

LOOKING FOR A NEXUS BETWEEN TRUST, COMPASSION, AND REGULATION: COLORADO'S SEARCH FOR STANDARDS OF CARE FOR PRIVATE, NON-PROFIT WILDLIFE SANCTUARIES

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In 2004, the Colorado legislature amended its wildlife statutes, formally recognizing the existence of private, non-profit wildlife sanctuaries under the jurisdiction of the Colorado Division of Wildlife (CDOW). Opponents to the 2004 amendments and CDOW staff have repeatedly expressed concerns that private sanctuaries should not be authorized in the absence of regulations and enforcement mechanisms sufficient to protect the animals and the people who come into contact with them. In implementing the sanctuary statute, CDOW has followed a familiar pattern, relying on the accreditation program of the American Association of Zoological Parks and Aquariums (AZA) to provide the basis of its regulations. In doing so, CDOW has failed to understand that the AZA standards are wholly inappropriate for sanctuaries; they are inadequate to protect the safety of animals and humans; and they are overly burdensome and even diametrically opposed to the status and goals of private, non-profit wildlife sanctuaries. Instead, CDOW could have acknowledged the stringent, comprehensive, extensive standards promulgated by The Association of Sanctuaries (TAOS), which are carefully tailored to the operations of sanctuaries. This article considers the plight of Colorado wildlife sanctuaries, which is by no means peculiar to the state of Colorado, and carefully examines the standards promulgated by the AZA and by TAOS. The article concludes that the TAOS accreditation program would have provided a significantly better basis for sanctuary regulation, and that by failing to take advantage of this, CDOW has missed an important opportunity to create a nexus between trust, compassion, and regulation.

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I. INTRODUCTION

Upon learning of an African lion kept in a suburban garage in Denver, starving on a diet of dry cat food, officers of the Colorado Division of Wildlife (CDOW) rescued the animal.¹ Like other wild animals rescued or surrendered from inappropriate captivity, Zeus the lion faced euthanasia unless an appropriate place could be found where he could receive care.² The exotic pet and entertainment industries produce thousands of such wild animals each year: animals that can no longer live with their would-be owners, have outlived their entertainment value, or have been subject to neglect and abuse.³

Luckily for Zeus, private, non-profit wildlife sanctuaries in Colorado and most other states are able to take these animals and provide them with appropriate environments and care for the rest of their lives.⁴ Zeus is now living at the Rocky Mountain Wildlife Conservation

¹ Rocky Mt. Wildlife Conservation Ctr., *Rescue Stories*, <http://www.wildlife-sanctuary.org/page10.html> (accessed Oct. 20, 2005).

² *Id.*; see also WOLF, *Wolf Philosophy*, <http://www.wolfsanctuary.net/02-philosophy/02-01.htm> (accessed Oct. 22, 2005) ("Animals are accepted by priority of need. Animals that are in immediate jeopardy of being euthanized are accepted first. Animals that have longer-term accommodations currently available are considered based on suitability of the animal, the availability of current space and a first come, first taken basis.").

³ Rocky Mt. Wildlife Conservation Ctr., *Captive Wildlife Management*, <http://www.wildlife-sanctuary.org/captivewildlife/> (accessed Oct. 20, 2005).

⁴ Rocky Mt. Wildlife Conservation Ctr., *Home Page*, <http://www.wildlife-sanctuary.org> (accessed Oct. 20, 2005).

Center (RMWCC) in Colorado.⁵ Unfortunately, the staggering scope of the captive wildlife problem means that wildlife sanctuaries in Colorado operate at capacity and must constantly turn down requests to take more animals.⁶ As Colorado sanctuaries struggle against the tide of animals needing homes, they have also had to struggle against state and local laws that have no place for long-term care facilities for exotic, wild, and potentially dangerous animals.

CDOW has recently been tightening its regulation of private wildlife sanctuaries, despite clear legislative intent to recognize wildlife sanctuaries as legitimate facilities in the state.⁷ The focus of the battle over sanctuaries has centered on CDOW's proposed regulations meant to implement the legislature's goal.⁸ CDOW has proposed the accreditation and certification standards of the American Association of Zoological Parks and Aquariums (popularly known as the American Zoo and Aquarium Association or AZA) as the keystone of its regulatory oversight of sanctuaries.⁹

In the case of non-profit wildlife sanctuaries, reliance on AZA certification standards is gravely misplaced. This article shows that AZA accreditation and certification standards are not only inappropriate and overly burdensome for non-profit sanctuaries, but are also less stringent in protecting the animals and people involved with sanctuaries. On the other hand, sanctuary-specific accrediting agencies such as the American Sanctuary Association (ASA) and The Association of Sanctuaries (TAOS) have promulgated accreditation standards that are both more comprehensive in regulating animal care and safety and more appropriate to non-profit facilities. This article compares the TAOS accrediting standards with those of the AZA and shows that the TAOS standards are superior for the regulation of non-profit wildlife sanctuaries.

