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# Federal Statutes Protecting Domesticated and Captive Animals

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## Federal Statutes Protecting Domesticated and Captive Animals

A number of federal laws aim to protect the health, safety, and well-being of animals under human control. These laws extend to pets, domesticated livestock, service animals, test subjects, and wild animals kept for exhibition, scientific, or educational purposes, among others. Some of them prohibit specific harmful acts, others prescribe standards for certain types of activities, and others require owners to have permits and meet certain criteria to possess various types of animals. This report provides brief summaries of federal laws that aim to protect domesticated and captive animals. The laws, or components thereof, that address animals owned by humans represent a subset of the federal laws that aim to protect and conserve animals.

A principal statute governing the humane treatment of animals is the Animal Welfare Act (AWA). Enacted in 1966, the AWA “is the only Federal law in the United States that regulates the treatment of animals in research, exhibition, transport, and dealers,” according to the Department of Agriculture. The AWA prescribes the minimum standards of care for certain animals that are used for research, sold or transported commercially, or exhibited to the public. Other statutes and policies refer to the AWA as the “minimum acceptable standard” for animal care and use.

The laws summarized in this report are categorized by topic. Due to its expansiveness and central role in animal protection law, the AWA is discussed first and in greater detail than the other laws. Laws that exclusively address the protection or conservation of animals in the wild were omitted from this report. To the extent a law applies to both animals in the wild and animals in captivity, such as the Endangered Species Act or the Lacey Act, the summary provided in this report focuses on the provisions that apply specifically to animals in captivity, such as permitting or import requirements. This report also does not include laws that only incidentally address animal protection or that address but do not aim to protect animals.

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A principal statute governing the humane treatment of animals is the Animal Welfare Act (AWA). Enacted in 1966, the AWA “is the only Federal law in the United States that regulates the treatment of animals in research, exhibition, transport, and dealers,” according to the Department of Agriculture.<sup>1</sup> The AWA prescribes the minimum standards of care for certain animals that are used for research, sold or transported commercially, and exhibited to the public.<sup>2</sup> Other statutes and policies reference the AWA as the “minimum acceptable standard” for animal care and use.<sup>3</sup> Due to its expansiveness and central role in animal protection law, the AWA is discussed first and in greater detail.

The laws, or components thereof, that address animals owned by humans represent a subset of the federal laws that aim to protect and conserve animals. Many laws address protection and conservation of animals in the wild.<sup>4</sup> Laws that exclusively address the protection or conservation of animals in the wild were omitted from this report. To the extent a law applies to both animals in the wild and animals in captivity, such as the Endangered Species Act or the Lacey Act, the summary provided in this report focuses on the provisions that apply specifically to animals in captivity, such as permitting or import requirements. This report also does not include laws that only incidentally address animal protection<sup>5</sup> or that address but do not aim to protect animals.

## Animal Welfare Act

**Citation:** 7 U.S.C. §§ 2131-2159; 18 U.S.C. § 49

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<sup>1</sup> Animal Welfare Act, NAT’L AGRICULTURAL LIBRARY, U.S. DEP’T OF AGRIC., <https://www.nal.usda.gov/awic/animal-welfare-act> (last visited Oct. 29, 2020).

<sup>2</sup> *Id.*; see generally 7 U.S.C. §§ 2131-2159.

<sup>3</sup> NAT’L AGRICULTURAL LIBRARY, *supra* note 1.

<sup>4</sup> For example, the Endangered Species Act, Marine Mammal Protection Act, Fur Seal Act, the Lacey Act, the Wild Horse Act, and other laws prohibit certain actions with respect to specific species of fish or wildlife. 16 U.S.C. §§ 1531-1544; *id.* §§ 1361-1423h; *id.* §§ 1151-1175. The Lacey Act, Nonindigenous Aquatic Nuisance Prevention and Control Act, and other laws protect domestic wildlife from invasive species. 18 U.S.C. § 42; 16 U.S.C. §§ 4701-4751. The Fish and Wildlife Act of 1956, National Wildlife Refuge System Administration Act, and other laws direct federal agencies to manage public land for wildlife conservation or set aside specific public land for such purposes. 16 U.S.C. §§ 742a-742j-2; *id.* §§ 668dd-668ee. For more information on statutes relating to the U.S. Fish and Wildlife Service, see CRS Report R45265, *U.S. Fish and Wildlife Service: An Overview*, by R. Eliot Crafton. The Magnuson-Stevens Fishery Conservation and Management Act and others laws aim to limit resource depletion (e.g., hunting or commercial fishing) in order to attain sustainable harvest rates. 16 U.S.C. §§ 1801-1891d. The Multinational Species Conservation Fund, African Elephant Conservation Act, Asian Elephant Conservation Act, Rhinoceros and Tiger Conservation Act, and other laws provide funding to state or nongovernmental entities for conservation projects. 16 U.S.C. § 4246; *id.* §§ 4201-4245; *id.* §§ 4261-4266; *id.* §§ 5301-5306.

<sup>5</sup> See, e.g., 7 U.S.C. §§ 1000, 1010-1013a (Bankhead-Jones Farm Tenant Act); 16 U.S.C. §§ 791a-825r (Federal Power Act); 33 U.S.C. §§ 1251-1388 (Federal Water Pollution Control Act); 16 USCA §§ 4601-31 to 4601-34; 43 U.S.C. §§ 390h, 390h-1 to 390h-12, 390h-12a to 390h-12p, 390h-13 to 390h-39 (Reclamation Projects Authorization and Adjustment Act of 1992); 33 U.S.C. § 540 (River and Harbor Act of 1938); 43 U.S.C. §§ 620a-1, 620a-2, 620c-1, 620d-1, 1501-1556 (Colorado River Basin Project Act).

The Animal Welfare Act (AWA) requires humane treatment of certain animals used for research, in exhibitions, and as pets.<sup>6</sup> The AWA does not apply to all animals. The act defines “animal” to apply only to *warm-blooded* animals.<sup>7</sup> The animals may be living or dead, but the act only applies if they are being used “for research, testing, experimentation, or exhibition purposes, or as a pet.”<sup>8</sup> Further, the definition of “animal” specifically excludes “(1) birds, rats of the genus *Rattus*, and mice of the genus *Mus*, bred for use in research, (2) horses not used for research purposes, and (3) other farm animals.”<sup>9</sup>

**Humane Standards.** The AWA requires the Secretary of Agriculture to “promulgate standards to govern the humane handling, care, treatment, and transportation of animals by dealers, research facilities, and exhibitors,” including federal research facilities and exhibitors.<sup>10</sup> The standards must include “minimum requirements for handling, housing, feeding, watering, sanitation, ventilation, shelter from extremes of weather and temperatures, adequate veterinary care, and separation by species” if necessary.<sup>11</sup> The AWA requires the standards to “ensure that animal pain and distress are minimized” in connection with experimental procedures.<sup>12</sup> Although many of these standards are left to the discretion of the Secretary of Agriculture—and in practice, the promulgated standards are highly specific to particular animals—the AWA specifies a few additional requirements for specific animals. For example, it requires that the standards include minimum requirements for the exercise of dogs and for an adequate physical environment to promote the psychological well-being of primates.<sup>13</sup> The Secretary of Agriculture must also promulgate standards for the humane treatment of animals while transported in commerce.<sup>14</sup>

The AWA requires every research facility (including federal facilities) to establish a committee, referred to as an Institutional Animal Committee or an Institutional Animal Care and Use Committee (IACUC),<sup>15</sup> to “assess animal care, treatment, and practices” in the facility’s experimental research.<sup>16</sup> The committee must inspect the facility’s animal study areas and animal facilities on a semi-annual basis to review, among other things, the condition of the animals and the facility’s practices that may cause pain to animals.<sup>17</sup> Research facilities must also provide

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<sup>6</sup> 7 U.S.C. §§ 2131-2159. For additional information on the Animal Welfare Act, see CRS Report RS22493, *The Animal Welfare Act: Background and Selected Animal Welfare Legislation*. The statute’s stated policy is to ensure that animals used as pets, for research, or for exhibitions are treated humanely, including while they are transported, and to prevent animal theft by preventing the sale or use of stolen animals. 7 U.S.C. § 2131. The act is also known as the Federal Laboratory Animal Welfare Act and the Laboratory Animal Act of 1966.

