

# THE ILL-FATED HISTORY OF ANIMAL PROTECTION LAWS: WHY CONGRESS MUST CREATE AN ANIMAL PROTECTION AGENCY

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*Over the years, the United States Congress has passed several federal laws with the intention of protecting animals from being subjected to inhumane treatment by humans. Such laws have great potential to create positive change for animals, but all of these laws have been delegated to inappropriate government agencies for oversight and enforcement. It is time to finally remove the impossible task placed upon these federal agencies—who have been asked to carry out their own stated mandates while also promulgating rules that effectuate animal protection laws in conflict with those same mandates—by creating a federal Animal Protection Agency with the sole purpose of ensuring that animal protection laws passed by Congress do, in fact, protect animals.*

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## I. INTRODUCTION

So-called ‘hunters’ kill wolves by running the animals down with snowmobiles, farmers send baby male chicks down conveyor belts to be dropped into grinders alive, and zoos keep arctic polar bears captive for display despite being located in Mediterranean climates—all of which has been interpreted as legal.<sup>1</sup> In light of the treatment of animals deemed acceptable under the law, one would hope that illegal actions against animals are taken seriously and violators of such laws are brought to justice. Instead, however, an agency permissiveness persists with regard to illegal harms to animals, like killing animals protected under the Endangered Species Act, transporting pigs without allowing them adequate food, water, and rest in violation of the 28-Hour Law, or keeping orcas captive in shallow tanks that violate the Animal Welfare Act.<sup>2</sup> Advocates fought lengthy, arduous battles to get such laws enacted,<sup>3</sup> but these efforts fall flat when agencies that are either unwilling or unable refuse to enforce the laws, rendering these animal legal protections ineffective.

Aptly titled, the Animal Welfare Act (AWA) contains numerous provisions that should ensure the protection of a plethora of species, whether these animals find themselves in a pet store window, a lab cage,

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<sup>1</sup> Kitty Block & Sara Amundson, *Horrific Wolf Killing in Wyoming Shows Urgent Need for Increased Protections*, U.S. HUMANE SOC’Y (Apr. 9, 2024), <https://www.humanesociety.org/blog/horrific-wolf-killing-wyoming-shows-urgent-need-increased-protections> (accessed Sept. 29, 2024); *Chick Culling: What Is It, What Are the Methods & Is It Cruel?*, FARM FORWARD, <https://www.farmforward.com/issues/animal-welfare/chick-culling/> (accessed Sept. 29, 2024); BORN FREE, BORN TO ROAM: THE SUFFERING OF POLAR BEARS IN ZOOS 8–10 (2023), <https://www.bornfree.org.uk/storage/media/content/files/Publications/Born%20to%20Roam%20-%20The%20Suffering%20of%20Polar%20Bears%20in%20Zoos.pdf> (accessed Sept. 29, 2024).

<sup>2</sup> Benji Jones, *The Ridiculously Stupid Reason the US is Letting Animals Spiral Toward Oblivion*, VOX (Dec. 18, 2023, 4:30 AM), <https://www.vox.com/down-to-earth/2023/12/18/23989030/endangered-species-act-explained-environment-biodiversity-extinction> (accessed Sept. 29, 2024); ANIMAL WELFARE INST., A REVIEW: THE TWENTY-EIGHT HOUR LAW AND ITS ENFORCEMENT 4 (2020), <https://awionline.org/sites/default/files/uploads/documents/20TwentyEightHourLawReport.pdf> (accessed Sept. 29, 2024); AWI Quarterly, *OIG Agrees: Lolita’s Tank is Too Small*, ANIMAL WELFARE INST. (2017), <https://awionline.org/awi-quarterly/fall-2017/oig-agrees-lolitas-tank-too-small> (accessed Sept. 29, 2024).

<sup>3</sup> See Janet M. Davis, *The History of Animal Protection in the United States*, ORG. OF AM. HISTORIANS (Nov. 2, 2015), <https://www.oah.org/tah/november-2/the-history-of-animal-protection-in-the-united-states/> (accessed Sept. 29, 2024) (describing the work of animal advocates since 1873 and the steps they took to get legislation enacted).

or an aquarium tank. But as social justice advocates know, a law is only as effective as its enforcement; in the case of the AWA, that enforcement has led to limited improvement of animal welfare in the United States.<sup>4</sup> Due to similarly inadequate oversight, other animal protection laws including the Free-Roaming Horses and Burros Act (WHBA) and the Marine Mammal Protection Act (MMPA) have also failed to reach their full potential in effectuating positive change for animals.<sup>5</sup> This failure is why the executive branch should create a new agency modeled after the Environmental Protection Agency (EPA) to promulgate and enforce animal regulations.

President Nixon originally created the Environmental Protection Agency (EPA) to consolidate existing environmental laws under one agency and address issues like air and water pollution and disposal of hazardous waste, streamlining existing congressional environmental initiatives.<sup>6</sup> The EPA's administration expanded over time to include new environmental legislation including the Clean Air Act, the Resource Conservation and Recovery Act, and the Safe Drinking Water Act.<sup>7</sup> Whether or not the EPA's creation encouraged the passage of these additional congressional acts, the agency was perfectly situated to implement subsequent environmental protection laws.

The AWA did not have such a fortuitous inauguration. Instead of creating a distinct agency to promulgate regulations for the AWA, the executive branch tasked its implementation to the United States Department of Agriculture (USDA), an existing agency whose purpose includes promoting agricultural production and keeping America's farmers and ranchers in business.<sup>8</sup> Promoting the use and slaughter of animals for human consumption is diametrically opposed to promoting animal welfare, which creates a conflict of interest that makes the USDA's oversight of the AWA inappropriate.

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<sup>4</sup> See Nancy Blaney, *How the USDA Fails to Enforce the Animal Welfare Act*, INDEP. MEDIA INST. (Aug. 25, 2022), <https://independentmediainstitute.org/2022/08/25/how-the-usda-fails-to-enforce-the-animal-welfare-act/> (accessed Sept. 29, 2024) (describing the lack of enforcement of the AWA and the deterioration of AWA inspections and enforcement during the first Trump Administration).

<sup>5</sup> See *The Problem*, AM. WILD HORSE CONSERVATION (2024), <https://americanwildhorse.org/problem> (accessed Sept. 29, 2024) (describing the ineffective and allegedly corrupt implementation of the Free-Roaming Horses and Burros Act by the Bureau of Land Management); Nathan Strout, *Conservation Groups Sue US Government To Enforce Marine Mammal Protections on Imported Seafood*, SEAFOOD SOURCE (Aug. 12, 2024), <https://www.seafoodsource.com/news/environment-sustainability/conservation-groups-sue-us-government-to-enforce-marine-mammal-protections-on-imported-seafood> (accessed Sept. 29, 2024).

<sup>6</sup> *The Origins of EPA*, EPA (updated May 31, 2024), <https://www.epa.gov/history/origins-epa> (accessed Sept. 29, 2024).

<sup>7</sup> *Laws and Executive Orders*, EPA (updated June 13, 2024), <https://www.epa.gov/laws-regulations/laws-and-executive-orders> (accessed Sept. 29, 2024).

<sup>8</sup> *Animal Welfare Act*, USDA, <https://www.nal.usda.gov/animal-health-and-welfare/animal-welfare-act> (accessed Sept. 29, 2024); *Our Agency*, USDA, <https://www.usda.gov/our-agency> (accessed Sept. 29, 2024).

This paper proposes that to properly carry out the mandates of federal animal protection legislation like the AWA, the WHBA, and the MMPA, the executive branch should create a new agency to oversee its provisions: the Animal Protection Agency (APA).<sup>9</sup> The APA's structure would include specialized departments to oversee animals used in 1) research; 2) sports; 3) entertainment; 4) fur farming; 5) animal agriculture; 6) captive wildlife; 7) wildlife in the wild; 8) species adaption to climate change; 9) companion animals; and 10) aquatic animals. Creating a new agency will encourage legislators to write animal-related laws that center the animals themselves, without being limited by the conflicting considerations of how non-animal-focused agencies will enforce animal-related laws.

Section II discusses three examples of the administrative history of government agencies over animal-related legislation: 1) the USDA's administration of the AWA; 2) the Bureau of Land Management's (BLM) administration of the WHBA; and 3) both the National Marine Fisheries Service's (NMFS) and the Fish and Wildlife Service's (FWS) administration of the MMPA. Section III discusses the successes and failures of the EPA in executing the environmental acts of Congress, providing examples of both effective tactics and pitfalls to avoid when creating the APA. Section IV discusses why the time is ripe for this new agency to be proposed and successfully established. Section V discusses the potential for a new agency to resolve many of the difficulties faced by agencies currently tasked with implementing animal welfare legislation, which federal laws would be covered by the new agency, and how this agency should be created and structured.

Removing oversight of animal protection laws from ill-suited government agencies and placing them with an Animal Protection Agency will ensure that laws created to protect animals will, in fact, protect animals.

## II. THREE EXAMPLES OF MISMATCHED LAWS & AGENCIES

While there are logical connections between each piece of animal welfare legislation and the agencies originally tasked with their oversight, these assignments also create a conflict of interest for the agencies between enforcing the new animal protections and carrying out their proper duties under their agency mandates. This section will discuss those conflicts of interest using the AWA, the WHBA, and the MMPA as case studies to exemplify the impossible position agencies currently find themselves in, and the need for a new agency to house these animal protection laws under.

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<sup>9</sup> As of 1998, there were seventy-one federal statutes that included provisions related to animal protection. See HENRY COHEN, CONG. RSCH. SERV., 94-731 BRIEF SUMMARIES OF FEDERAL ANIMAL PROTECTION STATUTES (1998) (listing the seventy-one federal statutes including provisions related to animal protections in 1998).

### A. USDA & THE ANIMAL WELFARE ACT

When the Animal Welfare Act was passed in 1966, the USDA was tasked with its oversight.<sup>10</sup> However, as this section will discuss, the nature of the USDA's mandated oversight of animals is not conducive to an additional task of protecting animal welfare, which makes this an inappropriate and ineffective match.