CDOW and all state agencies regulating wildlife sanctuaries can benefit from the accreditation programs of TAOS and similar agencies as regulatory partners. Such accreditation can ensure the safety of sanctuary animals and the humans with whom they interact, while also relieving state and local agencies of the need to expend their resources developing new areas of expertise and monitoring these facilities.

⁵ Rocky Mt. Wildlife Conservation Ctr., *supra* n. 1, at <http://www.wildlife-sanctuary.org/page10.html>.

⁶ Interview with Frank Wendland, Director of WOLF in LaPorte, Colorado (Sept. 26, 2004).

⁷ See Colo. H. 04-1135, 64th Gen. Assembly, 2d Reg. Sess. (Jan. 13, 2004) (on file with *Animal L.*) (creating new license category for non-profit wildlife sanctuaries and authorizing CDOW to implement regulations to cover sanctuaries).

⁸ See *infra* pts. VI–VII (discussing the CDOW's proposed regulations and reasons why the AZA certification is inappropriate for wildlife sanctuaries).

⁹ Colo. Wildlife Commn., *Draft Regulations - Chapter 11 - Wildlife Parks and Unregulated Wildlife* 18 (July 1, 2005) (available at <http://wildlife.state.co.us/WildlifeCommission/2005/July/PreMtg/Ch%2011%20-%20Sanctuaries%20-%20Draft%20Regs.pdf>) [hereinafter Colo. Wildlife Commn., *Draft Regulations*].

Achieving an amendment to the CDOW governing statute recognizing private, non-profit wildlife sanctuaries was a victory for sanctuary proponents, and the definitions and provisions in the amendment can serve as a model for lawmakers or advocacy groups considering such a step in other states. Despite Colorado sanctuaries' legislative victory, their cause could still founder on the issue of agency regulations; the kind of regulations proposed by CDOW could effectively block the continued service of non-profit sanctuaries in the state.¹⁰ If sanctuaries are to survive, state agencies need to be shown that they can rely on existing comprehensive, stringent, and appropriate accreditation programs as regulatory partners.

Part II of this article discusses the character of private, non-profit wildlife sanctuaries. Part III gives an overview of the legal complexities faced by private wildlife sanctuaries, illustrated by the development of sanctuaries in Colorado. Part IV discusses the events that first spurred CDOW to re-evaluate the status of wildlife sanctuaries in the state and ultimately led to legislative action. Part V explains the adoption of the 2004 Colorado statutory amendment authorizing sanctuaries, and Part VI discusses CDOW's subsequent proposal to rely on AZA standards to regulate them. Part VII carefully examines the AZA and TAOS standards, comparing them topic by topic, and concludes that while AZA certification is inappropriate, TAOS accreditation is well-equipped for the regulation of private, non-profit wildlife sanctuaries.

II. WHAT IS A PRIVATE, NON-PROFIT WILDLIFE SANCTUARY?

Wildlife sanctuaries are a response to the persistent problem of wild and exotic animals abused and abandoned by private and commercial enterprises.¹¹ Some sanctuaries provide care for domestic animals, farmed animals, reptiles, and birds.¹² This article focuses on sanctuaries for wild mammals, both indigenous and exotic.

¹⁰ See Colo. Div. of Wildlife, *Wildlife Commn. Meeting Transcr.* (Sept. 8-9, 2005) (CD on file with *Animal L.*) (comments by Pat Craig, Director of the Rocky Mountain Wildlife Conservation Center, stating that proposed regulations would put his sanctuary out of business).

¹¹ For example, at the Rocky Mountain Wildlife Conservation Center:

A Sanctuary is a place where animals can come to live and be protected [for] the rest of their lives. It's a safe haven, where they receive the very best care possible. Animals are not bought, sold, traded, or mistreated in any way. They are given every opportunity to behave naturally in a wonderfully loving environment. At our Sanctuary, we always put the animal's best interests in front of our own - and always remember they are the reason why we are here.

Rocky Mt. Wildlife Conservation Ctr., *What is a Sanctuary?* <http://www.wildlife-sanctuary.org/page7.html> (accessed Oct. 22, 2005).