<sup>7</sup> 7 U.S.C. § 2132(g).

<sup>8</sup> 7 U.S.C. § 2132(g).

<sup>9</sup> 7 U.S.C. § 2132(g).

<sup>10</sup> 7 U.S.C. §§ 2143(a)(1) & 2144. The standards that the Secretary of Agriculture has promulgated to implement these statutory requirements are codified in 9 C.F.R. Part 3.

<sup>11</sup> 7 U.S.C. § 2143(a)(2)(A).

<sup>12</sup> 7 U.S.C. § 2143(a)(3)(A).

<sup>13</sup> 7 U.S.C. § 2143(a)(2)(B).

<sup>14</sup> 7 U.S.C. § 2143(a)(4).

<sup>15</sup> 7 U.S.C. § 2132(n); 9 C.F.R. § 2.31.

<sup>16</sup> 7 U.S.C. § 2143(b)(1) & (c). The act defines “research facility” as “any school (except an elementary or secondary school), institution, organization, or person that uses or intends to use live animals in research, tests, or experiments, and that (1) purchases or transports live animals in commerce, or (2) receives funds under a grant, award, loan, or contract from a department, agency, or instrumentality of the United States for the purpose of carrying out research, tests, or experiments.” *Id.* § 2132(e). The Secretary may exempt by regulation certain facilities from being considered research facilities. *Id.*

<sup>17</sup> 7 U.S.C. § 2143(b)(3).

training for their scientists, animal technicians, and other personnel involved in caring for and treating the animals, with a focus on humane standards and minimizing or eliminating the use of animals or their pain or distress.<sup>18</sup>

**Licensing and Registration.** To support the humane standards it requires, the AWA establishes a system of licensure and registration. The specific registration requirements that apply depend on what kind of activity a party intends to engage in.

Dealers and exhibitors must obtain licenses from the Secretary of Agriculture in order to (1) sell or transport any animals to research facilities, for exhibition, or for use as a pet or (2) buy, sell, or transport any animals to or from another dealer or exhibitor.<sup>19</sup> The Secretary may also require operators of auction sales where cats or dogs are sold to obtain a license under conditions the Secretary may prescribe.<sup>20</sup> To receive a license, the person must demonstrate compliance with the humane standards of animal welfare promulgated by the Secretary.<sup>21</sup> In turn, research facilities may purchase dogs or cats only from licensed dealers or exhibitors.<sup>22</sup>

The AWA defines a dealer as a person who delivers for transportation, transports, buys, or sells in commerce for profit (1) any living or dead animal “for research, teaching, exhibition, or use as a pet” or (2) any dog for hunting, security, or breeding.<sup>23</sup> However, the definition of a dealer excludes retail pet stores that do not sell “animals to a research facility, an exhibitor, or a dealer.”<sup>24</sup> The AWA defines “exhibitor” as a person who exhibits any animals to the public for compensation.<sup>25</sup> The definition of exhibitor includes carnivals, circuses, and zoos regardless of whether they are operated for profit.<sup>26</sup> It specifically excludes retail pet stores, state and country fairs, livestock shows, rodeos, and purebred dog and cat shows.<sup>27</sup>

The act requires research facilities, intermediate handlers, carriers, and any exhibitors not required to obtain a license to register with the Secretary.<sup>28</sup> Dealers, exhibitors, research facilities, intermediate handlers, and carriers must maintain records of their transactions.<sup>29</sup> In addition, dealers, exhibitors, research facilities, and auction sale operators are subject to inspection of their animals and records by law enforcement agencies searching for lost animals.<sup>30</sup>

**Selling Cats and Dogs.** In addition to its more general requirements, the AWA prescribes some requirements that are specific to cats and dogs. Under the AWA, dealers and exhibitors cannot sell or otherwise dispose of any cats or dogs for five business days after acquiring the animal.<sup>31</sup> The AWA also requires public and private pounds and shelters, as well as licensed research facilities,

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<sup>18</sup> 7 U.S.C. § 2143(d).

<sup>19</sup> 7 U.S.C. §§ 2133 & 2134. The licensing regulations are found in 9 C.F.R. Part 2 Subpart A.

<sup>20</sup> 7 U.S.C. § 2142.

<sup>21</sup> 7 U.S.C. § 2133.

<sup>22</sup> 7 U.S.C. § 2137.

<sup>23</sup> 7 U.S.C. § 2132(f).

<sup>24</sup> 7 U.S.C. § 2132(f).

<sup>25</sup> 7 U.S.C. § 2132(h).

<sup>26</sup> 7 U.S.C. § 2132(h).

<sup>27</sup> 7 U.S.C. § 2132(h).

<sup>28</sup> 7 U.S.C. § 2136. The registration regulations are found in 9 C.F.R. Part 2 Subpart B.

<sup>29</sup> 7 U.S.C. § 2140. The recordkeeping regulations are found in 9 C.F.R. Part 2 Subpart G.

<sup>30</sup> 7 U.S.C. §§ 2143(a)(7) & 2147.

<sup>31</sup> 7 U.S.C. § 2135. The Secretary of Agriculture may prescribe an alternative timeframe. *Id.* This restriction does not apply to auction sale operators that are subject to the AWA. *Id.*

to “hold and care for” any dog or cat they acquire “for a period of not less than five days to enable such dog or cat to be recovered by its original owner or adopted by other individuals before such entity sells such dog or cat to a dealer.”<sup>32</sup> A dealer must provide a certification that contains information about the transaction, the animal, and compliance with the holding period requirement, among other things, to a recipient of a cat or dog obtained from a pound, shelter, or individual.<sup>33</sup> Research facilities may purchase cats or dogs only from licensed dealers, exhibitors, or auction sale operators subject to the AWA.<sup>34</sup> Similarly, federal agencies may acquire cats or dogs for research, experimentation, or exhibition purposes only from licensed dealers, exhibitors, or auction sale operators subject to the AWA.<sup>35</sup>

With some exceptions, the act also prohibits any person from importing a dog into the United States for purposes of resale unless “the dog is in good health, has received all necessary vaccinations, and is at least six months of age.”<sup>36</sup>

**Animal Fighting.** The AWA prohibits knowingly (1) sponsoring or exhibiting animals in animal fighting ventures, (2) attending animal fighting ventures, or (3) causing individuals under 16 to attend animal fighting ventures.<sup>37</sup> The act also prohibits knowingly selling, buying, possessing, training, transporting, delivering, or receiving animals for use in animal fighting ventures.<sup>38</sup> In addition, within the bounds of the interstate commerce clause, the act prohibits knowingly purchasing, selling, transporting, or delivering any “knife, a gaff, or any other sharp instrument attached, or designed or intended to be attached, to the leg of a bird for use in an animal fighting venture,” and it prohibits advertising or promoting animal fighting or related goods.<sup>39</sup> The Animal Fighting Prohibition Enforcement Act of 2007 provided for additional criminal penalties, including fines, imprisonment, or both, for violating certain of these animal fighting provisions.<sup>40</sup>

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<sup>32</sup> 7 U.S.C. § 2158(a).

<sup>33</sup> 7 U.S.C. § 2158(b).

<sup>34</sup> 7 U.S.C. § 2137. Research facilities may, however, purchase cats or dogs from dealers or exhibitors that are exempt from obtaining a license by 7 U.S.C. §§ 2133, 2137.

<sup>35</sup> 7 U.S.C. § 2138. Federal agencies may, however, purchase or otherwise acquire cats or dogs from dealers or exhibitors that are exempt from obtaining a license by 7 U.S.C. §§ 2133, 2138.