#### i. History of the AWA

In 1965, Democratic Representative Joseph Resnick of New York introduced the Laboratory Animal Welfare bill to Congress in response to the highly-publicized theft of a family's pet dalmatian named Pepper, who was sold to a research facility where she died.<sup>11</sup> The Act, the purpose of which was "to protect the owners of dogs and cats from theft of such pets, to prevent the sale or use of dogs and cats which have been stolen, and to insure that certain animals intended for use in research facilities are provided humane care and treatment," was passed on August 24, 1966.<sup>12</sup> The six species covered under the Act were dogs, cats, nonhuman primates, guinea pigs, hamsters, and rabbits.<sup>13</sup> The Act authorized the Secretary of Agriculture to regulate the transport, sale, and handling of animals related to research or "other purposes."<sup>14</sup>

On Christmas Eve in 1970, the Act was amended: the new Animal Welfare Act expanded protections to cover all warm-blooded animals used for research, testing, or experimentation to address the sentiment that "small helpless creatures deserve the care and protection of a strong and enlightened public."<sup>15</sup> Aside from excluding cold-blooded animals, the amendment also explicitly excluded horses and farmed animals not used in research.<sup>16</sup> These exclusions still exist today, and while public sentiment tends to favor at least the notion of humane treatment of horses, farmed animals do not enjoy that same benefit, which can result in blatant acts of animal cruelty (e.g., use of gestation crates and battery cages) that are not addressable by the AWA.<sup>17</sup>

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<sup>10</sup> *Animal Welfare Act*, *supra* note 8.

<sup>11</sup> *Animal Welfare Act Timeline*, USDA, <https://www.nal.usda.gov/collections/exhibits/awahistory/list> (accessed Oct. 8, 2024).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Animal Welfare Act of 1970*, Pub. L. No. 91-579, 84 Stat. 1560, 1561 (1970); *1970 Amendments to AWA, House Report No. 91-1651*, ANIMAL LEGAL & HIST. CTR. (July 2011), <https://www.animallaw.info/statute/us-awa-1970-amendments-awa-house-report-no-91-1651> (accessed Sept. 26, 2024).

<sup>16</sup> *Animal Welfare Act of 1970*, Pub. L. No. 91-579, 84 Stat. 1560, 1561 (1970).

<sup>17</sup> *The Animal Welfare Act: What It Does and Who It Protects*, THE HUMANE LEAGUE (Jan. 20, 2021), <https://thehumaneleague.org/article/animal-welfare-act> (accessed Sept. 26, 2024).

The 1970 amendment also empowered the USDA to regulate exhibitors like zoos and circuses regarding their treatment of animals.<sup>18</sup> Although these provisions have been added, their effectiveness has come under scrutiny. The Animal Legal & Historical Center claims that for animals in zoos, “the current laws lack effective ... enforcement to ensure the welfare of animals kept in captivity.”<sup>19</sup> The MSPCA says that violations of the AWA against animals in circuses are also not enforced effectively and points out that inherently cruel training instruments are allowed under the AWA.<sup>20</sup>

In 1976, the AWA was amended to include protection for covered animals during transport via all forms of transportation and added a provision against interstate and foreign transport of animals to be used for animal fighting.<sup>21</sup> Later amendments in 2007 strengthened prohibitions of activities surrounding animal fighting.<sup>22</sup> The 1985 amendment strengthened provisions for laboratory animals which required certain enrichment for animals, suggested using less painful testing procedures, and established Institutional Animal Care and Use Committees (IACUCs).<sup>23</sup> Each research facility is required to have an IACUC, which is made up of at least one veterinarian, one practicing scientist with animal research experience, one nonscientific member (typically a lawyer or member of the clergy), one member who is unaffiliated with the research institution, and one additional member.<sup>24</sup> IACUC members<sup>25</sup> are required to inspect their institutions twice a year, focusing on animal treatment and the state of the facilities.<sup>26</sup> The committee is also required to investigate concerns for animal welfare, whether raised by institution employees or community members.<sup>27</sup>

Upon creation, the AWA was delegated to the USDA,<sup>28</sup> presumably because the care of animals seemed best suited to the only department experienced in dealing with these kinds of animal issues. With each amendment, the USDA has remained the administering government agency.

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<sup>18</sup> Henry Cohen, *The Animal Welfare Act*, 2 J. of Animal L. 13,13 (2006).

<sup>19</sup> Kali S. Grech, *Brief Summary of Laws Affecting Zoos*, ANIMAL LEGAL & HIST. CTR. (2004), <https://www.animallaw.info/intro/laws-affecting-zoos> (accessed Sept. 26, 2024).

<sup>20</sup> See *Traveling Exotic Animal Acts*, MSPCA-ANGELL, [https://www.mspca.org/animal\\_protection/circus-animal-welfare/](https://www.mspca.org/animal_protection/circus-animal-welfare/) (accessed Sept. 26, 2024) (e.g., bullhooks, electric prods, whips, and chains).

<sup>21</sup> Cohen, *supra* note 18, at 17.

<sup>22</sup> *Id.* at 22.

<sup>23</sup> *Id.* at 17; *Animal Welfare Act Timeline*, *supra* note 11.

<sup>24</sup> 9 C.F.R. §§ 2.30–31 (1989); *The Institutional Animal Care and Use Committee*, NAT'L INST. OF HEALTH, <https://olaw.nih.gov/resources/tutorial/iacuc.htm> (accessed Sept. 26, 2024).

<sup>25</sup> Notably, an IACUC can satisfy membership requirements without including even one member whose primary concern is the wellbeing of animals.

<sup>26</sup> *The Institutional Animal Care and Use Committee*, *supra* note 24.

<sup>27</sup> *Id.*

<sup>28</sup> *Animal Welfare Act*, *supra* note 8.

*ii.* USDA Administration of the AWA

The USDA's administration of the AWA has a long and contentious past. The mismatch between the agency and the law has created a struggle between the goals of protecting human use of animals and protecting the animals themselves. This struggle has led to an ongoing string of litigation as animal welfare proponents work to gain the full protection of the law for animals.

Initial objections to the agency's administration arose when the Animal and Plant Health Inspection Service (APHIS), under the umbrella of the USDA, construed "warm-blooded animal" to exclude birds, rats, and mice despite the large percentage of animal research and testing conducted on these species.<sup>29</sup> The exclusion of such animals was beneficial to the research and testing community, which likely accounts for the non-scientific classification.<sup>30</sup> Animal Legal Defense Fund (ALDF) and The Humane Society of the United States (HSUS) filed a rulemaking petition with the USDA to challenge the exclusion of birds, rats, and mice.<sup>31</sup> ALDF then sued the USDA to promulgate regulations to implement the 1985 AWA Amendments because the department was three years late in doing so.<sup>32</sup> When the regulations were finally promulgated, still excluding birds, rats, and mice, ALDF filed suit against the USDA, challenging the regulations as arbitrary and capricious.<sup>33</sup> Judge Richey granted ALDF's motion for summary judgment, stating that if the purpose of the AWA is to ensure the humane treatment of animals used in research, excluding 95% of those animals would not serve the purpose.<sup>34</sup> Judge Richey's opinion included an assessment of the USDA's record of enforcing the AWA when concerns about animal welfare arise: "... as past experience indicates, [the USDA] will do little or nothing."<sup>35</sup> On appeal, the D.C. Circuit vacated, holding that the USDA had met its statutory requirements.<sup>36</sup>

The AWA's 1985 amendments also included new enrichment provisions, which the USDA failed to implement.<sup>37</sup> ALDF brought suit against the USDA for violating the Administrative Procedure Act by

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<sup>29</sup> Cohen, *supra* note 18.

<sup>30</sup> D. Smith, *Rats, Mice and Birds Excluded from Animal Welfare Act*, 33 AM. PSYCH. ASS'N 14 (July/Aug. 2002), <https://www.apa.org/monitor/julaug02/rats> (accessed Sept. 29, 2024) (research groups claiming that "USDA's regulation of rodents and birds would have prohibitively increased the cost of routine animal care and maintenance").

<sup>31</sup> *Animal Legal Def. Fund v. Madigan*, 781 F. Supp. 797, 799 (D.D.C. 1992).

<sup>32</sup> Joyce Tischler et al., *Animal Welfare Act: Related Litigation and Other Efforts*, 25 ANIMAL L. REV. 225, 229–30 (2019); *Animal Legal Def. Fund v. Espy*, 23 F.3d 496, 497–98 (D.C. Cir. 1994).

<sup>33</sup> *Animal Legal Def. Fund v. Yeutter*, 760 F. Supp. 923, 924, 928 (D.D.C. 1991).

<sup>34</sup> *Animal Legal Def. Fund v. Glickman*, 943 F. Supp. 44, 49 (D.D.C. 1996); Tischler et al., *supra* note 32, at 227–28.

<sup>35</sup> *Glickman*, 943 F. Supp. at 50.

<sup>36</sup> *Animal Legal Def. Fund v. Glickman*, 204 F.3d 229, 230–31 (D.C. Cir. 2000).

<sup>37</sup> Tischler et al., *supra* note 32, at 229.

unreasonably delaying agency action.<sup>38</sup> The USDA responded by issuing regulations mandating larger cages and social housing, but the industry fought the regulations and convinced the USDA to step aside and allow researchers to determine the best conditions for primate welfare, which ultimately resulted in the USDA promulgating regulations that only required each research institution to develop a plan for “how it would promote the psychological well-being of its primates.”<sup>39</sup> When ALDF brought a case to challenge these regulations, which was dismissed for lack of standing, the judge’s opinion began with the derisive statement: “This appeal is but the latest chapter in the ongoing saga of Animal Legal Defense Fund, Inc.’s effort to enlist the courts in its campaign to influence USDA’s administration of the Animal Welfare Act.”<sup>40</sup> Eight years later, after continued litigation and frustration voiced by USDA inspectors, the USDA finally acknowledged in a report that criticisms of the regulations were valid.<sup>41</sup>

Over the years, many animal proponents have filed lawsuits against the USDA on behalf of animals, including a string of litigation brought by People for the Ethical Treatment of Animals against the USDA for excluding birds from the AWA<sup>42</sup> and ALDF’s suit against the USDA for renewing an exhibitor’s license despite AWA violations against an orca named Lolita.<sup>43</sup> The long history of litigation against the USDA demonstrates efforts to demand that the USDA carry out its responsibility of administering the AWA, and there is USDA evidence that these lawsuits do not represent outliers: in fact, they represent the norm.

