any time reapply. The bill also provides for temporary care of animals if such attention is necessary to prevent their abandonment or destruction. In that situation, the Board may place the animals with any accredited zoo on a temporary or permanent basis, or otherwise provide for their "humane disposition."
Title III on H.R.16458 establishes zoo assistance programs to provide technical services by the Board's staff or experts employed by the Board to aid any regulated zoo to comply with or maintain operating standards issued pursuant to the bill.\footnote{Id., §301.} This assistance encompasses grants to train professional and paraprofessional personnel, and for research and special project assistance, including the establishment of survival centers for the breeding, care, and perpetuation of endangered species.\footnote{Id., §302.} In order to qualify for financial assistance, a zoo or aquarium must satisfy the operating standards issued by the Board.

Research qualifying for federal assistance is limited by §302(a)(2) to that which will improve the welfare of animals in regulated zoos, and other research which zoos must implement in order to meet and maintain operating regulations. No funds may be allotted unless: (1) research will be solely related to the welfare of animals while confined within zoos; (2) if experimentation is involved, such experimentation will be carried out in a humane manner; and (3) such research will not interfere with the health and welfare of the animals.\footnote{Id., §302(a)(2).}

Certain animal organizations have criticized the research provision of H.R.16458 as giving medical and scientific interests funds to use zoo animals in cruel experiments.\footnote{UAA REPORT, supra note 127.} Such fears are apparently unfounded, as the bill expressly states that research is limited to that which is related to benefiting animals while in captivity. The critics also take issue with the last two limitations, arguing that experimentation cannot be carried out in a humane manner, causing no interference with health or welfare.\footnote{Time Runs Out for Zoo Animals, supra, note 127, at 4.} Yet in fact a significant amount of scientific study can be performed without causing animals any harm. For example, blood studies may necessitate taking samples, but these procedures are painless. As a result, animal treatment techniques may be improved.\footnote{Pressman, supra, note 12.} Zoos can also provide opportunities for the study of animal behavior. In order to better provide for the needs of the zoo species, extensive study of the instinctual physical and psychological drives of zoo inhabitants must be undertaken. Perhaps what is needed to assuage the fears of the research critics is an express provision, either set forth in the accre-
dition standards promulgated by the Board or included in the bill itself, that no zoological garden or aquarium will receive or maintain accreditation if research on the premises is allowed which violates any of the limitations established in §302(a)(2)(3).165

C. Dingell II

On May 1, 1975, Representative Dingell introduced another bill, H.R.6631,166 which contains several revisions of and additions to his previous legislation. While certain provisions, such as the membership on the Federal Zoological Control Board, procedures for temporary care of animals, provisions for citizen participation, and research limitations remain the same, the bill as a whole is broader in scope and clearer in terms of those persons and institutions it seeks to regulate.

The policy behind this bill, as stated in §2(c), indicates the greater degree of regulation authorized:

It is the policy of the Congress that within a reasonable time after the enactment of this Act, all importation of, and interstate commerce in, and the captive maintenance, propagation, and public exhibition of, wild animals shall be regulated by a Federal Zoological Control Board which shall prescribe and enforce required standards for facilities and care, and shall license businesses, institutions and individuals engaged in such activities.167

H.R.6631 regulates "zoological animals," that is, species which constitute any animals other than a "non-zoological animal." Section 201 of the bill defines non-zoological animals as:

(1) Any species of animal which has been kept and reproduced under human control for such time so as to assume, through selective breeding, characteristics substantially different from those of any closely related wild species and which is commonly maintained in the United States as a pet, beast of burden, or agricultural animal;
(2) Any species of animal other than an endangered species or threatened species—
   (A) which resides in, and has not been removed from, any State to which it is native, or
   (B) which resides, and has not been removed from any State, which has become established in such State as a result of the introduction

165 Id.
167 Id., §2(c).
of the species into the State followed by the establishment of a self-sustaining wild population; and

(3) Any species of animal other than an endangered species or threatened species which, but for this subsection, would be classified as a zoological animal but which because of its size, nature, or other characteristics may be safely kept as a house pet.

The Board is obligated to promulgate and revise from time to time a list specifying non-zoological animals.