<sup>36</sup> 7 U.S.C. § 2148(b)(1). Resale, as defined by the act, “includes any transfer of ownership or control of an imported dog of less than 6 months of age to another person, for more than de minimis consideration.” *Id.* § 2148(a)(2). By regulation, the required vaccines are distemper, hepatitis, leptospirosis, parvovirus, parainfluenza virus, and rabies. 9 C.F.R. § 2.151(a)(1)-(2).

This prohibition may not apply, however, if the dog is being imported for research or veterinary care. 7 U.S.C. § 2148(b)(2)(A). Under regulations implemented by the Secretary of Agriculture pursuant to the AWA, a dog need not meet one or more of the three statutory requirements if the person importing the dog provides satisfactory evidence that meeting those requirements “would interfere with the dog’s use in [the person’s] research, tests, or experiments.” *Id.*; 9 C.F.R. § 2.151(b)(1). The regulations also provide that a dog need not meet the three statutory requirements if it is being imported for veterinary treatment that cannot be obtained in the export country and if it is confined until certain conditions are met pursuant to a veterinary treatment agreement with the U.S. Department of Agriculture. 7 U.S.C. § 2148(b)(2)(A); 9 C.F.R. § 2.151(b)(2).

In addition, dogs that are in good health and have received the necessary vaccinations may be imported into Hawaii from the British Isles, Australia, Guam, or New Zealand for resale so long as they are not transported out of Hawaii for resale before they are six months old. 7 U.S.C. § 2148(b)(2); 9 C.F.R. § 2.151(b)(3).

<sup>37</sup> 7 U.S.C. § 2156(a).

<sup>38</sup> 7 U.S.C. § 2156(a)-(b).

<sup>39</sup> 7 U.S.C. § 2156(c)-(e).

<sup>40</sup> 18 U.S.C. § 49. Section 26 of the Animal Welfare Act is codified at 7 U.S.C. § 2156.

**Penalties.** The act authorizes the Secretary of Agriculture to assess a civil penalty of not more than \$10,000 for any violation of any provision of the AWA, or of any rule, regulation, or standard promulgated by the Secretary.<sup>41</sup> The act also provides for criminal penalties: knowing violations of the act by dealers, exhibitors, or auction sale operators may be punishable by imprisonment of up to one year, fines of up to \$2,500, or both.<sup>42</sup> The Secretary may also seek a temporary restraining order or injunction against any dealer, carrier, exhibitor, or intermediate handler that the Secretary has reason to believe is dealing in stolen animals or placing animals' health in serious danger in violation of the AWA and associated regulations and standards.<sup>43</sup> Unlike some other statutes, such as the Endangered Species Act, the AWA does not include a citizen suit provision, which would allow private citizens to file lawsuits alleging AWA violations.

## Federal Service Animals

### Adoption of Military Animals

**Citation:** 10 U.S.C. § 2583

The Adoption of Military Animals Act provides for the transfer or adoption of military animals deemed suitable for transfer or adoption (1) at the end of their “useful life,” (2) when justified by unusual or extraordinary circumstances such as the animal’s handler being killed in action, or (3) when the animal is otherwise in excess of the military’s needs.<sup>44</sup> The military animal may be adopted by or transferred to the animal’s handler, other persons or organizations capable of humanely caring for the animal, or a law enforcement agency.<sup>45</sup> Military animals are defined by the statute to mean military working dogs and horses, mules, or donkeys owned by the Department of Defense.<sup>46</sup> For retired military working dogs, the statute expresses a preference for the dogs to be adopted by their former handlers unless it is not in the dog’s best interest.<sup>47</sup> The statute provides for veterinary screening and care for and transportation of military working dogs to be retired.<sup>48</sup> The statute limits the United States’ liability for any claim arising from military animals adopted or transferred pursuant to the statute.<sup>49</sup>

### Disposition of Unfit Horses and Mules

**Citation:** 40 U.S.C. § 1308

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<sup>41</sup> 7 U.S.C. § 2149(b). Specifically, civil penalties may be assessed against dealers, exhibitors, research facilities, intermediate handlers, carriers, or operators of auction sales subject to the AWA. *Id.*

<sup>42</sup> 7 U.S.C. § 2149(d). Section 49 of Title 18 under the Animal Fighting Prohibition Enforcement Act of 2007 provides criminal penalties for violating certain animal fighting venture prohibitions. 7 U.S.C. § 2156(j).

<sup>43</sup> 7 U.S.C. § 2159.

<sup>44</sup> 10 U.S.C. § 2583(a).

<sup>45</sup> 10 U.S.C. § 2583(c).

<sup>46</sup> 10 U.S.C. § 2583(i).

<sup>47</sup> 10 U.S.C. § 2583(h).

<sup>48</sup> 10 U.S.C. § 2583(f) & (g).

<sup>49</sup> 10 U.S.C. § 2583(e).

This statute provides that, subject to applicable regulations, “horses and mules belonging to the Federal Government that have become unfit for service may be destroyed or put out to pasture.”<sup>50</sup> The horses and mules may be pastured “either on pastures belonging to the Government or those belonging to financially sound and reputable humane organizations whose facilities permit them to care for the horses and mules during the remainder of their natural lives, at no cost to the Government.”<sup>51</sup>

## **Federal Law Enforcement Animal Protection Act of 2000**

**Citation:** 18 U.S.C. § 1368

The Federal Law Enforcement Animal Protection Act of 2000 criminalizes “willfully and maliciously harm[ing]” any dog or horse employed by a Federal agency for law enforcement purposes, or “attempt[ing] or conspir[ing] to do so.”<sup>52</sup> Violations are punishable by fines or imprisonment, with a higher maximum prison term if the animal is permanently disabled or disfigured.<sup>53</sup>

## **Health and Disease Control**

### **Animal Cancer Research Act**

**Citation:** 7 U.S.C. §§ 3901-3904

In the 1980 Animal Cancer Research Act, Congress found that “basic research in diagnosis, prevention, and control of malignant tumors in animals and birds has not been adequately coordinated”<sup>54</sup> and that basic research is “essential to protect the health of domestic animals, poultry, and wildlife, including birds.”<sup>55</sup> The statute directs the “Secretary of Agriculture [to] conduct a program of basic research on cancer in animals and birds.”<sup>56</sup> It also directs the Secretary and the Director of the National Institutes of Health (NIH) to coordinate this program with the National Cancer Institute research program.<sup>57</sup>

### **Animal Health Protection Act**

**Citation:** 7 U.S.C. §§ 8301-8321

The Animal Health Protection Act addresses the prevention, detection, control, and eradication of animal diseases and pests, particularly as they relate to livestock.<sup>58</sup> The act allows the Secretary of Agriculture to restrict the import, export, or trade in animals or goods that may contain pests or disease or the means of conveying them if necessary “to prevent the introduction into or

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<sup>50</sup> 40 U.S.C. § 1308.

<sup>51</sup> 40 U.S.C. § 1308.

<sup>52</sup> 18 U.S.C. § 1368(a).

<sup>53</sup> 18 U.S.C. § 1368(a).

<sup>54</sup> 7 U.S.C. § 3901(a).

<sup>55</sup> 7 U.S.C. § 3901(c).

<sup>56</sup> 7 U.S.C. § 3902.

<sup>57</sup> 7 U.S.C. § 3903.