Inspectors and directors at the USDA have repeatedly stated on the record that the AWA is not being implemented and that the APHIS is not making the best use of their limited resources to protect animals.<sup>44</sup> Another more suitable agency is necessary to ensure that businesses and individuals who use animals either comply with the AWA or face an appropriate penalty.

### B. *BLM & THE WILD HORSES AND BURROS ACT*

Wild horses and burros are one of the country’s last vestiges of the American West ideal, with herds still viewable to the public in ten of the

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<sup>38</sup> *Id.* at 225, 230.

<sup>39</sup> *Id.* at 231.

<sup>40</sup> *Animal Legal Def. Fund v. Glickman*, 130 F.3d 464, 466 (D.C. Cir. 1997).

<sup>41</sup> *Tischler et al.*, *supra* note 32, at 233.

<sup>42</sup> *PETA v. USDA*, 7 F. Supp. 3d 1 (D.C. Cir. 2014); *PETA v. USDA*, 60 F. Supp. 3d 14 (D.C. Cir. 2014); *PETA v. USDA*, 797 F.3d 1087 (D.C. Cir. 2015); *PETA v. USDA*, 194 F. Supp. 3d 404 (E.D.N.C. 2016); *PETA v. USDA & APHIS*, 918 F.3d 151 (D.C. Cir. 2019).

<sup>43</sup> *Animal Legal Def. Fund v. U.S. Dep’t of Agric.*, 789 F.3d 1206, 1209–10, 1212 (11th Cir. 2015). Lolita’s tank did not meet the size requirements set by the AWA for orcas.

<sup>44</sup> GIL H. HARDEN, USDA, AUDIT REPORT 33002-4-SF, ANIMAL AND PLANT HEALTH INSPECTION SERVICE ANIMAL CARE PROGRAM INSPECTIONS OF PROBLEMATIC DEALERS 1, 8, 17, 25, 36, 41 (2010).

western states.<sup>45</sup> But while their image is romanticized by the public, their very existence is denigrated by the livestock industry because the horses' and burros' habitat consists solely of public lands that ranchers prefer to use for grazing their cattle. This section will discuss the conflict between the BLM's duty to protect wild horses and burros and the agency's duty to protect the interests of the ranchers, and highlight why wild horses and burros need a separate agency to oversee the WHBA on their behalf.

*i.* History of the WHBA

Congress passed the Wild Free-Roaming Horses and Burros Act in 1971 to protect animals who were “fast disappearing from the American scene” from “capture, branding, harassment, or death.”<sup>46</sup> Ranchers, hunters and ‘mustangers’ who wanted to use the public lands exclusively for grazing their cattle had been rounding up wild horses and burros on public lands, hog-tying the animals, and eventually slaughtering them for fertilizer and chicken feed.<sup>47</sup> In 1950, Velma B. Johnston, otherwise known as Wild Horse Annie, witnessed the aftermath of a roundup in Reno, Nevada and began documenting the treatment of these animals and disseminating the evidence to the public at large.<sup>48</sup> Nevada passed the “Wild Horse Annie Act” in 1959 to prevent roundups using trucks and planes, and eventually the nationwide public outcry motivated Congress to unanimously pass the WHBA in 1971.<sup>49</sup> The WHBA placed all wild free-roaming horses and burros under the jurisdiction of the Secretary of the Interior, giving the BLM authority to protect and manage these animals “as components of the public lands” and the ability to designate public land ranges as sanctuaries.<sup>50</sup>

According to Mrs. Johnston, the fight to enact legislation was against “the domestic livestock industry, the target animal industry, and pet food manufacturers, and the Department of the Interior’s Bureau of Land Management... which looked upon the commercial harvesting of the animals as an expedient means of range clearance to make more forage potential available to the vested interest groups.”<sup>51</sup>

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<sup>45</sup> FAQ, AM. WILD HORSE CONSERVATION, <https://americanwildhorse.org/faq> (accessed Sept. 28, 2024).

<sup>46</sup> 16 U.S.C. §1331 (1971).

<sup>47</sup> *The Wild Horse Annie Act*, AM. WILD HORSE CAMPAIGN, <https://americanwildhorse-campaign.org/wild-horse-annie-act> (accessed Sept. 28, 2024); *Velma Johnston (Wild Horse Annie)*, WILD HORSE EDUC., <https://wildhorseeducation.org/velma-johnston-wild-horse-annie/> (accessed Sept. 28, 2024).

<sup>48</sup> *Velma Johnston (Wild Horse Annie)*, *supra* note 47.

<sup>49</sup> *Program History*, BUREAU OF LAND MGMT., <https://www.blm.gov/programs/wild-horse-and-burro/about-the-program/program-history> (accessed Sept. 28, 2024).

<sup>50</sup> 16 U.S.C. §§ 1332–1333 (1971).

<sup>51</sup> *Velma Johnston (Wild Horse Annie)*, *supra* note 47.

*ii.* BLM Administration of the WHBA

Initially, it may seem logical for the Bureau of Land Management to be tasked with enforcing the WHBA because the herds consist of wild animals living on public lands. However, this 'logic' comes under scrutiny upon a closer read of BLM's mission statement, which is "sustain[ing] the health, diversity, and productivity of public lands for the use and enjoyment of present and future generations."<sup>52</sup> BLM's mission statement does not explicitly mention the welfare of any animals living on these lands.<sup>53</sup> Further, sustaining the productivity of public lands for the use of present generations is in direct conflict with the welfare of wild animals; the focus under this item is protecting the use of lands for industrial grazing to prop up private commercial beef operations rather than the health and diversity of the plants and animals naturally living and depending upon the protection of the land.<sup>54</sup> The American Wild Horses Campaign asserts, "Under pressure from special interests, the federal agency has turned the law on its head, committing the very atrocities Congress sought to protect mustangs against."<sup>55</sup>

The WHBA mandates that its directives be carried out by the Secretary of the Interior through the BLM and the Secretary of Agriculture through the Forest Service, taking into consideration the recommendations of independent scientists.<sup>56</sup> In reality, "the BLM often works independently and inefficiently."<sup>57</sup> Under the direction of the BLM, the WHBA has largely been interpreted as a statute directing resource management. This statute could (and should) also be read as an animal welfare directive for the protection of wild animals from harassment, capture, branding, and death. Animal advocates and ranchers have asked the legal system to decide which of these approaches will prevail. The Colorado Wild Horse and Burro Coalition brought suits against the BLM to challenge the agency's proposed gathering of wild horses in violation of the WHBA.<sup>58</sup> The WHBA requires the BLM to maintain a current inventory of wild horses and burros to determine whether any area is overpopulated and, in such cases, allows the BLM to remove excess animals.<sup>59</sup> In this

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<sup>52</sup> *The Bureau of Land Management*, U.S. DEP'T OF THE INTERIOR, <https://www.blm.gov/> (accessed Sept. 28, 2024).

<sup>53</sup> *See id.* (stating that the Bureau of Land Management's mission is to sustain the health, diversity, and productivity of public lands for the use and enjoyment of present and future generations).

<sup>54</sup> BRUCE A. WAGMAN ET AL., *ANIMAL LAW CASES AND MATERIALS* 882 (Carolina Academic Press ed., 6th ed. 2019).

<sup>55</sup> *The Issue*, AM. WILD HORSE CAMPAIGN, <https://americanwildhorse.org/issue> (accessed Sept. 28, 2024).

<sup>56</sup> 16 U.S.C. §§ 1332–33 (1971).

<sup>57</sup> Katrina Duran, *The Mustang Spirit of the West: How Taking a More Cooperative Approach Will Save Our Mustangs*, 10 ARIZ. J. ENV'T L. & POL'Y 241, 243 (2020).

<sup>58</sup> *Colo. Wild Horse & Burro Coal., Inc. v. Salazar*, 639 F. Supp. 2d 87, 89 (D.D.C. 2009); *Colo. Wild Horse & Burro Coal., Inc. v. Salazar*, 890 F. Supp. 2d 99, 100 (D.D.C. 2012).

<sup>59</sup> 16 U.S.C. § 1333(b)(1) (1971).

case, the BLM proposed removing an entire herd without having deemed its population to be ‘in excess.’<sup>60</sup> The judge found the BLM’s authorized roundups arbitrary and capricious because the herd at issue was not in excess of the amount mandated to be preserved.<sup>61</sup> The BLM continued to appeal, but the final decision found that although the WHBA allows only for removal of ‘excess’ wild horses and burros, the BLM has authority to deem the populations in excess in the gather plan, thus the question presented was deemed not ripe for review.<sup>62</sup>

Without independent groups spending time and money to ensure the BLM is protecting wild horses and burros as mandated by the WHBA, the BLM has repeatedly proposed actions that would harm these animals. After ranchers in Idaho took it upon themselves to round up and slaughter wild horses in their state, the D.C. Circuit ruled that the roundup violated the WHBA because it was not sanctioned by an agency tasked with the management of wild horses and burros.<sup>63</sup> Despite this outcome, wild horses and burros continued to be rounded up and slaughtered for meat under the BLM’s management, leading the Animal Protection Institute to file suit against the BLM in 1988.<sup>64</sup> The Ninth Circuit ruled that the BLM was responsible for ensuring that wild horses were not being rounded up and sent to slaughterhouses and thus the agency’s policy of knowingly selling wild horses from their roundups to adopters who plan to slaughter these animals contravened congressional intent.<sup>65</sup> The courts have continually ruled that the WHBA was enacted to protect wild horses and burros and that the BLM’s implementation (or lack thereof) of the act, specifically protecting animals on public lands, is impermissible. As evidenced, the BLM has a repeated history of failing to protect wild horses and burros until they are challenged in court by private actors.