The rationale for the distinction between non-zoological and zoological animals is not readily apparent. The rationale for the distinction in Subdivision (2) could be that with regards to indigenous species, regulation is not perceived as being necessary (as long as the animals do not fall into the endangered or threatened categories). The distinction would also relieve zoos of the problems involved in possessing and transporting certain animals within the United States. Any surplus of a particular species could be sold or transferred without the administrative tangle involved in present procedures.\textsuperscript{166} The vagueness of §201(3), however, presents problems. What is it about the “size, nature or other characteristics” of an animal that makes it safe to keep as a household pet? The overall difficulty with this distinction is that it excludes many animals from regulation of the Zoo Control Board. For example, roadside exhibitions of indigenous animals would be exempt from regulation. This Subsection indicates that many concessions have been made to zoo directors and others dealing in animals.

One of the major strengths of the new zoo bill is that it expressly defines the exhibitions covered by its provisions. The term “captivity” does not mean only confinement within a cage, pen, or enclosure, but any time an animal “has its movement restricted as a result of any humanly designed device . . . .”\textsuperscript{169} Consequently, the “cageless” zoos, such as Lion Country Safari, come under the ambit of the bill. A “zoo” is defined as “any captive collection of one or more specimens of any zoological animal for any purpose whatsoever.”\textsuperscript{171} Three types of exhibitions covered by the bill’s regulations are the “zoological park,” the “zoological research facility,” and the “zoological menagerie.” A “zoological park” is any zoo at a permanent location which exhibits species to the public and holds

\textsuperscript{166} See text at notes 61-113, supra.
\textsuperscript{169} H.R.6631, 94th Cong., 1st Sess. §3(3)(B) (1975).
\textsuperscript{171} Id., §3(9).
more than two hundred animals in its collection. A zoological research facility means "any zoo maintained primarily for research purposes and which is not open to the general public." The term "zoological menagerie" means any zoo which:

(A) exhibits zoological animals to the general public and which travels from State to State to so exhibit or which has no permanent location;
(B) has fewer than two hundred specimens of zoological wildlife or does not have on its staff a full time zoological curator licensed under section 221;
(C) is not open to the general public and which provides trained or conditioned zoological animals for use in movies, television programs, or shows of any kind; or
(D) has one or more animals on exhibit to the public at a location within one mile of a public highway; and

(I) charges the public a fee for admission to the exhibit
(II) solicits donations at the exhibit from the public, or
(III) uses the exhibit as a means of attracting the public to patronize any commercial enterprise operated in the vicinity of the exhibit.

Thus, facilities from a very large zoological garden to a circus to a roadside zoo to a research facility fall into categories of exhibitions subject to regulation by the Zoo Control Board, as long as they exhibit zoological animals.

As in Dingell's previous bill, the broad scope of this bill regarding exhibitions regulated has caused concern among zoo professionals and researchers. The fact that H.R.6631 very clearly seeks to regulate research facilities could create serious problems in Congress. The breadth of the provisions indicates that this bill might seek to regulate any facility which has animals, instead of focusing strictly on zoological exhibitions. The inclusion of these operations within H.R.6631, however, is advisable in order to provide the most comprehensive protection possible for the animals involved.

While the composition of the Federal Zoo Control Board remains the same in H.R.6631 as it was in the previous legislation, the membership of the Advisory Committee has been revised. The Committee of Technical Advisors is composed of twelve individuals: four veterinarians, four licensed zoo curators with special expertise in

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171 Id., §3(17).
172 Id., §3(15).
173 Id., §3(16).
174 Steele, supra note 151; Pressman, supra note 12.
terrestrial mammals, marine mammals, birds, reptiles, amphibians, or fish, two field zoologists, and two ethologists. Although the composition of this committee is an improvement, the group is still heavily weighted toward zoo professionals, with seven out of the twelve being formally associated with zoos.

H.R.6631 also provides for the regulation of certain zoo personnel, a subject not covered either in the Whitehurst/Hatfield legislation or in Dingell’s previous effort. Section 221(a) authorizes the Board to prescribe standards which any individual must meet in order to be licensed by the Board as a zoological curator, zoological dealer, zoological hobbyist, or zoological technician. Licensing regulations will include requirements with respect to education, experience, and competence as demonstrated by examination, including knowledge of captive care of specified categories of zoological animals, competence in providing proper care and maintenance, professional competence in the overall administration of zoological parks, and professional competence in providing proper care and maintenance in the transportation of such animals. Any person securing a license shall be subject to certain terms and conditions including specification of the classes of animals which the individual is capable of providing care and maintenance for, and those animals which the licensee is authorized to buy, sell, trade, or transport. A maximum fee of $100 must be paid to the Board. The bill also provides for revocation of licenses in the event that an individual is assessed a civil penalty for violating any local, state, or federal law enacted to prevent cruelty to animals or to protect or conserve wildlife or is fined or imprisoned for breaking such laws. The Board is also empowered to revoke a license if, after an agency hearing, it determines that such a person has performed incompetently the permitted functions.