<sup>58</sup> 7 U.S.C. § 8301.

dissemination within the United States of any pest or disease of livestock.”<sup>59</sup> The act authorizes the Secretary to conduct inspections of and to seize, quarantine, or dispose of animals, articles, and means of conveyance under certain circumstances<sup>60</sup> Under the act, the Secretary may also undertake efforts “to detect, control, or eradicate any pest or disease of livestock (including the drawing of blood and diagnostic testing of animals), including animals at a slaughterhouse, stockyard, or other point of concentration.”<sup>61</sup> The statute prescribes criminal and civil penalties for violations.<sup>62</sup>

## Federal Food, Drug, and Cosmetic Act

**Citation:** 21 U.S.C. §§ 301-399g

The Federal Food, Drug, and Cosmetic Act (FD&C Act) has been amended several times to include specific requirements for animal drugs. The Animal Drug Amendments of 1968 prescribed standards for when a new animal drug or an animal feed bearing or containing a new animal drug shall be considered unsafe under FD&C Act provisions relating to adulterated drugs, devices, and food.<sup>63</sup> As amended, the FD&C Act prescribes an application process for approving new animal drugs.<sup>64</sup> The Minor Use and Minor Species Animal Health Act of 2004 amended the FD&C Act to allow for conditional approval of new animal drugs intended (1) for minor use or to treat minor species; (2) to treat serious or life-threatening conditions; or (3) when demonstrating effectiveness is particularly difficult.<sup>65</sup> As amended in 2004, the FD&C Act also allows the Secretary to declare a new animal drug for a minor use or use in a minor species to be a “designated new animal drug,” which qualifies the sponsor for grants and contracts to develop the drug and generally provides 7 years of marketing exclusivity if approved or conditionally approved.<sup>66</sup>

## Food Security Act of 1985

**Citation:** 21 U.S.C. §§ 151-158

Two statutes, first enacted in 1914 and then amended as part of the Food Security Act of 1985, make it unlawful to import, export, prepare, or trade in any “worthless, contaminated, dangerous, or harmful virus, serum, toxin, or analogous product intended for use in the treatment of domestic animals.”<sup>67</sup> Any virus, serum, toxin, or analogous product intended for treating domestic animals

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<sup>59</sup> 7 U.S.C. §§ 8303(a), 8304(a), 8305.

<sup>60</sup> 7 U.S.C. §§ 8306, 8307.

<sup>61</sup> 7 U.S.C. § 8308(a).

<sup>62</sup> 7 U.S.C. § 8313.

<sup>63</sup> 21 U.S.C. § 360b.

<sup>64</sup> 21 U.S.C. § 360b.

<sup>65</sup> 21 U.S.C. § 360ccc. Major species are “cattle, horses, swine, chickens, turkeys, dogs, and cats,” and any other species added to this definition by regulation. 21 U.S.C. § 321(nn)-(oo). Minor species, for purposes of this provision, includes all other animals. The term minor use is defined as “the intended use of a drug in a major species for an indication that occurs infrequently and in only a small number of animals or in limited geographical areas and in only a small number of animals annually.” 21 U.S.C. § 321(pp).

<sup>66</sup> 21 U.S.C. § 360ccc-2. The 7-year exclusivity period prevents FDA from approving another application for the same new animal drug and intended use as the drug with exclusivity. *Id.* For more information about regulatory exclusivities under the FD&C Act, see CRS In Focus IF11217, *Drug Pricing and the Law: Regulatory Exclusivities*, by Erin H. Ward

<sup>67</sup> 21 U.S.C. § 151. Specifically, the statute prohibits preparing, selling, bartering, or exchanging such items “in the

must also be prepared in accordance with regulations issued by the Secretary of Agriculture and at a facility licensed by the Secretary of Agriculture.<sup>68</sup> To implement these provisions, the act authorizes the Secretary to inspect imports;<sup>69</sup> implement regulations;<sup>70</sup> and issue, revoke, and suspend licenses and permits.<sup>71</sup> The act provides criminal penalties for violations and includes enforcement provisions.<sup>72</sup>

## Safety and Welfare

### Animal Enterprise Terrorism Act

**Citation:** 18 U.S.C. § 43

The Animal Enterprise Terrorism Act, which amended the Animal Enterprise Protection Act of 1992,<sup>73</sup> applies to “animal enterprises.” Those enterprises include:

- (A) a commercial or academic enterprise that uses or sells animals or animal products for profit, food or fiber production, agriculture, education, research, or testing;
- (B) a zoo, aquarium, animal shelter, pet store, breeder, furrier, circus, rodeo, or other lawful competitive animal event; or
- (C) any fair or similar event intended to advance agricultural arts and sciences.<sup>74</sup>

The act protects such enterprises by criminalizing using interstate or foreign commerce to damage or interfere intentionally with an animal enterprise by damaging real or personal property it uses or placing a person associated with it in reasonable fear of death or serious injury through various forms of intimidation.<sup>75</sup> The statute provides penalties for violating the act and restitution for damages caused by a violation of the act.<sup>76</sup>

### Dog and Cat Protection Act of 2000

**Citation:** 19 U.S.C. § 1308

The Dog and Cat Protection Act of 2000 makes it unlawful “to import into, or export from, the United States any dog or cat fur product” or to engage in interstate commerce in any dog or cat fur product.<sup>77</sup> This prohibition does not apply to “a personal pet that is deceased, including a pet

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District of Columbia, or the Territories, or any place under the jurisdiction of the United States” and prohibits shipping or delivering for shipment such items “in or from the United States, the District of Columbia, any territory of the United States, or any place under the jurisdiction of the United States.” *Id.*

<sup>68</sup> 21 U.S.C. § 152.

<sup>69</sup> 21 U.S.C. § 153.

<sup>70</sup> 21 U.S.C. § 154; *see also* 9 C.F.R. subch. E.

<sup>71</sup> 21 U.S.C. §§ 154, 154a, 155, & 156.

<sup>72</sup> 21 U.S.C. §§ 158-159.

<sup>73</sup> Animal Enterprise Protection Act of 1992, Pub. L. No. 102-346, 106 Stat. 928 (codified at 18 U.S.C. § 43).

<sup>74</sup> 18 U.S.C. § 43(d)(1).

<sup>75</sup> 18 U.S.C. § 43(a).

<sup>76</sup> 18 U.S.C. § 43(b)-(c).

<sup>77</sup> 19 U.S.C. § 1308(b)(1).

preserved through taxidermy.”<sup>78</sup> Violators may be subject to civil penalties as well as debarment from trading in fur products and forfeiture of dog or cat fur products.<sup>79</sup>

## Horse Protection Act

**Citation:** 15 U.S.C. §§ 1821-1831

The Horse Protection Act prohibits showing, exhibiting, selling, or transporting sore horses.<sup>80</sup> “Soring” may be employed to change a horse’s gait for purposes of competition or show.<sup>81</sup> For purposes of the statute, a horse is considered “sore” when a substance or device, such as an irritating agent or a tack, is used to inflict pain, inflammation, or lameness when the horse is moving, though the term excludes practices undertaken as part of a therapeutic treatment supervised by a veterinarian.<sup>82</sup> The act also requires managers of horse shows, exhibits, sales, or auctions to disqualify or exclude sore horses.<sup>83</sup> To monitor compliance, the act creates an inspection regime of public and private horse inspectors.<sup>84</sup> Violations of the statute are punishable by civil or criminal penalties.<sup>85</sup>

## Preventing Animal Cruelty and Torture Act

**Citation:** 18 U.S.C. § 48

The Preventing Animal Cruelty and Torture Act defines “animal crushing” as “actual conduct in which one or more living non-human mammals, birds, reptiles, or amphibians is purposely crushed, burned, drowned, suffocated, impaled, or otherwise subjected to serious bodily injury.”<sup>86</sup> An animal crush video, under the statute, is “any photograph, motion-picture film, video or digital recording, or electronic image that—(A) depicts animal crushing; and (B) is obscene.”<sup>87</sup> The findings of the act interpret obscene in this context to mean that the depictions “(A) appeal to the prurient interest in sex; (B) are patently offensive; and (C) lack serious literary, artistic, political, or scientific value.”<sup>88</sup> The act prohibits, to the extent of federal jurisdiction, “purposely engag[ing] in animal crushing” and “knowingly creat[ing] an animal crush video.”<sup>89</sup> This prohibition (with some exceptions) also extends to “the knowing sale, marketing, advertising, exchange, distribution, or creation of an animal crush video outside the United States” if the person intends or has reason to know the video will be transported into the United States or its

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<sup>78</sup> 19 U.S.C. § 1308(b)(2).

<sup>79</sup> 19 U.S.C. § 1308(c).

<sup>80</sup> 15 U.S.C. § 1824.

<sup>81</sup> Horse Protection Act, Animal & Plant Health Inspection Serv., U.S. Dep’t of Ag. (Aug. 4, 2020), [https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/sa\\_hpa](https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/sa_hpa).