Recently, advocacy groups exposed welfare issues stemming from the BLM’s Adoption Incentive Program, created in 2019.<sup>66</sup> The BLM has rounded up so many wild horses and burros that its government holding pens are overcrowded, so to solve the problem, the agency, through the Adoption Incentive Program, is paying \$1,000 to individual buyers for each animal adopted.<sup>67</sup> Records show that these animals are going to slaughter auctions rather than the “good homes” purported by the

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<sup>60</sup> Colo. Wild Horse & Burro Coal. Inc., 639 F. Supp. 2d at 98.

<sup>61</sup> *Id.*

<sup>62</sup> Colo. Wild Horse & Burro Coal., Inc., 890 F. Supp. 2d at 103.

<sup>63</sup> Am. Horse Prot. Ass’n v. U.S. Dep’t of Interior, 551 F.2d 432, 433–35, 441 (D.C. Cir. 1977).

<sup>64</sup> Animal Prot. Inst. v. Hodel, 860 F.2d 920, 922 (9th Cir. 1988).

<sup>65</sup> *Id.* at 922, 924, 927–28.

<sup>66</sup> Dave Philipps, *Wild Horses Adopted Under a Federal Program Are Going to Slaughter*, N.Y. TIMES (updated June 23, 2023), <https://www.nytimes.com/2021/05/15/us/wild-horses-adoptions-slaughter.html> (accessed Oct. 10, 2024).

<sup>67</sup> *Wild Horse and Burro Adoption Incentive Program*, BUREAU OF LAND MGMT., <https://www.blm.gov/programs/wild-horse-and-burro/adoptions-and-sales/adoption-incentive-program> (accessed Sept. 23, 2024); Philipps, *supra* note 66.

BLM's plan.<sup>68</sup> The lack of adequate oversight regarding the outcome of these adoptions is a clear indicator that the BLM is concerned with removing the horses and burros from public lands in deference to ranchers, rather than the protection of these wild animals as mandated by the WHBA.

The BLM's conflict of interest has invariably led to the mismanagement of the wild animals inappropriately entrusted to its care. Clearly, this is another case in which wild horses and burros would benefit from a dedicated agency enforcing the WHBA, which was passed to protect horses and burros, not eradicate them.

### C. NMFS & FWS & THE MARINE MAMMAL PROTECTION ACT

The last ill-fitting match between legislation and administrating agency discussed in this section is the Marine Mammal Protection Act, which was assigned to the National Marine Fisheries Service and the Fish and Wildlife Service agencies. In this case, similar to the USDA's duty to protect the human use of animals, the NMFS and the FWS both have duties to protect the interests of humans who catch fish for human use. Again, asking the NMFS and the FWS to protect the interests of the animals themselves creates a dilemma for the agencies that would *not* be present for an Animal Protection Agency.

#### i. History of the MMPA

By the 1970s, several species of whales, seals, sea lions, and dolphins were facing extinction due to unsustainable hunting and fishing—a fate that had already befallen the Steller's sea cow who disappeared from the oceans in the eighteenth century.<sup>69</sup> Among the marine mammal activism growing in the 1970s were cetologist Roger Payne's wildly successful recordings of humpback whale songs, which garnered widespread public attention in the United States and helped the anti-whaling movement take off.<sup>70</sup> Industrial commercial practices such as employing purse seine nets, which kill large numbers of unintended animals, commonly referred to as bycatch, in the process of fishing for targeted species, increased public concern and eventually led to congressional action.<sup>71</sup>

In 1972, Congress passed the Marine Mammal Protection Act (MMPA) to protect marine mammals and their habitats from dangerous population depletions because of their aesthetic, recreational, and economic value to the international community.<sup>72</sup> The MMPA's policy

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<sup>68</sup> See Philipps, *supra* note 66 (explaining the pattern of individuals who adopt the horses quickly turning the animals over for slaughter after payment).

<sup>69</sup> *Marine Mammal Protection Act*, ANIMAL WELFARE INST., <https://awionline.org/content/marine-mammal-protection-act> (accessed Oct. 10, 2024).

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> 16 U.S.C. § 1371 (1972); *City of Sausalito v. O'Neill*, 386 F.3d 1186, 1203 (9th Cir. 2004).

declaration focuses on the protection of marine mammals to prevent negative effects resulting from the diminished presence or extinction of any species.<sup>73</sup> In particular, the MMPA focuses on the negative impact of human activity on marine mammal populations.<sup>74</sup> Unlike the previous legislation discussed, the language of this Act primarily focuses on preserving aquatic animal populations for the benefit of humans, without a clearly stated focus on animal welfare.

ii. NMFS & FWS Administration of the MMPA

The National Marine Fisheries Service, under the Department of Commerce, and the Fish and Wildlife Service, under the Department of the Interior, are tasked with implementing the MMPA.<sup>75</sup> While the NMFS may appear appropriate to oversee provisions addressing fishing practices, a 1976 case called into question the department's suitability when the Committee for Humane Legislation sued the NMFS.<sup>76</sup> The plaintiff's complaint stemmed from the NMFS granting commercial tuna fishermen permits to kill dolphins as a bycatch of their purse seine fishing operations in violation of the MMPA.<sup>77</sup> The court found that the congressional intent behind the MMPA was to manage animal populations "with the interests of the animals as the prime consideration," and as the permits were not aligned with the interests of the dolphins being caught, they should not have been granted.<sup>78</sup> Only four years after the MMPA was enacted, this ruling shed light on an obvious problem: Since the MMPA was passed to protect marine mammals, yet the NMFS's mission includes ensuring "productive and sustainable fisheries" and "safe sources of seafood," the NMFS unavoidably faces a conflict of interest.<sup>79</sup> Should they ensure marine mammals can be killed in pursuit of productive and safe sources of seafood, or should they protect the survival of marine animals?

The FWS's mission is to "conserve, protect, and enhance fish, wildlife, plants, and their habitats for the continuing benefit of the American people."<sup>80</sup> The primary interest of the FWS is to continue the exploitation of aquatic animals for the benefit of humans, which is often at odds with the mission of protecting individuals, including the marine mammals who the MMPA should protect.

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<sup>73</sup> 16 U.S.C. § 1361 (1994).

<sup>74</sup> 16 U.S.C. § 1361 (1994).

<sup>75</sup> ANTHONY R. MARSHAK, CONG. RSCH. SERV., R47892, THE MARINE MAMMAL PROTECTION ACT (P.L. 92-522): PRIMER AND ISSUES FOR CONGRESS 4 (2024); *Our Mission*, NOAA FISHERIES, <https://www.fisheries.noaa.gov/about-us> (accessed Oct. 23, 2024); *About Us*, U. S. FISH & WILDLIFE SERVICE, [HTTPS://WWW.FWS.GOV/ABOUT](https://www.fws.gov/about) (accessed Oct. 23, 2024).

<sup>76</sup> *Comm. for Humane Legis., Inc. v. Richardson*, 540 F.2d 1141, 1143 (D.C. Cir. 1976).

<sup>77</sup> *Id.* at 1143–44.

<sup>78</sup> *Id.* at 1151. Despite this ruling, the court granted fishermen another year to continue harming dolphins using the same impermissible methods.

<sup>79</sup> *Our Mission*, *supra* note 75.

<sup>80</sup> *About Us*, *supra* note 75.

In 2020, the Ninth Circuit held that the FWS unlawfully approved an offshore oil rig off the coast of Alaska despite findings that polar bears would be adversely affected by the project, thus jeopardizing the marine mammal species and resulting in “incidental take” of polar bears.<sup>81</sup> The Center for Biological Diversity asserted that the FWS violated the MMPA by “producing a legally inadequate biological opinion.”<sup>82</sup> The court concluded that the FWS’s biological opinion, which supported the oil rig project despite the likelihood of its detrimental effect on polar bears, was flawed and unlawful, and approval of the drilling project was vacated.<sup>83</sup> This litigation is an example of the FWS prioritizing industry above animals, contravening the MMPA’s stated purpose.

Lawsuits including *Natural Resources Defense Council, Inc. v. Evans*,<sup>84</sup> *Center for Biological Diversity v. Salazar*,<sup>85</sup> and *NRDC, Inc. v. Pritzker*<sup>86</sup> continued to challenge NMFS and FWS decisions that prioritized military exercises and industrial operations above the preservation of marine mammals.

These cases demonstrate that the agencies have understandably chosen to prioritize their stated mandates above the stated purpose of the MMPA, which is why NMFS and FWS oversight of animal protection provisions is clearly inappropriate.

### III. HISTORY OF THE EPA: SUCCESSES, FAILURES, AND CONTROVERSY

This section will take a closer look at how the EPA has most effectively implemented legislation designed to protect the environment and the challenges the EPA has faced, with an eye toward avoiding the same downfalls and creating a strong foundation for the Animal Protection Agency.

The effectiveness of the EPA as a tool for protecting the environment depends on its implementation tactics: “When used effectively and appropriately, policy protects, strengthens, and advances our common

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<sup>81</sup> *Ctr. for Biological Diversity v. Bernhardt*, 982 F.3d 723, 731–32, 747–48 (9th Cir. 2020).

<sup>82</sup> *Id.* at 732, 744 (“Disturbance that disrupts behavioral patterns of polar bears is classified as take under the MMPA. The MMPA prohibits unpermitted incidental take of marine mammals.”).

<sup>83</sup> *Id.* at 731, 747, 751.