Certain zoo officials have complained about these licensing procedures for zoo personnel. They argue that many highly competent zoo directors and curators have had no formal education and, depending

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174 Id., §103(a)(1)-(4).
175 These seven would be the two veterinarians who had practiced at zoological parks, the four licensed curators, and the one veterinarian who had practiced as a veterinary officer for an oceanarium.
177 Id., §221(a)(2).
178 Id., §221(e).
179 Id., §221(f)(1).
180 Id., §222(a)(1),(2).
181 Id., §222(a)(3).
on the standards issued by the Board, may not be able to pass an examination. Zoo administrators also decry interference from the federal government in regulating their own employees. Proponents, however, argue that high quality care for zoo animals requires well-trained personnel.

Requirements that must be included in the operating standards promulgated by the Board are more specific in H.R.6631. Regulations must require that:

(A) each zoological menagerie, zoological park, and zoological research facility must have on its staff a doctor of veterinary medicine or be a party to a contractual agreement under which a doctor of veterinary medicine observes and treats the animal inventory at least once a week,

(B) each zoological park must have at least one zoological curator employed on a full time basis in a supervisory position, and

(C) each zoological menagerie must be a party to a contractual agreement under which a zoological curator consults not less than one day each month with the menagerie regarding its operation.

Zoo directors have lodged complaints about the annual licensing fees that would be imposed by this bill. The maximum charge would be $1000, and zoo administrators argue that this fee would add to their overwhelming financial burden. Licensing fees for zoo personnel would also contribute to the fiscal drain on these institutions. These figures, however, represent the highest amount that could be levied, and with the possibility of securing federal loans and grants, these exhibitions might be in a better financial position to pay any charges imposed.

Civil penalties for violations of operating standards involve the same procedures as the prior legislation. Criminal sanctions are laid out more specifically, and both types of penalties apply to "persons" as defined by §3(6) to include individuals, private entities, federal agencies, States, and localities, or any officers or agents thereof.

H.R.6631 appears to give the Board an important role in regulating importation and transportation of wild species. The previous

184 Pressman, supra note 12.
185 Tougher, More Restrictive Zoo Control Bill to be Introduced, ZOOACTION, March, 1975, at 1.
187 ZOOACTION, supra note 185.
189 Id., §231.
190 Id., §232.
legislation did not grant this authority, impliedly indicating that any such control remained with the federal agencies concerned with the implementation of prior protective legislation.\textsuperscript{191} H.R.6631 also explicitly provides for coordination with other environmental laws.\textsuperscript{192} While Dingell's bill is not to be construed as superseding or limiting the provisions of the Marine Mammal Protection Act of 1972 or the Endangered Species Act of 1973 as a whole, any provision of H.R.6631 regarding transportation and maintenance of zoological animals\textsuperscript{193} within the United States would supersede pertinent provisions in those Acts.\textsuperscript{194} In case of conflict with respect to the maintenance of a zoological animal, the provisions of the Dingell bill would supersede the Animal Welfare Act.\textsuperscript{195} Furthermore, licenses or registrations granted pursuant to the AWA will not exempt a person from licensing under Title II of H.R.6631. With regard to the Lacey Act,\textsuperscript{196} the provisions of the Dingell bill would apply should a conflict exist, except where an individual is required under both Acts to secure a permit for the transportation of any animal, a person obtaining a license pursuant to the Lacey Act would be exempt from similar provision of H.R.6631.\textsuperscript{197} No provisions in the bill supersede or limit the duties of the Secretary of Agriculture under any animal quarantine law or the functions of the Secretary of the Treasury under the Tariff Act of 1930.\textsuperscript{198}

The goal of these provisions is a greater degree of coordination among the various relevant federal laws and the agencies charged with the duty of enforcing them. The Federal Zoological Control Board is given priority in regulating transportation and maintenance of zoo animals within the United States, subject to any quarantine laws administered by the Department of Agriculture. All other provisions of other protective legislation and regulations issued thereunder apparently remain operative.\textsuperscript{199} This coordination, if it is achieved, ought to alleviate the bureaucratic difficulties about which many zoo directors complain,\textsuperscript{200} and hopefully provide