<sup>82</sup> 15 U.S.C. § 1821.

<sup>83</sup> 15 U.S.C. §§ 1823(a)-(b), 1824(3)-(6).

<sup>84</sup> 15 U.S.C. § 1823(c).

<sup>85</sup> 15 U.S.C. § 1825.

<sup>86</sup> 18 U.S.C. § 48(f)(1).

<sup>87</sup> 18 U.S.C. § 48(f)(2).

<sup>88</sup> Pub. L. No. 111-294 § 2, 124 Stat. 3177 (2010); *see also* United States v. Richards, 755 F.3d 269, 274-75 (5th Cir. 2014) (discussing the meaning of obscene in the act).

<sup>89</sup> 18 U.S.C. § 48(a).

territories or the video is so transported.<sup>90</sup> Violators may be fined, “imprisoned for not more than 7 years, or both.”<sup>91</sup>

## Robert T. Stafford Disaster Relief and Emergency Assistance Act

**Citation:** 42 U.S.C. §§ 5121-5207

The Pets Evacuation and Transportation Standards Act of 2006 amended the Robert T. Stafford Disaster and Emergency Assistance Act to provide for pets and service animals during emergencies.<sup>92</sup> The underlying statute allowed federal agencies to perform services essential to saving lives and protecting property or the public health and safety during an emergency. The 2006 amendment included pets and service animals in this authorization, allowing agencies to provide “rescue, care, shelter, and essential needs to individuals with household pets and service animals[,] and to such pets and animals.”<sup>93</sup> As amended, the act also requires state and local emergency preparedness operational plans to “take into account the needs of individuals with household pets and service animals.”<sup>94</sup> The 2006 amendment also included pets and service animals in provisions authorizing the Administrator of the Federal Emergency Management Agency to “study and develop emergency preparedness measures designed to afford adequate protection of life and property,”<sup>95</sup> and to provide financial assistance to “the States and local authorities for animal emergency preparedness purposes.”<sup>96</sup>

## Scientific Research

### Interagency Coordinating Committee on the Validation of Alternative Methods Authorization Act of 2000

**Citation:** 42 U.S.C. §§ 2851-2 to 2851-6

A 2000 statute formally established the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM). The Committee is organized as part of the National Institutes of Health, and is composed of the heads (or their designees) of 15 named federal agencies plus “[a]ny other agency that develops, or employs tests or test data using animals, or regulates on the basis of the use of animals in toxicity testing.”<sup>97</sup> The Committee’s purpose is to “reduce, refine, or replace the use of animals in testing, where feasible.”<sup>98</sup> Among the ICCVAM’s functions is to “[f]acilitate appropriate interagency and international harmonization of acute or chronic

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<sup>90</sup> 18 U.S.C. § 48(b). The exceptions include veterinary and animal husbandry practices, slaughtering animals for food, hunting and other legal sporting activities, medical research, and protecting a person’s life or property. *Id.* § 48(d).

<sup>91</sup> 18 U.S.C. § 48(c).

<sup>92</sup> Pub. L. No. 109-308, 109th Cong. (2006).

<sup>93</sup> 42 U.S.C. § 5170b(a)(3)(j).

<sup>94</sup> 42 U.S.C. § 5196b(g).

<sup>95</sup> 42 U.S.C. § 5196(e)(4).

<sup>96</sup> 42 U.S.C. § 5196(j)(2).

<sup>97</sup> 42 U.S.C. § 2851-3; *see also* About ICCVAM, NAT’L INSTIT. OF HEALTH, U.S. DEP’T OF HEALTH & HUMAN SERV., <https://ntp.niehs.nih.gov/whatwestudy/niceatm/iccvam/index.html> (last updated Nov. 25, 2020).

<sup>98</sup> 42 U.S.C. § 2851-3(a)-(b).

toxicological test protocols that encourage the reduction, refinement, or replacement of animal test methods.”<sup>99</sup>

## Public Health Service Act

**Citation:** 42 U.S.C. §§ 201 to 300mm-61

Among other things, the Public Health Service Act (PHSA) addresses animals used in scientific research. The Health Research Extension Act of 1985 amended the act to require the NIH Director to establish guidelines for research facilities on the proper care and treatment of animals used for research, including the appropriate use of tranquilizing and euthanizing agents and proper pre- and post-surgical care.<sup>100</sup> Entities that conduct biomedical and behavioral research with NIH funds must establish animal care committees to review the care and treatment of animals in the research entity’s study areas and facilities at least semi-annually.<sup>101</sup> Failure to comply with the guidelines and take corrective action as needed may be grounds for suspending or revoking NIH grants or contracts.<sup>102</sup>

The National Institutes of Health Revitalization Act of 1993 amended the PHSA to direct the NIH Director to research “methods of biomedical research and experimentation that do not require the use of animals[,] . . . that reduce the number of animals used[,] . . . that produce less pain and distress in animals [used,] and . . . that involve the use of marine life (other than marine mammals)” and to encourage the use of such methods in the scientific community.<sup>103</sup>

The PHSA has been amended specifically to address the use of chimpanzees in research. The 1993 Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act prohibited using federal funds on “any project that entails the capture or procurement of chimpanzees obtained from the wild.”<sup>104</sup> In 2000, the Chimpanzee Health Improvement, Maintenance, and Protection Act (CHIMP Act) amended the PHSA to require the Secretary of Health and Human Services (HHS) to establish and operate a sanctuary system “to provide for the lifetime care of chimpanzees that have been used, or were bred or purchased for use, in research conducted or supported by . . . agencies of the Federal Government” when the chimpanzees are no longer needed for research.<sup>105</sup> Chimpanzees that were not used in federally-connected research that meet certain criteria may also be accepted into the sanctuary system.<sup>106</sup> The act prescribes standards that apply to chimpanzees in the system, including that they generally may not be used in research except as specified in the statute and they must be cared for in accordance with the Animal Welfare Act.<sup>107</sup>

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<sup>99</sup> 42 U.S.C. § 285l-3(e).

<sup>100</sup> 42 U.S.C. § 289d(a); PHS Policy on Humane Care and Use of Laboratory Animals, Nat’l Instit. of Health, U.S. Dep’t of Health & Human Serv. (2015), <https://olaw.nih.gov/policies-laws/phs-policy.htm>. The guidelines are not, however, to be “construed to prescribe methods of research.” *Id.*

<sup>101</sup> 42 U.S.C. § 289d(b).

<sup>102</sup> 42 U.S.C. § 289d(d).

<sup>103</sup> 42 U.S.C. § 283e(a).

<sup>104</sup> 42 U.S.C. § 289d note (Pub. L. No. 102-394).

<sup>105</sup> 42 U.S.C. § 283m(a).

<sup>106</sup> 42 U.S.C. § 283m(c).

<sup>107</sup> 42 U.S.C. § 283m(d).

# Slaughter

## Export Administration Amendments Act of 1985

**Citation:** 15 U.S.C. § 1824a

The Export Administration Amendments Act of 1985 effectively prohibits exporting horses for slaughter under certain circumstances. That statute provides that “no horse may be exported by sea from the United States, or any of its territories or possessions, unless such horse is part of a consignment of horses with respect to which” the Secretary of Commerce has granted a waiver.<sup>108</sup> Such waivers may be granted only if “no horse in that consignment is being exported for purposes of slaughter.”<sup>109</sup> It prescribes criminal and civil penalties for violating the statute.<sup>110</sup>

## Humane Slaughter Act of 1978

**Citation:** 7 U.S.C. §§ 1901-1906

The Humane Methods of Slaughter Act of 1958 requires that slaughtering of livestock be humane. It prescribes two methods of slaughtering and handling livestock that comply with that requirement.<sup>111</sup> First, for non-religious slaughtering, the livestock must be “rendered insensible to pain by a single blow or gunshot or an electrical, chemical or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut.”<sup>112</sup> Second, animals may be slaughtered “in accordance with the ritual requirements of the Jewish faith or any other religious faith,” where the slaughter is performed by “simultaneous and instantaneous severance of the carotid arteries with a sharp instrument.”<sup>113</sup> The act also directs the Secretary of Agriculture to research methods of slaughter and handling of livestock that are practicable and humane and to designate such methods by publication in the Federal Register.<sup>114</sup>

Sections 901 to 905 of the Federal Agriculture Improvement and Reform Act of 1996, entitled Commercial Transportation of Equine for Slaughter, allowed the Secretary of Agriculture to regulate “the commercial transportation of equine for slaughter by persons regularly engaged in that activity within the United States.”<sup>115</sup> The act specifically directed the Secretary to “review the food, water, and rest provided to equine for slaughter in transit, the segregation of stallions from other equine during transit, and such other issues as the Secretary considers appropriate.”<sup>116</sup> The Secretary subsequently promulgated regulations, which are published at 9 C.F.R. Part 88.