<sup>84</sup> *Nat. Res. Def. Council, Inc. v. Evans*, 279 F. Supp. 2d 1129, 1129, 1137–38 (N.D.Cal. 2003) (challenging the NMFS’s and U.S. Navy’s use of sonar systems in training exercises because of its detrimental effect on marine animals).

<sup>85</sup> *Ctr. for Biological Diversity v. Salazar*, 695 F.3d 893, 898 (9th Cir. 2012) (challenging the FWS for authorizing incidental takes of polar bears and walruses off the Alaskan coast due to oil and gas exploration).

<sup>86</sup> *NRDC, Inc. v. Pritzker*, 828 F.3d 1125, 1128–29, 1130–31 (9th Cir. 2016) (challenging the NMFS for authorizing military use of sonar systems despite their detrimental impact on marine mammals).

mission: shared well-being on a healthy planet.”<sup>87</sup> Since the EPA’s creation in 1970, presidential administrations, members of Congress, and the environmental movement have disagreed about the nature of the EPA’s role.<sup>88</sup> Many politicians have argued that the EPA should balance environmental and economic concerns, whereas environmentalists have argued that the EPA needed to counter the existing agencies already prioritizing economics.<sup>89</sup>

Under the EPA, the Clean Air Act attempted to decrease lead emissions from gasoline, implemented vehicular emissions testing, limited chemicals depleting the ozone, and regulated greenhouse gas emissions.<sup>90</sup> The EPA also banned pesticides proven to harm humans and wildlife, regulated the use of chemicals under the Toxic Substances Control Act, and worked to control air and water pollution, drinking water quality, and waste disposal.<sup>91</sup> Over the years, the EPA has litigated against companies violating its provisions despite the potential political repercussions.<sup>92</sup> The EPA’s ability to enforce environmental laws independent of industry approval stems from the agency’s singular purpose to protect the environment—the same reason why the animal protection laws must also have an independent agency. Many argue the EPA has been enormously effective, and environmentalist and former EPA Administrator William Reilly went so far as to say, “I don’t know of an agency that can point to more indisputable successes, progress, and achievements that you can breathe, that you can drink, that you can touch with your hands, than the Environmental Protection Agency.”<sup>93</sup>

Along with its triumphs, the EPA has had its share of failures. Politics and the executive administration have always affected the agency’s ability to function effectively.<sup>94</sup> Over time, federal environmental laws

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<sup>87</sup> Eban Goodstein, *A Look at EPA History: Environmental Wins and Remaining Woes*, LEAD THE CHANGE, <https://leadthechange.bard.edu/blog/a-look-at-epa-history-environmental-wins-and-remaining-woes> (accessed Sept. 29, 2024).

<sup>88</sup> Jonathan H. Adler, *The Environmental Protection Agency Turns Fifty*, 70 *CASE W. RESV. L. REV.* 871, 872–73 (2020), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3789184](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3789184) (accessed Sept. 29, 2024).

<sup>89</sup> *Id.*

<sup>90</sup> *Id.* at 875–76.

<sup>91</sup> David M. Konisky, *EPA At Fifty: A Look Back and Forward*, in *FIFTY YEARS AT THE ENVIRONMENTAL PROTECTION AGENCY: PROGRESS, RETRENCHMENT, AND OPPORTUNITIES* 523, 533 (A. James Barnes et al. eds., 2021).

<sup>92</sup> *Civil and Cleanup Enforcement Cases and Settlements*, EPA, <https://www.epa.gov/enforcement/civil-and-cleanup-enforcement-cases-and-settlements> (accessed Sept. 29, 2024).

<sup>93</sup> JOHN E. REEDER, AM. UNIV. SCH. OF PUB. AFF. CTR. FOR ENV’T POL’Y, *MOVING FORWARD: FUTURE DIRECTIONS FOR EPA AND ENVIRONMENTAL PROTECTION* 3 (2019), <https://www.american.edu/spa/cep/future-directions/upload/report-on-future-of-epa-dec-17-pdf.pdf> (accessed Sept. 23, 2024).

<sup>94</sup> See generally UNION OF CONCERNED SCIENTISTS, *INTERFERENCE AT THE EPA* 1–2, 6, 8 (2008), <https://www.ucsusa.org/sites/default/files/2019-09/interference-at-the-epa.pdf> (accessed Sept. 24, 2024) (discussing the results of a survey of nearly 5,500 EPA scientists to investigate political interference in their scientific work, the impact on EPA

like the Clean Air Act, the Resource Conservation and Recovery Act,<sup>95</sup> and Superfund legislation<sup>96</sup> have been impacted by the EPA's leadership, which notably affected the success of clarifying ambiguous concepts, the ability to make crucial strategic decisions, and the choice to prioritize civic education.<sup>97</sup> Special interest groups also attempt to influence environmental rulemaking and regulations, and "in some cases the EPA appears to be a willing participant" in these industry tactics.<sup>98</sup>

Some presidential administrations have bent to the will of big business, resulting in inadequate policies that were not effectively regulated: "[T]he agency's inclination to take on automakers, the oil and gas industry, electric utilities, and other sectors has waxed and waned over the years, often constrained by the White House and other powerful voices within the executive branch."<sup>99</sup>

Most recently, the first Trump administration's prioritization of industry over the environment thwarted EPA programs to reduce greenhouse gases, and as a result, the EPA "does not currently have in place a serious approach to reducing the greenhouse emissions causing climate change."<sup>100</sup> President Trump promoted Andrew Wheeler to EPA Administrator despite the fact that Wheeler's previous job was as a coal industry lobbyist who worked to "undermine many of the environmental laws that he would now have responsibility to implement."<sup>101</sup>

There is an obvious conflict of interest when industry, which by nature exploits natural resources, is asked to oversee legislation passed to protect those very same natural resources from depletion. Similarly, when animal exploiters who disregard the welfare and desires of the animals from whom they profit are tasked with overseeing legislation passed to protect those same animals' interests, that legislation will not be effectively regulated or enforced.

Importantly, when neutral administrators who were primarily interested in protecting the environment have overseen the EPA, the

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decision-making, and barriers to communication amid concerns over industry and political pressure distorting scientific findings critical to public health and environmental protection).

<sup>95</sup> See *Summary of the Resource Conservation and Recovery Act*, EPA (updated July 31, 2024), <https://www.epa.gov/laws-regulations/summary-resource-conservation-and-recovery-act> (accessed Oct. 7, 2024) (discussing that under RCRA, the EPA has authority to control hazardous waste from creation to disposal).

<sup>96</sup> See *Summary of the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund)*, EPA (updated July 31, 2024), <https://www.epa.gov/laws-regulations/summary-comprehensive-environmental-response-compensation-and-liability-act> (accessed Oct. 7, 2024) (This act provides a Federal 'Superfund' to clean up uncontrolled or abandoned hazardous-waste sites as well as accidents, spills, and other emergency releases of pollutants and contaminants into the environment.).

<sup>97</sup> MARC K. LANDY ET AL., *THE ENVIRONMENTAL PROTECTION AGENCY: ASKING THE WRONG QUESTIONS FROM NIXON TO CLINTON* 240 (Oxford Univ. Press expanded ed. 1994).

<sup>98</sup> Adler, *supra* note 88, at 879.

<sup>99</sup> Konisky, *supra* note 91, at 539.

<sup>100</sup> *Id.* at 549.

<sup>101</sup> *Id.* at 551.

agency has made progress toward protecting the environment. So too will an APA, with appropriate administrators in place, make progress toward protecting animals.

#### IV. WHY AN ANIMAL PROTECTION AGENCY IS NECESSARY

The laws protecting animals are currently administered by agencies whose mission statements conflict with the interests of animals to not be harmed. Constrained by the limited options of existing agencies, Congress's logic was understandable in entrusting the AWA to the only agency already addressing farmed animals in some way, the WHBA to the agency managing the land where the horses and burros reside, and the MMPA to the agency overseeing aquatic animals. But faced with a situation like wild horses and burros grazing in the same public fields where producers graze their cattle, an agency must choose between acting in line with its mandated mission—in this case, the BLM safeguarding the use of public lands for the beef industry's use<sup>102</sup>—or with the WHBA's mandate to protect wild horses and burros for future generations.<sup>103</sup> Each of these agencies have historically chosen their own mandate over the animal protection law they oversee, leaving animals deprived of the protections they are entitled to by law.<sup>104</sup>

Animal protection legislation can only be executed properly under an agency not required to violate its own mission in order to properly administer the animal protection law with which it has been tasked. Thus, it is time for the creation of a federal agency devoted to the protection of animals.

The timing is right. The plight of nonhuman animals is gaining more public attention due to a growing recognition of (1) nonhuman animal sentience, (2) nonhuman animal intelligence, and (3) the current exploitation of nonhuman animals.<sup>105</sup>

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<sup>102</sup> See Federal Land Policy and Management Act, 43 U.S.C. §§ 1751–1753 (noting that under the Federal Land Policy and Management Act of 1976, the BLM is required to manage public lands for a variety of uses, including grazing cattle); *BLM Rule Threatens Multiple Use Management of Public Lands*, NAT'L CATTLEMEN'S BEEF ASS'N (Apr. 18, 2024), <https://www.ncba.org/ncba-news/news-releases/news/details/37658/blm-rule-threatens-multiple-use-management-of-public-lands> (accessed Oct. 14, 2024).

<sup>103</sup> See generally Wild Free-Roaming Horses and Burros Act, 16 U.S.C. §§ 1331–1340 (noting that WHBA is a U.S. federal law that provides protection for wild horses and burros on public lands).

<sup>104</sup> See, e.g., Jessica Hill, *Report: More Than 1,000 Wild Horses Sent to Slaughter*, PHYS. ORG (Sept. 26, 2022), <https://phys.org/news/2022-09-wild-horses-slaughter.html> (accessed Sept. 24, 2024) (discussing the BLM allowing wild horses and burros to be rounded up and slaughtered for profit).