¹² See The N. Tex. Rabbit Sanctuary, *Index*, <http://ntrs.org/index.html> (accessed Oct. 22, 2005) (a sanctuary for rabbits); The Heart and Soul Animal Sanctuary, *Home*, <http://www.animal-sanctuary.org/index.html> (accessed Oct. 22, 2005) (dogs and cats); Dreamtime Sanctuary, *Animals*, <http://www.dreamtimesanctuary.org/animals.htm> (horses,

There is no formal definition of a wildlife sanctuary. Webster's Dictionary provides the following definitions for the concept of sanctuary, generally:

[A] sacred and inviolable asylum; a place of refuge and protection; . . . a place of resort for those who seek relief: a refuge from turmoil and strife: . . . a place of refuge for birds or for game or other animals where predatory animals may be controlled and hunting is not allowed.¹³

Wildlife facilities that have chosen the term "sanctuary" to define their purpose share several goals. Prime among them is providing animals with lifelong, species-appropriate housing in as natural a setting as possible, with minimal human interference and without the threat of commercial exploitation or unnecessary euthanasia.¹⁴ Unlike other organizations that provide homes for animals, true sanctuaries do not breed, sell, display or train their animals, and most do not adopt their animals out to private homes.¹⁵ Sanctuaries are non-profit organizations,¹⁶ in keeping with the goal of eliminating commercial exploitation of wild animals. A voluntary sanctuary association, TAOS defines its member groups in this way:

An animal sanctuary is a place of refuge where injured, abused, or displaced animals are provided with appropriate lifetime care or, when possible, rehabilitated and returned to the wild . . . Sanctuaries exist in recognition that all lives have value and that we have an obligation to attempt to right the wrongs that some humans have done to animals.¹⁷

The wild animals housed in sanctuaries tend to defy existing legal and regulatory categories. Some sanctuaries house wild but indige-

burros, and other agricultural animals) (accessed Nov. 13, 2005); Wildlife Rescue and Rehab., *Frequently Asked Questions*, <http://www.wildlife-rescue.org/faqs.shtml> (accessed Oct. 22, 2005) (squirrels and birds).

¹³ *Webster's Third New International Dictionary* 2009 (Philip Babcock Gove ed., 3d ed., Merriam-Webster Inc. 1961).

¹⁴ Wolves Offered Life and Friendship (WOLF) states its euthanasia policy this way:

[WOLF] is, literally, a no-kill facility. The only time that euthanasia is considered for an animal is when its physical condition has lowered the quality of its life to an unacceptable level. The directors, in conjunction with the advice of the Clinical Director, make that determination. A veterinarian, using IV Euthanasia, humanely euthanizes when that decision is made for the animal.

WOLF, *supra* n. 2, at <http://www.wolfsanctuary.net/02-philosophy/02-01.htm>.

¹⁵ See e.g. Rocky Mt. Wildlife Conservation Ctr., *supra* n. 11, at <http://www.wildlife-sanctuary.org/page7.html> ("A sanctuary is a place where animals can come to live and be protected [for] the rest of their lives"); The Wildcat Sanctuary, *Welcome to the Wildcat Sanctuary*, <http://www.wildcatsanctuary.org/aboutus/about.html> (accessed Oct. 20, 2005) ("At [The Wildcat Sanctuary], there is no breeding, selling or exhibiting. We simply provide a safe haven for the wild at heart.").

¹⁶ The Wildcat Sanctuary, *supra* n. 15, at <http://www.wildcatsanctuary.org/aboutus/about.html>.

¹⁷ TAOS, The Association of Sanctuaries, *What Is a Sanctuary?* <http://www.taosanctuaries.org/about/index.htm> (accessed Oct. 20, 2005).

nous animals.¹⁸ Others house exotic species.¹⁹ Some, like Wolves Offered Life and Friendship (WOLF), house animals that are unclassifiable—hybrid mixes of wolves and domestic dogs.²⁰ Because local, state, and federal agencies may have authority over these various categories of animals, such sanctuaries can fall into areas where regulations overlap or are non-existent.