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<sup>108</sup> 15 U.S.C. § 1824a(a)-(b). This act amended an 1891 act about the humane treatment of cattle during export which has since been repealed. Act of Mar. 3, 1891, ch. 521 § 1-2 (codified at 46 U.S.C. §§ 466a-466b, moved to 46 U.S.C. §§ 3901-3902, repealed by Pub. L. No. 107-171, § 10418(a)(2) (2002)).

<sup>109</sup> 15 U.S.C. § 1824a(b).

<sup>110</sup> 15 U.S.C. § 1824a(c).

<sup>111</sup> 7 U.S.C. § 1902.

<sup>112</sup> 7 U.S.C. § 1902(a).

<sup>113</sup> 7 U.S.C. § 1902(b); *see also* 7 U.S.C. § 1906.

<sup>114</sup> 7 U.S.C. § 1904; *see also* 9 C.F.R. Parts 313 & 500.

<sup>115</sup> 7 U.S.C. § 1901 note (Pub. L. No. 104-127 § 903(a)).

<sup>116</sup> 7 U.S.C. § 1901 note (Pub. L. No. 104-127 § 903(b)).

## Prohibitions on Horse Slaughter in Appropriations Acts

The Federal Meat Inspection Act requires inspection of horses (among other amenable species) before they can be slaughtered for human consumption.<sup>117</sup> In its 2006 appropriations act for the Department of Agriculture, Congress prohibited the use of federal funds to “pay the salaries or expenses of personnel to inspect horses” under the Federal Meat Inspection Act.<sup>118</sup> On February 8, 2006, however, the Department of Agriculture issued a regulation allowing slaughter plants to pay for inspections by the Department of Agriculture’s Food Safety and Inspection Service so that horses could continue to be slaughtered for human consumption.<sup>119</sup> For the 2008 fiscal year, the 110th Congress again prohibited using appropriated funds to pay salaries and expenses for horse inspection under the Federal Meat Inspection Act, and the Secretary of Agriculture from expending funds to implement or enforce the February 2006 regulation.<sup>120</sup> With some exceptions, Congress has generally continued this prohibition on using appropriated funds for horse slaughter purposes since the 2008 fiscal year.<sup>121</sup>

## Transportation

### Livestock Transportation Act

**Citation:** 49 U.S.C. § 80502

The Livestock Transportation Act<sup>122</sup> limits the duration of confinement for animals being transported. The act prohibits “a rail carrier, express carrier, or common carrier (except by air or water), a receiver, trustee, or lessee of one of those carriers, or an owner or master of a vessel transporting animals” across state lines from “confini[ng] animals in a vehicle or vessel for more than 28 consecutive hours without unloading the animals for feeding, water, and rest.”<sup>123</sup> When the animals are unloaded, the act requires that they be “unloaded in a humane way into pens equipped for feeding, water, and rest for at least 5 consecutive hours.”<sup>124</sup> The statute does not apply if the animals “have food, water, space, and an opportunity for rest” in the transportation

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<sup>117</sup> 21 U.S.C. §§ 601, 603.

<sup>118</sup> Pub. L. No. 109-97, § 794, 119 Stat. 2120 (2006).

<sup>119</sup> 9 C.F.R. § 352.19; 71 Fed. Reg. 6337 (Feb. 8, 2006).

<sup>120</sup> Consolidated Appropriations Act, 2008, Pub. L. No. 110-161 § 741. 121 Stat. 1844 (2007).

<sup>121</sup> *See, e.g.*, Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, Div. A, § 795 (2020); Further Consolidated Appropriations Act, 2020, Pub. L. No. 116-94 § 739 (2019); Consolidated Appropriations Act, 2019, Pub. L. No. 116-6 § 750 (2019); Consolidated Appropriations Act, 2018, Pub. L. No. 115-141 § 782 (2018); Consolidated Appropriations Act, 2017, Pub. L. No. 115-31 § 762 (2017); Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 § 767 (2015); Consolidated Appropriations Act, 2015, Pub. L. No. 113-483 § 750 (2014); Consolidated Appropriations Act, 2014, Pub. L. No. 113-76 § 745 (2014); Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2010, Pub. L. No. 111-80 § 744 (2009); Omnibus Appropriations Act, 2009, Pub. L. No. 111-8 § 738 (2009).

<sup>122</sup> This act is also known as the Cruelty to Animals Act, the Food and Rest Law, and the Twenty-Eight Hour Law.

<sup>123</sup> 49 U.S.C. § 80502(a)(1).

<sup>124</sup> 49 U.S.C. § 80502(b).

vehicle.<sup>125</sup> The 28-hour period may be extended under certain circumstances.<sup>126</sup> The statute provides civil penalties for violations.<sup>127</sup>

## Wendell H. Ford Aviation Investment and Reform Act for the 21st Century

**Citation:** 49 U.S.C. § 41721

Section 710 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century requires passenger airlines to submit monthly reports to the Secretary of Transportation “on any incidents involving the loss, injury, or death of an animal” during air transport.<sup>128</sup> The regulations cover “any warm- or cold-blooded animal which, at the time of transportation, is being kept as a pet in a family household in the United States” and any dog or cat in a “commercial shipment on a scheduled passenger flight.”<sup>129</sup> The data from these reports must be published and shared with the Secretary of Agriculture.<sup>130</sup> The statute also requires the Secretary to work with the airlines to improve employee training on transporting animals and passenger notification about the conditions under which their animals are transported.<sup>131</sup>

## Wildlife in Captivity

### Bald and Golden Eagle Protection Act

**Citation:** 16 U.S.C. §§ 668-668d

The Bald and Golden Eagle Protection Act largely pertains to bald eagles and golden eagles in the wild. It prohibits taking such eagles and any commerce in eagles (alive or dead), parts of eagles (including feathers), eggs, or nests.<sup>132</sup> However, the act allows the Secretary of the Interior to permit taking, possessing, or transporting bald or golden eagles “for the scientific or exhibition purposes of public museums, scientific societies, and zoological parks, or for the religious purposes of Indian tribes” if it is compatible with preserving the eagles.<sup>133</sup> The Secretary may also permit such activities as necessary “for the protection of wildlife or of agricultural or other interests in any particular locality.”<sup>134</sup> In addition, the Secretary may permit taking, possessing, and transporting golden eagles “for the purposes of falconry,” but only if the golden eagles that

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<sup>125</sup> 49 U.S.C. § 80502(c).

<sup>126</sup> 49 U.S.C. § 80502(a)(2).

<sup>127</sup> 49 U.S.C. § 80502(d).

<sup>128</sup> 49 U.S.C. § 41721(a). Under the statute, “the air transport of an animal includes the entire period during which an animal is in custody of an air carrier, from check-in of the animal prior to departure until the animal is returned to the owner or guardian of the animal at the final destination of the animal.” *Id.* § 41721(e).

<sup>129</sup> 14 C.F.R. § 235.1 (2019).

<sup>130</sup> 49 U.S.C. § 41721(c)-(d).

<sup>131</sup> 49 U.S.C. § 41721(b).