<sup>105</sup> See Charlotte E. Blattner, *The Recognition of Animal Sentience by the Law*, 9 J. OF ANIMAL ETHICS 121, 121–22, 128 (2019) (discussing the legal recognition of animal sentience, exploring its ethical implications and the evolving role of law in addressing animal rights); Juliane Bräuer et al., *Old and New Approaches to Animal Cognition: There Is Not "One Cognition,"* 8 J. OF INTEL. 28, 29–30 (2020) (arguing that cognition evolves in response to specific selection pressures, and that rather than assuming cognitive skills

### A. NONHUMAN ANIMAL SENTIENCE

Sentient means “capable of sensing or feeling: conscious of or responsive to the sensations of seeing, hearing, feeling, tasting, or smelling,” and sentience means “a sentient quality or state.”<sup>106</sup> Scientific evidence of animal sentience implicates a moral obligation regarding the treatment of animals and has influenced animal welfare law in the UK, the EU, Canada, Australia, and New Zealand.<sup>107</sup> For many, the notion that nonhuman animals feel pleasure and pain is common sense and stems simply from personal experiences with family pets or other personal animal encounters. For those who need more, this idea dates back to ancient Greece when Pythagoras said, “[H]umans must regard all living things as kindred and bestow[] on them equal moral consideration.”<sup>108</sup>

Scientists are paying more attention to animal sentience, but unlike the imperfect criteria used and accepted by scientists to evaluate human sentience, nonhuman animal sentience is required to provide unequivocal proof—a paradox termed “paralytic perfectionism” by neuroscientist Donald Griffin.<sup>109</sup> Examples of nonhuman animals considered to be sentient include dogs, cats, elephants, whales, dolphins, octopuses, and bees.<sup>110</sup> In 2012, scientist and animal sentience specialist Helen Proctor was already saying, “Developing our understanding of animal sentience is imperative for improving animal welfare and attitudes toward animals.”<sup>111</sup> Some are still fighting against these new studies, aligning with Descartes’s 17th century statement that “[a]nimals are like robots: they cannot reason or feel pain,”<sup>112</sup> which conveniently reconciled his

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cluster similarly across species, studies should adopt a biocentric approach, recognizing independent cognitive adaptations in diverse environments without overemphasizing human-like traits).

<sup>106</sup> *Sentient*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/sentient> (accessed Oct. 1, 2024); *Sentience*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/sentience> (accessed Oct. 1, 2024); See also Vivian Sandler, *The Animal Sentience Debate: From BCE to the 21st Century*, INT’L AID FOR THE PROT. & WELFARE OF ANIMALS (May 16, 2022), <https://iapwa.org/the-animal-sentience-debate/> (accessed Oct. 1, 2024). Of note, some animal rights proponents prefer to leave sentience out of animal legislation discussions to avoid creating another criterion for excluding animals from protection, but this concept does have the potential to improve animal welfare.

<sup>107</sup> Heather Browning & Jonathan Birch, *Animal Sentience*, 17 PHIL. COMPASS 1, 3 (2022), <https://compass.onlinelibrary.wiley.com/doi/full/10.1111/phc3.12822>.

<sup>108</sup> Sandler, *supra* note 106.

<sup>109</sup> Helen S. Proctor et al., *Searching for Animal Sentience: A Systematic Review of the Scientific Literature*, 3 ANIMALS 882, 883 (2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4494450/> (accessed June 29, 2025).

<sup>110</sup> Helen Proctor, *Animal Sentience: Where Are We and Where Are We Heading*, 2 ANIMALS 628, 629, 631, 633–34 (2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4494284/> (accessed June 29, 2025).

<sup>111</sup> *Id.* at 637.

<sup>112</sup> Proctor et al., *supra* note 110; e.g., Rachael Revesz, *MPs Refuse to Recognise that Animals Feel Pain or Emotion in Brexit Bill Vote*, INDEP. (Nov. 20, 2017), <https://www.independent.co.uk/news/uk/home-news/brexit-bill-latest-animal-sentience-cannot->

religious beliefs with humans' use of nonhuman animals but failed to account for easily observable nonhuman animal behaviors and intelligence that clearly dispute any comparison to robots. Despite resistance, science continues to establish that animals feel pain and pleasure,<sup>113</sup> presenting another reason for the public to be concerned with the welfare of these animals and leading to a desire to establish stronger non-human animal welfare standards.

### B. NONHUMAN ANIMAL INTELLIGENCE

Although there has been less resistance to the concept of nonhuman animal intelligence than sentience, there is still work to be done. In many traditional animal intelligence studies, researchers have looked at how nonhuman animals perform human tasks to gauge intelligence rather than nonhuman animal abilities to perform a range of tasks relevant to their own interests.<sup>114</sup> Studies that observe animals in their natural habitats reveal significant information about animal intelligence, including elephants who visit the gravesites of fellow elephants, dolphins who are capable of developing distinct accents based on their location, and birds who treat members of their social groups differently according to individual relationships.<sup>115</sup> Ecologist and author Carl Safina has written about the culture of nonhuman animals and how they think, feel, and learn from each other.<sup>116</sup> Dissemination of animal intelligence findings from further studies like these will help encourage support for animal protections from the public and, in turn, Congress.

Animals who are considered the most intelligent have scientifically-proven abilities to perform certain tasks.<sup>117</sup> Ravens can understand

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feel-pain-emotion-vote-mps-agree-eu-withdrawal-bill-michael-gove-a8064676.html (accessed Oct. 1, 2024) (exemplifying the resistance to the notion of nonhuman animal sentience); see Uri Lifshin, *Motivated Science: What Humans Gain From Denying Animal Sentience*, 31 ANIMAL SENTIENCE 1, 1–2 (2022), <https://www.wellbeingintlstudiesrepository.org/cgi/viewcontent.cgi?article=1757&context=animsent> (discussing why humans deny ideas of nonhuman animal sentience).

<sup>113</sup> Proctor, *supra* note 110, at 629, 633.

<sup>114</sup> Hanna Jane Guendel, *On Animal Intelligence, We've Got It All Wrong*, THE BARD CEP ECO READER (May 4, 2021), <https://www.bard.edu/cep/blog/?p=12989> (accessed Oct. 1, 2024).

<sup>115</sup> Tim Brinkhof, *Awareness of Death and Other Incredible Examples of Animal Intelligence*, BIG THINK (Feb. 2, 2022), <https://bigthink.com/life/animal-intelligence-cognition/> (accessed Oct. 1, 2024).

<sup>116</sup> Barbara J. King, *In 'Becoming Wild,' Carl Safina Takes Us Inside The Cultures Of Animals*, NAT'L PUB. RADIO (Apr. 15, 2020), <https://www.npr.org/2020/04/15/834307724/in-becoming-wild-carl-safina-takes-us-inside-the-cultures-of-animals> (accessed Nov. 12, 2024).

<sup>117</sup> Grace Hussain, *The 30 Most Intelligent Animals in the World Might Surprise You*, SENTIENT MEDIA (Sept. 20, 2023), <https://sentientmedia.org/which-animals-are-most-intelligent/> (accessed Sept. 26, 2024).

abstract concepts and plan ahead.<sup>118</sup> Pigs have the ability to learn from experience.<sup>119</sup> Chimpanzees can recognize themselves in mirrors.<sup>120</sup> Octopuses are known for their ability to escape from imprisonment and to use tools to carry out a variety of different tasks.<sup>121</sup> Recent studies show evidence of bees playing purely for fun.<sup>122</sup>

These studies give rise to the question of “whether an animal who is as capable as a human toddler should spend their life locked in a cage as someone’s pet or research subject—let alone be served as dinner.”<sup>123</sup> This question is inviting more people to consider whether it is acceptable to continue allowing nonhuman animals to suffer under a system that fails to protect them with either effective legislation or with proper regulation and implementation of existing legislation.<sup>124</sup>

### C. EXPLOITATION OF NONHUMAN ANIMALS

The final factor to discuss regarding changing attitudes is the growing awareness of existing methods of nonhuman animal exploitation. Several organizations have been conducting undercover investigations to gather evidence and expose the cruel methods used in industries exploiting animals.<sup>125</sup> As videos and images spread to the public of the general practices employed by chicken, cow, pig, and egg producers, slaughterhouse employees, animal testing labs, leather traders, and animal entertainment companies<sup>126</sup> (to name just a few examples of nonhuman animal exploitation), the public has begun to demand better treatment for animals.

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<sup>118</sup> See *id.* (discussing that ravens have better planning skills than toddlers and can find keys to unlock certain boxes).

<sup>119</sup> See *id.* (discussing that after repeated exposure, pigs can develop the skills to play and win simple video games).

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> Erik Stokstad, *Are These Bumble Bees Playing with Toys?*, SCIENCE (Oct. 27, 2022, 11:00 AM), <https://www.science.org/content/article/are-these-bumble-bees-playing-toys> (accessed Sept. 26, 2024).

<sup>123</sup> Hussain, *supra* note 117 (discussing a study that demonstrated the enjoyment of bees playing with wooden balls).

<sup>124</sup> See Gary L. Francione & Anna E. Charlton, *The Case Against Pets*, AEON ESSAYS (Sept. 8, 2016), <https://aeon.co/essays/why-keeping-a-pet-is-fundamentally-unethical> (accessed Sept. 26, 2024) (arguing that existing animal rights laws do not work, and thus companion animals should no longer be bred and cease to exist); see *The Growing Movement to Stop CAFOs*, STRAY DOG INST., <https://straydoginstitute.org/the-growing-movement-to-stop-cafos/> (accessed Sept. 26, 2024) (discussing American Public Health Association recommendation to ban CAFOs, which rely upon animal exploitation).

<sup>125</sup> See *generally Investigations*, ANIMAL EQUAL., <https://animalequality.org/all-investigations/> (accessed Sept. 26, 2024) (providing information about Animal Equality’s investigations into standard industry methods); *Undercover Investigations*, MERCY FOR ANIMALS, <https://mercyforanimals.org/investigations/> (accessed Sept. 26, 2024) (providing information about Mercy For Animals’s investigations into standard industry methods).