Consider WOLF or Mission: Wolf, two Colorado sanctuaries, both of which house pure wolves and wolf-dog hybrids.²¹ As indigenous wild animals, wolves fall under the licensing and regulatory jurisdiction of CDOW.²² However, state statutes define hybrids between wild and domestic animals as pet animals, subject to regulation by the state Department of Agriculture and the state veterinarian's office.²³

Pure wolves kept at the sanctuaries may also be subject to federal regulation by the United States Fish and Wildlife Service (FWS) under the Endangered Species Act.²⁴ When the sanctuaries take "ambassador wolves" to public presentations off site, or when they transport animals in need of care, they come under the regulation of the United States Department of Agriculture (USDA) and the Animal Welfare Act.²⁵ And, of course, the sanctuaries must comply with local zoning ordinances and county officials who are often skeptical about potentially dangerous wild animals in their midst.²⁶ Thus, sanctuary operators must continuously walk a twisting and confusing maze of regulation.

III. THE FIRST STAGE OF THE COLORADO STORY: AN ILL-FITTING LICENSE

In the 1980s, private facilities started springing up in Colorado to provide care for wild and potentially dangerous animals. RMWCC

¹⁸ For example, the Colorado Wolf and Wildlife Center (CWWC) provides sanctuary for gray wolves and wolf-hybrids, as well as coyotes and foxes. Colo. Wolf and Wildlife Ctr., <http://www.wolfeducation.org> (accessed Oct. 20, 2005).

¹⁹ For example, RMWCC houses, among other species, lions, tigers, jaguars and leopards. Rocky Mt. Wildlife Conservation Ctr., *Our Story*, <http://www.wildlife-sanctuary.org/page2.html> (accessed Oct. 20, 2005).

²⁰ WOLF, *General Information: Mission*, http://www.wolfsanctuary.net/01-general_info/01-01.htm (accessed Oct. 21, 2005); Mission: Wolf, *Mission Statement: What is Mission: Wolf*, <http://www.missionwolf.com/refuge.asp?sec=3> (accessed Oct. 20, 2005).

²¹ WOLF, *supra* n. 20, at http://www.wolfsanctuary.net/01-general_info/01-01.htm; Mission: Wolf, *supra* n. 20, at <http://www.missionwolf.com/refuge.asp?sec=3>.

²² Colo. Rev. Stat. § 33-6-109 (2004).

²³ Colo. Rev. Stat. § 35-80-102 (2004).

²⁴ Endangered Species Act of 1973, 16 U.S.C. §§ 1531-1543 (2000).

²⁵ 7 U.S.C. §§ 2131-2159 (2000).

²⁶ See generally *Walworth County v. Shumak*, 1996 WL 346174 (Wis. App. June 26, 1996) (unpublished pursuant to Wis. Stat. Ann. § 809.23(3)) (The court struggles to define a wildlife sanctuary within zoning classifications and statutory definitions of "game" and "game management.").

started housing and caring for big cat species in 1980, and Mission: Wolf started its work with wolves and wolf-dog hybrids in 1988.²⁷

At the time RMWCC and Mission: Wolf established themselves, there was no state statutory recognition of private ownership of wild animals for purposes of long-term care. However, possession of wildlife without a license was a criminal misdemeanor and could subject the guilty party to fines or imprisonment or both.²⁸ When the sanctuary operators sought protective legal authorization and licensure from the state, they encountered a difficult problem: the existing statutes and regulations did not recognize non-profit facilities holding wild animals indefinitely for non-commercial purposes.

CDOW, part of the state Department of Natural Resources²⁹ was the agency most likely to have jurisdiction over the sanctuaries. CDOW has “[responsibility] for all wildlife management, for licensing requirements, and for the promulgation of rules, regulations, and orders concerning wildlife programs.”³⁰ CDOW is authorized by statute to issue licenses for hunting and fishing, as well as “special licenses” for other uses of wildlife.³¹

In its special licensing regulations, promulgated under the statute, CDOW created two general categories of non-game wildlife institutions: commercial wildlife parks and non-commercial wildlife parks.³² It would initially appear that a non-profit wildlife refuge like RMWCC or Mission: Wolf would fall into the non-commercial park category. Unfortunately, the definition for that category describes only facilities in possession of certain birds or in possession of exotic wildlife prior to January 1983.³³ While RMWCC may have met one of those criteria because it began working with big cats prior to 1983, Mission: Wolf did not.

If Mission: Wolf did not qualify as a non-commercial wildlife park, the only way it could be licensed by CDOW was as a commercial wildlife park. Commercial wildlife parks are defined by regulation as “privately owned wildlife parks” for the “commercial use” of wildlife, such as “buying, selling, propagating, brokering or trading . . . charging customers to hunt . . . or exhibiting wildlife for educational or promotional purposes.”³⁴

Neither RMWCC nor Mission: Wolf had any commercial purpose for their sanctuaries and made no commercial use of the animals

²⁷ Rocky Mt. Wildlife Conservation Ctr., *supra* n. 19, at <http://www.wildlife-sanctuary.org/page2.html>; Mission: Wolf, *Land for Wolves*, http://www.missionwolf.com/land_for_wolves.asp?sec=3&sub=25 (accessed Oct. 22, 2005).