<sup>132</sup> 16 U.S.C. § 668(a)-(b); 50 C.F.R. § 22.1. The act defines “take” to include “pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb.” 16 U.S.C. § 668c. The act provides for civil and criminal penalties for violations. *Id.* § 668(a)-(b). The act must be done knowingly or “with wanton disregard for the consequences” to incur criminal penalties. *Id.* § 668(a).

<sup>133</sup> 16 U.S.C. § 668a.

<sup>134</sup> 16 U.S.C. § 668a.

are taken would have been “taken because of depredations on livestock or wildlife.”<sup>135</sup> Finally, upon request by the governor of a state, the Secretary is required to allow the taking of golden eagles to seasonally protect domesticated flocks and herds in the state.<sup>136</sup> The regulations governing bald and golden eagle permits are found in 50 C.F.R. Part 22.

## Endangered Species Act of 1973

**Citation:** 16 U.S.C. §§ 1531-1544

The ESA aims to conserve threatened and endangered fish, wildlife, and plants and the ecosystems upon which they rely.<sup>137</sup> The Secretary of the Interior or the Secretary of Commerce, depending on the type of species, determines whether a species is threatened or endangered pursuant to five statutory factors.<sup>138</sup> Listing a species as endangered or threatened triggers many of the act’s protections.<sup>139</sup> In general, the ESA prohibits takes of or commerce in endangered species,<sup>140</sup> and the Secretary may extend most of these prohibitions to threatened species.<sup>141</sup> Further restrictions apply to international trade by prohibiting trading or possessing specimens in contravention of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).<sup>142</sup> Violators may incur civil or criminal penalties.<sup>143</sup>

The ESA allows for certain exemptions to these prohibitions and restrictions that, among other things, allow for the captive breeding or exhibition of endangered species.<sup>144</sup> For example, the Secretary may permit acts otherwise prohibited by the ESA with respect to endangered species “for scientific purposes or to enhance the propagation or survival of the affected species, including, but not limited to, acts necessary for the establishment and maintenance of experimental populations.”<sup>145</sup> The U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) (together, the Services) have promulgated regulations governing ESA permits.<sup>146</sup> FWS also excludes wildlife that were captive-bred in the United States (and meet certain other criteria) from many of the ESA’s prohibitions.<sup>147</sup> A person must register with FWS to breed listed species in captivity.<sup>148</sup>

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<sup>135</sup> 16 U.S.C. § 668a.

<sup>136</sup> 16 U.S.C. § 668a.

<sup>137</sup> 16 U.S.C. § 1531.

<sup>138</sup> 16 U.S.C. § 1533. Threatened species and endangered species are defined in 16 U.S.C. § 1532.

<sup>139</sup> 16 U.S.C. §§ 1536, 1538.

<sup>140</sup> 16 U.S.C. § 1538. The act defines “take” to mean “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” *Id.* § 1532(19).

<sup>141</sup> 16 U.S.C. § 1533(d).

<sup>142</sup> 16 U.S.C. § 1538(c).

<sup>143</sup> 16 U.S.C. § 1540(a)-(b).

<sup>144</sup> 16 U.S.C. § 1539

<sup>145</sup> 16 U.S.C. § 1539(a)(1)(A).

<sup>146</sup> 50 C.F.R. §§ 17.22; *id.* Part 222 Subpart C.

<sup>147</sup> 50 C.F.R. § 17.21(g)-(h). FWS defines “bred in captivity or captive-bred” to refer to “wildlife including eggs, born or otherwise produced in captivity from parents that mated or otherwise transferred gametes in captivity, if reproduction is sexual, or from parents that were in captivity when development of the progeny began, if development is asexual.” *Id.* § 17.3.

<sup>148</sup> 50 C.F.R. § 17.21(g)(2)-(3); *see also* Permits | Frequently Asked Questions, U.S. FISH & WILDLIFE SERV., <https://www.fws.gov/endangered/permits/faq.html> (last updated Jan. 30, 2020).

For threatened species, FWS regulations also allow permits to be issued for zoological exhibitions, educational purposes, and “special purposes consistent with the purposes of the [ESA].”<sup>149</sup> The Services may also allow for certain actions with respect to a threatened species when extending prohibitions to that species.<sup>150</sup> For example, FWS regulations allow captive Canada lynx to be taken without a permit; imported or exported in accordance with CITES; and made the object of interstate commerce.<sup>151</sup>

However, the ESA’s provisions still apply unless authorized by a permit or exception, even to a specimen in captivity. For example, a zoo holding endangered or threatened species may still be liable for harming or harassing the animals in violation of the prohibition on take.<sup>152</sup>

## Lacey Act

**Citation:** 16 U.S.C. § 701; 16 U.S.C. §§ 3371-3378; 18 U.S.C. §§ 41-42, 46-47

The Lacey Act consists of two components. The Lacey Act title 18 provisions prohibit—among other things—importing or shipping certain species determined to be “injurious to human beings, to the interests of agriculture, horticulture, forestry, or to wildlife or the wildlife resources of the United States.”<sup>153</sup> But the Secretary may permit injurious species to be imported “for zoological, educational, medical, and scientific purposes” upon finding a “proper showing of responsibility and continued protection of the public interest and health.”<sup>154</sup>

The title 16 provisions prohibit commerce in any fish or wildlife taken, possessed, transported, or sold in violation of U.S. or tribal law.<sup>155</sup> They also prohibit engaging in those activities in interstate or foreign commerce with fish or wildlife taken, possessed, transported, or sold in violation of state or foreign law.<sup>156</sup>

The Captive Wildlife Safety Act amended title 16 of the Lacey Act further to prohibit commerce in any “prohibited wildlife species,”<sup>157</sup> defined to mean lions, tigers, leopards, cheetahs, jaguars, cougars, or hybrids of such species.<sup>158</sup> However, this prohibition does not apply to persons licensed or registered by a federal agency with respect to that species; state colleges, universities,

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<sup>149</sup> 50 C.F.R. § 17.32. NMFS has similar regulations specifically for sea turtles and Middle Columbia River steelhead, but not general regulations allowing such permits for listed marine and anadromous species. 50 C.F.R. §§ 223.206, 223.201, 223.309.

<sup>150</sup> 16 U.S.C. § 1533(d).

<sup>151</sup> 50 C.F.R. § 17.40(k). The regulation defines a captive lynx as one who “was in captivity at the time of the listing, born in captivity, or lawfully imported into the contiguous United States” provided they have not subsequently been released into the wild. *Id.* § 1740(k)(3).

<sup>152</sup> *See, e.g.,* People for Ethical Treatment of Animals v. Wildlife in Need & Wildlife in Deed, No. 4:17-cv-00186, 2020 WL 4448481 (S.D. Ind. 2020); Kuehl v. Sellner, 161 F. Supp. 3d 678 (N.D. Iowa 2016), *aff’d* by Kuehl v. Sellner, 887 F.3d 845 (8th Cir. 2018).

<sup>153</sup> 18 U.S.C. § 42(a)(1). Specifically, the statute prohibits “any shipment [of injurious species] between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any possession of the United States.” 18 U.S.C. § 42(a)(1). In *U.S. Association of Reptile Keepers v. Zinke*, the D.C. Circuit held that this prohibition applies only to shipment from one of the listed jurisdictions to another but not to interstate shipments within the continental United States. 852 F.3d 1131, 1142 (D.C. Cir. 2017).

<sup>154</sup> 18 U.S.C. § 42(a)(3).

<sup>155</sup> 16 U.S.C. § 3372(a)(1).

<sup>156</sup> 16 U.S.C. § 3372(a)(2).

<sup>157</sup> 16 U.S.C. § 3372(a)(2); Pub. L. No. 108-191, 117 Stat. 2871 (2003).