\textsuperscript{192} H.R.6631, 94th Cong., 1st Sess. §204—Coordination with Other Laws (1975).
\textsuperscript{193} For definition of "zoological animal," see text at notes 167-68, supra.
\textsuperscript{194} H.R.6631, 94th Cong., 1st Sess. §204(b) (1975).
\textsuperscript{195} Id., §204(c).
\textsuperscript{197} H.R.6631, 94th Cong., 1st Sess. §204(d) (1975).
\textsuperscript{198} Id., §204(e)(2), (f) respectively.
\textsuperscript{199} Id., §204. As there have been no committee hearings on H.R.6631 the degree of coordination projected by the author and supporters of this bill is not clear.
\textsuperscript{200} Braker, supra note 105.
for more efficient procedures. The problem of duplicative regulatory authority over areas and activities already governed by existing federal agencies remains, but given the bill’s commitment to uniformity and concerted action, the problem may not be major.

Title IV, authorizing funding of regulatory procedures, administrative expenses, and technical and project assistance calls for a sum of $3,000,000 for the fiscal year 1977 and for each of the next four fiscal years,\(^{201}\) as well as such sums as may be necessary for loans to various zoological institutions.\(^{202}\) One of the greatest benefits offered by this legislation is a comprehensive, federally funded effort to improve conditions in zoos and aquaria across the country, which will benefit both animals and humans. Financing from the federal government is requisite for such a program, since zoos are desperate for financial support. As previously discussed, large amounts of money will be needed for many, if not all, qualified exhibitors to meet and maintain operating standards set by the Board.\(^{203}\) While the bill authorizes $3,000,000 for grants and loans, Congress must appropriate the funds to make this program feasible. Without federal monies, very few zoos may qualify for licenses. The result would be that many zoos run by imaginative administrators would be put out of business for no other reason than lack of funds. In lieu of employing the standard authorization-appropriation procedure to secure money, the bill could authorize that funds be set aside, covering the maximum amount to be allotted under the bill. Under this approach when the Board approved a project or an application for grants for research or personnel training, such approval would be deemed a contractual obligation of the Congress for the payment of the government’s proportionate contribution.\(^{204}\) In that way, zoos and aquaria receiving Board approval would have a legally binding right to the monies authorized. The chances of such a provision being included in the bill, however, appear very slim.

Some persons, not all of them zoo directors, object to any federal zoo bill as an unwanted incursion of the federal government. Zoos and aquaria, they argue, are traditionally matters of local concern,

\(^{201}\) H.R.6631, 94th Cong., 1st Sess. §401(b) (1975).

\(^{202}\) Id., §401(c).

\(^{203}\) See text at notes 31-44.

\(^{204}\) One example of legislation in which federal funds were obligated under the Contract Clause is the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. §1283 (a)(Supp. II, 1972).
subject to local and state control. On the other hand, federal regulation may be necessary to effectuate any meaningful improvement in the maintenance and operation of these institutions. First, the desire for uniformity of standards and enforcement procedures requires federal supervision. This policy coincides with that of several pieces of environmental legislation in which federal agencies take on roles as overseers, prescribing standards and rules that can be implemented on the local level. States are often allowed to establish regulatory plans of their own as long as these regulations are at least as stringent as federal standards. Secondly, the subject of this protective legislation is zoo animals—species that are intimately involved in commerce due to procedures employed in obtaining, transporting, and transferring them. The problem is clearly interstate in scope; thus, it is fitting that Congress exercise its authority under the Commerce Clause to enact federal laws to govern the health and welfare of these animals. Finally, over the past several years, federal legislators have recognized a trustee responsibility to endangered and threatened species. This obligation has been undertaken as a nation, in the context of a growing international effort to preserve and perpetuate wildlife all over the world. If the regulation and protection of zoo animals, many of which fall into the “endangered” and “threatened” categories, is left to individual states and localities with no assurance of affirmative action, it would be a denial of our national commitment.

The three zoo bills thus far proposed represent serious, well-intentioned attempts on the part of legislators and proponents of zoological institutions to design a regulatory scheme which will ameliorate the desperate situation faced by zoos and aquaria across the country. Prospects for the passage of H.R.663 (or similar legislation) are presently unclear. One of its major obstacles is that certain professional zoo organizations and animal welfare associations appear to be misinterpreting its provisions. Support comes from the more moderate animal associations and zoo professionals,
who view the bill as providing a much needed stimulus to improve and sustain these institutions. These bills, by setting up a federal regulatory program and promising the opportunity to receive much needed federal financial support, are looked on by supporters as the only means whereby the zoological institution can be preserved.\textsuperscript{298} If H.R.6631 is defeated, along with all other attempts to pass effective legislation, animals confined in zoos now will continue to suffer the degradations of substandard environments. Clearly something has to be done on a political level to instigate any meaningful improvement.