<sup>126</sup> *Investigations*, *supra* note 125.

This is evidenced by the demand from consumers for ‘humane’ meat and eggs, ‘cruelty-free’ cosmetics and hygiene products, and the removal of live animals from the Ringling Brothers Circus.<sup>127</sup> Americans are growing more concerned with the welfare of animals in a variety of situations-where people continue to support industries that exploit animals, they at least want to believe that the animals have been treated humanely.<sup>128</sup>

The USDA certifies companies to use specific food labels like ‘cage-free’ and ‘free-range’ under their Animal Welfare Audit and Certification programs.<sup>129</sup> Use of these labels, in theory, is verified by the USDA’s initial certification and ongoing inspections to ensure continued practice of approved methods under a given label.<sup>130</sup> In some cases, the label itself has been challenged as misleading. Compassion Over Killing brought suit after rulemaking petitions were dismissed that would require agencies to promulgate regulations mandating egg carton labels to specify the hens’ welfare condition<sup>131</sup> In this case, the court ruled that the FDA was free to choose its procedural mode of administration, which was individual enforcement actions rather than promulgation of the proposed regulations.<sup>132</sup> This was an interesting choice for

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<sup>127</sup> See *More Customers Want Cage-Free Eggs*, THE GAZETTE (Feb. 11, 2022, 3:09 PM), <https://www.thegazette.com/business/more-customers-want-cage-free-eggs/> (accessed Sept. 26, 2024) (discussing the demand for cage-free eggs); OrganicThemesDev, *Survey Reveals Consumer Demands for Certified Humane*, CERTIFIED HUMANE (Jan. 14, 2021), <https://certifiedhumane.org/survey-reveals-consumer-demands-for-certified-humane/> (accessed Sept. 26, 2024) (discussing the demand for free-range animal products); Teresa Bergen, *Don’t Be Cruel: Demand Grows for Cruelty-free Products*, HEALTH J. (Nov. 10, 2017), <https://www.thehealthjournals.com/cruelty-free-beauty-products/> (accessed Sept. 26, 2024) (discussing the demand for cosmetics and other products that are not tested on animals); Scottie Andrew, *The Ringling Bros. Circus is Returning Next Year – Without Elephants*, CNN ENT. (May 18, 2022, 10:48 AM), <https://www.cnn.com/2022/05/18/entertainment/ringling-bros-circus-return-2023-cec/index.html> (accessed Sept. 26, 2024) (discussing the Ringling Bros.’s decision to remove live animals from their shows in response to consumer demand for cruelty-free entertainment).

<sup>128</sup> See *Public Opinion Surveys on Farm Animal Welfare*, ASPCA, <https://yuan-diing.com/aspca-surveys.html> (accessed Sept. 26, 2024) (discussing a 2022 survey revealing growing concern for farmed animal welfare); *FBR National Public Opinion Polls: Do You Support Ethical Animal Research?*, FOUND. FOR BIOMEDICAL RSCH., <https://fbresearch.org/polls/> (accessed Sept. 26, 2024) (discussing support for the “humane use” of animals in biomedical research).

<sup>129</sup> USDA, *Animal Welfare Audit and Certification Programs*, <https://www.nal.usda.gov/animal-health-and-welfare/animal-welfare-audit-and-certification-programs> (accessed Nov. 12, 2024); *Shell Egg Labeling Guidance*, USDA, <https://www.ams.usda.gov/grades-standards/shell-egg-labeling-guidance> (accessed Oct. 26, 2024).

<sup>130</sup> USDA, QAD 700 PROCEDURE 166–67 (June 6, 2022), [https://www.ams.usda.gov/sites/default/files/media/700\\_ShellEggGradingProcedures.pdf](https://www.ams.usda.gov/sites/default/files/media/700_ShellEggGradingProcedures.pdf) (accessed Sept. 29, 2024).

<sup>131</sup> *Agencies*, USDA, <https://www.usda.gov/our-agency/agencies> (accessed Oct. 26, 2024); *Compassion Over Killing v. U.S. Food & Drug Admin.*, 849 F.3d 849, 852 (9th Cir. 2017).

<sup>132</sup> *Compassion over Killing*, 849 F.3d at 857 (although this holding applies specifically to the FDA, which is not a USDA agency, the USDA agencies likely have similar freedom of choice).

the FDA to make considering the limited resources at its disposal to respond to individual enforcement actions. Had the question of regulating egg carton labels been delegated to an agency whose mission was unequivocally to safeguard the welfare of animals, that agency would likely have chosen to create a new regulation, thus improving the welfare of egg-laying hens across the board by creating a standard that unquestionably applies to all egg production operations.

Despite the problematic nature of labeling, the use of labels tout-ing animal welfare claims demonstrates the desire of today's American consumers to purchase animal products from companies that treat their animals humanely. These concerns have become more prevalent as awareness of nonhuman animal sentience and intelligence grows and people become more educated about the treatment of animals exploited in our society.

## V. CREATION AND STRUCTURING PROPOSAL FOR THE APA

When the EPA was created, there were already federal environmental programs in existence that President Nixon wanted to combine under one agency to maximize effectiveness.<sup>133</sup> Creating a new agency required reorganizing existing offices, bureaus, and responsibilities.<sup>134</sup> The proposition of an Animal Protection Agency calls for similar action that would transfer the many existing animal welfare programs from their current agencies to the APA.

America's growing concern for the environment in the 1960s led to President Nixon presenting a message to Congress.<sup>135</sup> President Nixon's address included requests from Congress for more progressive national environmental standards and legislation, executive orders launching federally funded research for technological advancements, and approval of a plan for responding to oil spills.<sup>136</sup> Today, Americans are growing more and more concerned about the state of animal welfare, especially regarding animals raised for food.<sup>137</sup> It may be too much to hope that

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<sup>133</sup> H.R. Doc. No. 91-366 (1970).

<sup>134</sup> Adler, *supra* note 88, at 871.

<sup>135</sup> *The Origins of EPA*, *supra* note 6. See generally H.R. Doc. No. 91-364, at 1 (1970); H.R. Doc. No. 91-365, at 1 (1970); H.R. Doc. No. 91-366, at 1 (1970) (providing President Nixon's reorganization plans and message to Congress).

<sup>136</sup> *The Origins of EPA*, *supra* note 6; H.R. Doc. No. 91-366, at 7 (1970).

<sup>137</sup> Bob Meadow & Meryl O'Bryan, *ASPCA Animal Welfare Labeling – Online Survey Public Memo – February 2019*, LAKE RSCH. PARTNERS (Feb. 1, 2019), [https://www.aspc.org/sites/default/files/aspc-2018\\_animal\\_welfare\\_labelling\\_and\\_consumer\\_concern\\_survey.pdf](https://www.aspc.org/sites/default/files/aspc-2018_animal_welfare_labelling_and_consumer_concern_survey.pdf) (accessed Sept. 24, 2024) (discussing that 76% of consumers surveyed were concerned about animal welfare, remaining steady since 2016's survey); *Survey: Majority of Voters Surveyed Support Greater Oversight of Industrial Animal Farms*, JOHNS HOPKINS BLOOMBERG SCH. OF PUB. HEALTH (Dec. 10, 2019), <https://publichealth.jhu.edu/2019/survey-majority-of-voters-surveyed-support-greater-oversight-of-industrial-animal-farms> (Sept. 24, 2024) (discussing that 57% of registered voters surveyed support greater oversight of industrial animal operations).

a U.S. president will take animal welfare concerns seriously enough to address Congress with a special message calling for action. However, it is possible for a member of Congress to introduce similar legislation, especially if there is support from the executive administration, one of the congressional houses, or both.<sup>138</sup> The key to this step is spreading enough awareness among voters to create a bipartisan demand for more efficient and effective government oversight of animal welfare that will ultimately galvanize elected officials by *simply not allowing* for inaction on this issue.

President Nixon created a council to assess how environmental concerns addressed in his message could be implemented efficiently.<sup>139</sup> The council recommended consolidating all federal environmental responsibilities under one new agency, allowing the agency to conduct independent research, monitor environmental conditions, set and enforce environmental standards, provide guidelines for industries to follow, and help states with financial and technical assistance in developing their own environmental programs.<sup>140</sup> Congress conducted hearings and ultimately approved the proposal, creating the new agency and placing William Ruckelshaus, a known conservationist who also worked for big business, as its first administrator.<sup>141</sup>

This step of creating a council to assess how animal welfare concerns will be addressed by a new agency will be imperative in convincing Congress to not only create the APA, but also transfer duties from existing government agencies to the APA. The council should be made up of qualified experts recognized by both parties and without ties to any animal industry. Nixon's environmental council recognized that the scattering of current environmental laws throughout different agencies was problematic: "[S]ince each agency has a job to do...its view of the environment is likely to be influenced accordingly."<sup>142</sup> Any knowledgeable council that convenes to evaluate the implementation of the current animal welfare laws will find the same problem identified by the 1970 environmental council; this logically leads to the conclusion that a dedicated agency is necessary to solve the conflict-of-interest problems and create a viable solution to ensure that animal welfare laws passed by Congress are being implemented the way Congress and the American people intended.

One important point to address when seeking congressional support is funding. There is a case to be made that costs accrued by the

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<sup>138</sup> *How Laws Are Made*, USA.GOV, <https://www.usa.gov/how-laws-are-made> (accessed Sept. 29, 2024).

<sup>139</sup> *The Origins of EPA*, *supra* note 6.