<sup>158</sup> 16 U.S.C. § 3371(g).

or agencies; state-licensed wildlife rehabilitators or veterinarians; accredited wildlife sanctuaries that meet certain criteria; or persons who have custody of the species solely to transport it to a permissible recipient.<sup>159</sup>

## Marine Mammal Protection Act of 1972

**Citation:** 16 U.S.C. §§ 1361-1423h

The Marine Mammal Protection Act of 1972 (MMPA) imposes a moratorium on taking or importing marine mammals or products thereof.<sup>160</sup> However, the Secretary of Commerce or the Secretary of the Interior (depending on the type of animal) may grant permits to take or import marine mammals “for purposes of scientific research, public display, photography for educational or commercial purposes, or enhancing the survival or recovery of a species or stock.”<sup>161</sup> Only permits for scientific research or to enhance the survival or recovery of the species may allow the permit holder to take pregnant or nursing marine mammals or marine mammals taken from depleted stocks or in inhumane manners.<sup>162</sup> Unlike the Endangered Species Act, the MMPA regulations do not exempt captive-bred marine mammals from the act’s prohibitions. The National Marine Fisheries Service regulations, however, identify whether the animal was born in captivity as a consideration when deciding to issue a permit.<sup>163</sup> The act provides civil and criminal penalties for violations.<sup>164</sup>

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<sup>159</sup> 16 U.S.C. § 3372(e).

<sup>160</sup> 16 U.S.C. § 1371. Under the act, a marine mammal is “any mammal which (A) is morphologically adapted to the marine environment (including sea otters and members of the orders Sirenia, Pinnipedia and Cetacea), or (B) primarily inhabits the marine environment (such as the polar bear); and, for the purposes of this chapter, includes any part of any such marine mammal, including its raw, dressed, or dyed fur or skin.” 16 U.S.C. § 1362(6). The act defines “take” to mean “to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.” 16 U.S.C. § 1362(13).

<sup>161</sup> 16 U.S.C. § 1371(a). The act also allows the Secretary of Defense to exempt any action or category of actions taken by the Department of Defense from compliance with the MMPA as needed for national defense purposes. *Id.* § 1371(f). The National Defense Authorization Act of 1987 implemented a provision to allow the Secretary of Defense to “authorize the taking of not more than 25 marine mammals [not a member of an endangered or threatened species] each year for national defense purposes. Any such authorization may be made only with the concurrence of the Secretary of Commerce after consultation with the Marine Mammal Commission.” 10 U.S.C. § 8754.

<sup>162</sup> 16 U.S.C. § 1372(b).

<sup>163</sup> 50 C.F.R. § 222.308.

<sup>164</sup> 16 U.S.C. § 1375.

## Migratory Bird Treaty Act

**Citation:** 16 U.S.C. §§ 703-711

The Migratory Bird Treaty Act<sup>165</sup> prohibits certain activities with respect to “migratory bird species that are native to the United States or its territories.”<sup>166</sup> For example, the act prohibits the take or capture of such birds and commerce in the birds or their parts, eggs, or nests.<sup>167</sup> Violators may be subject to criminal penalties, including fines, imprisonment, and forfeiture of property used in connection with the violation.<sup>168</sup> The Secretary of the Interior may issue regulations prescribing exceptions to the unlawful actions listed in the statute, including for hunting.<sup>169</sup> The implementing regulations, found in 50 C.F.R. Part 21, allow the U.S. Fish and Wildlife Service to issue permits for a number of activities, including banding or marking birds, scientific collection for research or education purposes, taxidermy, falconry, raptor propagation, and rehabilitating birds.<sup>170</sup> Permit holders may only undertake permitted activities with the covered birds and must comply with certain criteria to obtain and comply with the permit.<sup>171</sup>

## Tariff Act of 1930

**Citation:** 19 U.S.C. § 1527

The Tariff Act of 1930 (also known as the “Hawley-Smoot Tariff Act” and the “Smoot-Hawley Act”) require certification for animal-related imports. An importer must certify that any imported wild mammal or bird, or any part or product thereof was not acquired or exported in violation of the laws or regulations of the country of origin.<sup>172</sup> The Lacey Act contains a similar provision, and the Tariff Act applies only to the extent the Lacey Act or other laws do not already prohibit importing the animal, part, or product.<sup>173</sup> Any animal, part, or product imported in violation of

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<sup>165</sup> This act implements the Convention for the Protection of Migratory Birds in the United States and Canada of 1916, signed by Great Britain on behalf of Canada, and has been amended to incorporate similar agreements between the United States and Mexico, Japan, and Russia. Convention for the Protection of Migratory Birds in the United States and Canada, Can.-U.S., Aug. 16, 1916, 39 Stat. 1702; Convention between the United States of America and the United Mexican States for the Protection of Migratory Birds and Game Mammals, Mex.-U.S., Feb. 7, 1936, 50 Stat. 1311 (implemented by Act of June 20, 1936, Pub. L. No. 74-728, 49 Stat. 1555 (1936)); Mex.-U.S., Mar. 10, 1972, 23 U.S.T. 260; Convention between the Government of the United States of America and the Government of Japan for the Protection of Migratory Birds and Birds in Danger of Extinction, and Their Environment, Japan-U.S., Mar. 4, 1972, 25 U.S.T. 3329 (implemented by Act of June 1, 1974, Pub. L. No. 93-300, 88 Stat. 190 (1974)); Convention between the United States of America and the Union of Soviet Socialist Republics Concerning the Conservation of Migratory Birds and Their Environment, Russ.-U.S., Nov. 19, 1976, 29 U.S.T. 4647 (implemented by Act of Nov. 8, 1978, Pub. L. No. 95-616, 92 Stat. 3111 (1978)).

<sup>166</sup> 16 U.S.C. § 703(b)(1). The act defines “native to the United States” to mean “occurring in the United States or its territories as the result of natural biological or ecological processes.” *Id.* § 703(b)(2)(A).

<sup>167</sup> 16 U.S.C. § 703(a). Although the act does not define “take,” U.S. Fish and Wildlife Service regulations interpret “take” to mean “pursue, hunt, shoot, wound, kill, trap, capture, or collect” or attempt to do any of those acts. 50 C.F.R. § 10.12.

<sup>168</sup> 16 U.S.C. § 707.

<sup>169</sup> 16 U.S.C. § 704.

<sup>170</sup> 50 C.F.R. §§ 21.1–21.61. Raptors include vultures, kites, eagles, hawks, caracaras, falcons, and owls. *Id.* § 21.30(a). The regulations exempt certain persons or entities from the permit requirements under specified conditions. *Id.* §§ 21.12–21.15.

<sup>171</sup> 50 C.F.R. §§ 21.21–21.31.

<sup>172</sup> 19 U.S.C. § 1527(a). The certification must be from the U.S. consul for the consular district from which the animal, part, or product was exported. *Id.*

<sup>173</sup> 19 U.S.C. § 1527(c).

this prohibition may be seized and forfeited.<sup>174</sup> The Tariff Act does not prohibit importing such animals, parts, or products if they are “imported for scientific or educational purposes.”<sup>175</sup>

## Wild Bird Conservation Act of 1992

**Citation:** 16 U.S.C. §§ 4901-4916

The Wild Bird Conservation Act of 1992, also known as the Wild Exotic Bird Conservation Act, generally prohibits importing certain exotic birds, including those listed under the Convention on International Trade of Endangered Species of Wild Fauna and Flora (CITES).<sup>176</sup> The Secretary of the Interior may, however, permit otherwise prohibited birds to be imported for some purposes, including scientific research, zoological display, or cooperative breeding programs that meet certain criteria.<sup>177</sup>

The Secretary has implemented permitting regulations in part 15 of title 50 of the Code of Federal Regulations. Certain approved captive-bred species are also excluded from the importation prohibition.<sup>178</sup>

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<sup>174</sup> 19 U.S.C. § 1527(b).

<sup>175</sup> 19 U.S.C. § 1527(c).

<sup>176</sup> 16 U.S.C. §§ 4904, 4905, 4907, 4910; *see also* Wild Bird Conservation Act: Summary of Regulations & Effects, U.S. FISH & WILDLIFE SERV. (Aug. 2016), <https://www.fws.gov/international/pdf/factsheet-wild-bird-conservation-act-summary-of-effects-2013.pdf>.

<sup>177</sup> 16 U.S.C. § 4911.

<sup>178</sup> 16 U.S.C. § 4905(b).