\textbf{Conclusion}

The best of the modern zoological gardens are operated by forward thinking administrators and are dedicated to providing an educational experience for the viewing public as well as contributing to the preservation of wildlife through breeding programs. Research designed to improve conditions for the animals has the potential to further these goals immensely. At the moment, however, most zoos do not have the resources to realize their promise. These financially troubled institutions must grapple with rising operating costs, inadequate facilities badly needing renovation, and the problems inherent in the urban environment. The latest zoo bills attempt to address these and other problems. By establishing a federal board to promulgate standards and oversee the operation and maintenance of these exhibitions, zoos worth keeping can hopefully receive sufficient support both in terms of technical advice and financial assistance to make meaningful improvements in their facilities. Those roadside zoos and menageries which contain substandard conditions will, and should, be eliminated.

Underlying all attempts at zoo regulation is the fundamental question of whether we should continue to have zoos at all. Beyond any policy statements establishing a commitment to provide adequately for the health and welfare of captive animals, we first must decide whether wildlife should be confined for human entertainment and education.

Certainly poorly maintained and operated zoos cannot provide a meaningful educational experience for the viewing public. Animals which exhibit neurotic behavior as a result of a stultifying environ-
ment are not true examples of wildlife. Renovation and progressive techniques are necessary in order to avoid the destructive results of substandard environments. Confinement, in and of itself, is not as "unnatural" as it may seem. Ethological studies have shown that animals in the wild do not roam endlessly. They remain in very well-defined areas—restricted by their own self-imposed territorial instincts. Wild animals suffer from parasitic afflications and are engaged in a constant struggle for food, in continual competition with members of their own and other species. Scientific knowledge in the field of animal behavior indicates that spacious, biologically, and behaviorally viable habitats can provide wildlife with a "happy" existence.

Whether zoo reform can be achieved in an urban environment is another question. Land is at a premium, rendering expansion virtually impossible. Vandalism could be alleviated as a major problem by providing greater protection. Other problems inherent in the urban environment are not so easily curable—the most pervasive being pollution. Animals feel the effects of air and noise pollution. For example, in 1971, researchers discovered that a large number of animals at the Staten Island Zoo were suffering from lead poisoning attributed to atmospheric contamination. One can logically argue that wildlife has a right not to be subjected to so detrimental an environment. Zoos could be banned within city limits and established in outlying safer areas.

See text accompanying notes 45-49, supra.

G. Steele, text of prepared speech presented before the Fresno Zoological Society, Fresno, California, July 22, 1975, at 9.

Almost all animals in the wild are parasitized and diseased . . . The majority of animals in the wild never reach maturity and . . . those who do very seldom live past the prime of life . . . All animals in the wild are in a perpetual search for food . . . in a constant state of alertness in fear of predation or in competition by their peers.

Id. at 10.

Hediger, supra note 1.

R. J. Bazell, Lead Poisoning: Zoo Animals May be the First Victims, 173 Science 130-31 (July 9, 1971). Bazell also reported that a similar phenomenon appeared in Bronx Zoo animals, although fewer species were affected.

Biologists have determined that various kinds of pollution have detrimental effects on animals, plants and human beings. See generally, R.W. Ferenbaugh, Acid Rain: Biological Effects and Implications, 4 Env. Aff. 745 (1975). Such scientific knowledge raises the question as to whether subjecting an animal to a polluted environment would constitute cruelty as defined by state anti-cruelty statutes.

Restricting zoos to outlying, clean areas might be challenged as discriminating against urban lower classes, as they would be less able to afford to travel to zoos in order to take advantage of them. This problem is not insurmountable as accessibility could be achieved by funding public transportation to reach these places. As in so many situations involving conflicting interests, a balance ought to be struck.
Zoos today face a constant battle between what is best for the animals and that which will provide most for the human visitors. By terminating the abuse of zoo animals and providing them with the greatest possible degree of care and the most beneficial environment possible, these institutions will then serve both wildlife and the viewing public in a truly equitable manner. The animals will enjoy a biologically sound environment, and the public, by viewing physically and psychologically healthy species, will at last receive a truly meaningful educational experience.