<sup>140</sup> *Id.*

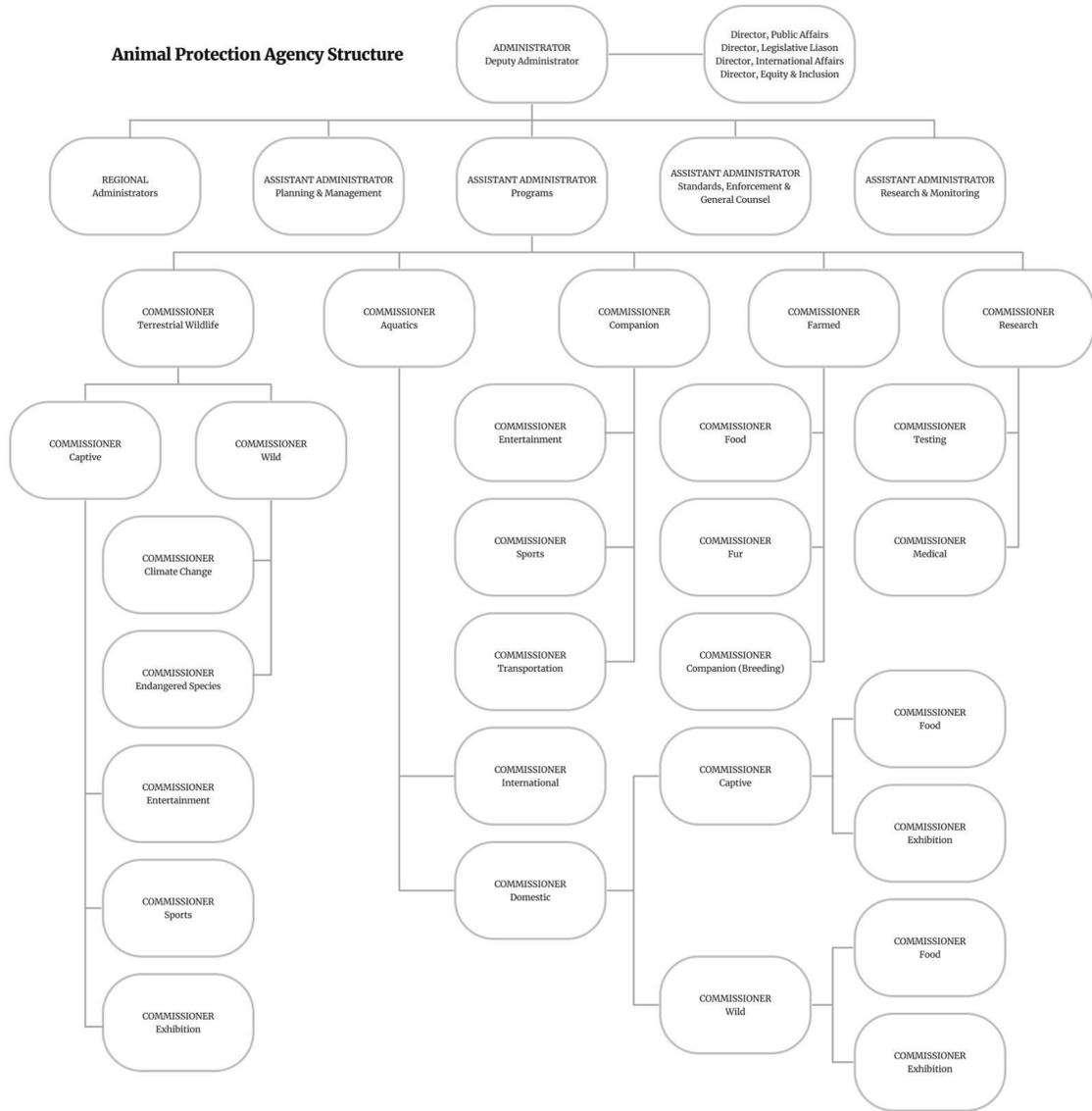
<sup>141</sup> *Id.*; Robert D. McFadden, *William Ruckelshaus, Who Quit in 'Saturday Night Massacre,' Dies at 87*, N.Y. TIMES (updated June 12, 2020), <https://www.nytimes.com/2019/11/27/us/politics/william-ruckelshaus-dead.html> (accessed Sept. 24, 2024).

<sup>142</sup> EPA, ASH COUNCIL MEMO 3 (1970), <https://www.epa.gov/archive/epa/aboutepa/ash-council-memo.html> (accessed Sept. 24, 2024).

addition of a new agency would be offset by the efficiency gained in delegating all animal welfare legislation to appropriate experts working under one agency, with the added benefit of removing conflicts of interest from other government agencies. Additionally, employees working on animal legislation under existing agencies could potentially relocate to the APA and continue applying their expertise at the new agency, equating to a shift in cost rather than a new added cost.

#### A. *PROPOSED STRUCTURE FOR THE APA*

Like with the EPA proposal, the APA needs to include independent research and monitoring systems for the implementation of animal welfare legislation. The APA also needs to examine existing regulations to enforce animal welfare laws and make necessary changes to ensure the regulations are effectuating congressional intent, including providing new guidelines for industries and technical assistance in implementing the new regulations. Along with research, initial departments are included in the following table, which proposes one possible organizational structure for the APA:



**B. WHICH FEDERAL LAWS WOULD BE TRANSFERRED TO THE APA**

The EPA was created to oversee several programs: (1) the National Air Pollution Control Administration, Bureaus of Water Hygiene and Solid Waste Management, and some functions of the Bureau of Radiological Health under the Department of Health, Education and Welfare (HEW); (2) tolerance levels for pesticides under the Food and Drug Administration; (3) the Federal Water Quality Administration and some pesticide research responsibilities under the Department of the

Interior; (4) pesticide registration under the Department of Agriculture; and (5) radiation criteria and standards under the Atomic Energy Commission and the Federal Radiation Council.<sup>143</sup> Creating the EPA under these terms meant transferring responsibilities from eight different departments to the new agency.<sup>144</sup>

Laws whose oversight should be transferred to the APA comprise programs from nine different departments: (1) the AWA, Humane Methods of Slaughter Act, the Twenty-Eight Hour Law, the Horse Protection Act, and the Big Cat Public Safety Act from the USDA; (2) the WHBA from the BLM; (3) the MMPA from the NMFS and the FWS; (4) the Endangered Species Act from the National Oceanic and Atmospheric Administration and the FWS; (5) the Preventing Animal Cruelty and Torture Act from the Bureau of Alcohol, Tobacco, Firearms and Explosives; and (6) the Lacey Act from the Departments of Interior, Commerce and Agriculture, including the FWS, the NMFS, and the APHIS.<sup>145</sup> Each of these laws deals directly with the protections afforded to animals by Congress,<sup>146</sup> and as such, deserves an agency fully capable of and motivated to implement these protections effectively.

## VI. CONCLUSION

Too many animals are being harmed despite the protections afforded to them by federal law. This is because laws are merely unfulfilled promises until they have a loyal partner to ensure that what is written and intended is faithfully carried out. American citizens have voiced their concerns for improved animal welfare and Congress has responded by passing legislation written to address the unacceptable state of nonhuman animal exploitation in the United States.<sup>147</sup> Unfortunately, these laws were passed and then immediately delegated to agencies whose mandates contravene the proper execution of animal protection.<sup>148</sup>

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<sup>143</sup> Jack Lewis, *The Birth of EPA*, EPA (Nov. 1985), <https://www.epa.gov/archive/epa/aboutepa/birth-epa.html> (accessed Sept. 24, 2024).

<sup>144</sup> H.R. Doc. No. 91-366, at 2–3 (1970).

<sup>145</sup> Animal Welfare Act, 7 U.S.C. §§ 2131–2159 (1966); Humane Methods of Slaughter Act of 1958, 7 U.S.C. §§ 1901–1907 (1958); 49 U.S.C. § 80502 (1994); Horse Protection Act, 15 U.S.C. §§ 1821–1831 (1976); Big Cat Public Safety Act, 16 U.S.C. §§ 3371–3374, 3376 (2022); Wild Free-Roaming Horses and Burros Act, 16 U.S.C. §§ 1331–1340 (1971); Marine Mammal Protection Act of 1972, 16 U.S.C. §§ 1361–1389, 1401–1407, 1411–1417, 1421, 1423 (1972); Endangered Species Act of 1973, 16 U.S.C. §§ 1531–1544 (1973); *Laws & Policies: Endangered Species Act*, NOAA FISHERIES, <https://www.fisheries.noaa.gov/topic/laws-policies/endangered-species-act> (accessed Oct. 26, 2024); Preventing Animal Cruelty and Torture Act, Pub. L. No. 116-72, 133 Stat. 1151 (2019) (codified as amended at 18 U.S.C. § 48); 18 U.S.C. § 42 (1948).

<sup>146</sup> *Laws that Protect Animals: Federal, State, and Local*, ANIMAL LEGAL DEF. FUND, <https://aldf.org/article/laws-that-protect-animals/> (accessed Sept. 29, 2024).

<sup>147</sup> *Supra* Section II.

<sup>148</sup> *Id.*

Although many of these agency employees have likely wanted to help animals by enforcing their respective regulations, they also have a duty to execute their agency's mission statement. The inevitable result is that even those who may want to help animals are severely limited in their ability to do so under the current delegation of animal protection laws. This leads to frustration for dedicated civil servants and suffering for nonhuman animals. It leads to a failure to fulfill the laws of the land, and thus a failure to fulfill the will of the people. The tide is turning for nonhuman animals, and as more and more voters in the United States voice their opinions in support of stronger protections for everyone—from the tiniest mouse to the largest whale—Congress must be equipped to act. If its response is anything less than drafting new laws to be delegated to an Animal Protection Agency, those laws will also fail.

The solution is obvious: create a new federal agency with the sole purpose of independently researching animal welfare issues, monitoring animal conditions, setting welfare regulation standards, providing industry guidelines, assisting industry members with conforming to new regulations, conducting regular inspections to ensure industry compliance, collaborating with applicable agencies to ensure the continued improvement in animal welfare throughout the country, and implementing new federal animal welfare laws passed by Congress. With all the challenges facing nonhuman and human animals alike, these issues become more urgent with each passing day. There is no time to waste in addressing the suffering taking place right now and the suffering that is imminent under the current system. If humans are to be measured by the way they treat nonhuman animals, the APA is the best starting point down the road to redemption.