²⁸ Colo. Rev. Stat. §§ 33-6-109(3), (4) (2004).

²⁹ Colo. Rev. Stat. § 33-1-104 (2004).

³⁰ *Id.* at § 33-1-104(1).

³¹ *Id.* at § 33-4-102.

³² 2 Colo. Code Regs. 406-8(1104) (2005).

³³ 2 Colo. Code Regs. 406-8(1104)(B).

³⁴ 2 Colo. Code Regs. 406-8(1104)(A).

housed there.³⁵ However, each sanctuary conducted educational tours of the facility or occasionally took ambassador animals to educational presentations off site.³⁶ Therefore, the sanctuaries could squeeze into the definition of “exhibiting wildlife for educational or promotional purposes” if officials disregarded the fact that such exhibition had no commercial or profit-making motive.

Whether this was the line of reasoning used, or whether it was some other, CDOW licensed Mission: Wolf and RMWCC as commercial wildlife parks, allowing them to legally possess wild animals.³⁷ Until 2000, CDOW licensed approximately eight other similar entities as commercial wildlife parks, all of which are also registered with the state as non-profit organizations and list their major activities as refuge, rehabilitation, and long-term care of wild animals.³⁸

There has never been serious dispute that the statutory and regulatory definitions of commercial wildlife parks are not only inconsistent with the purpose and goals of wildlife sanctuaries, but also are flatly opposed to them.³⁹ Under both the statute and the regulations, a commercial wildlife park must have a commercial purpose and make commercial use of the animals it houses.⁴⁰ CDOW defines “commercial use” as “using captive wildlife in sale, trade, barter, brokerage or other commerce with the motive to generate profit from such use.”⁴¹ The educational or promotional activities of wildlife sanctuaries that allowed them to slip into the commercial wildlife park category are certainly not motivated by profit and thus fall outside of the definition of “commercial use.”

Many sanctuaries aim to educate the public about the dangers and abuses inherent in profit-motivated commercial uses of wildlife.⁴²

³⁵ See generally Rocky Mt. Wildlife Conservation Ctr., *Visiting the Sanctuary*, <http://www.wildlife-sanctuary.org/page8.html> (accessed Oct. 22, 2005) (“[O]ur Sanctuary is designed so that you can see the animals—and learn about their incredible rescue stories”); Mission: Wolf, *supra* n. 20, at <http://www.missionwolf.com/refuge.asp?sec=3> (“Education is our purpose.”).

³⁶ Mission: Wolf, *Educational Experiences*, <http://www.missionwolf.com/education.asp?sec=2> (accessed Oct. 20, 2005); Rocky Mt. Wildlife Conservation Ctr., *supra* n. 35, at <http://www.wildlife-sanctuary.org/page8.html>.

³⁷ Interview, *supra* n. 6; Colo. Div. of Wildlife, Spec. Licensing Unit, *2005 Mammal Commercial Parks* 5, 9 (Mar. 8, 2005) (available at http://wildlife.state.co.us/special_licensing/PublicLists/Commercial%20Parks/Commercial%20Parks%20-%20Mammals.pdf).

³⁸ These facilities include Prairie Wind Animal Refuge, WOLF, Indigo Mountain Nature Center, Rocky Mountain Ark, Colorado Wolf and Wildlife Center, Wet Mountain Wildlife, Big Cats of Serenity Springs, and the Schneegas Wildlife Foundation. Colo. Div. of Wildlife, Spec. Licensing Unit, *supra* n. 37, at 2–4, 6–8.

³⁹ Colo. Rev. Stat. § 33-4-102(2) (2004); 2 Colo. Code Regs. 406-8(1104)(A).

⁴⁰ Colo. Rev. Stat. § 33-4-102(2); 2 Colo. Code Regs. 406-8(1104)(A).

⁴¹ 2 Colo. Code Regs. 406-8(1104)(A).

⁴² Rocky Mt. Wildlife Conservation Ctr., *Just How Big Is This Problem?* <http://www.wildlife-sanctuary.org/aquisitionfront/index.html> (accessed Oct. 22, 2005); WOLF, *Philosophy: Education*, <http://www.wolfsanctuary.net/02-philosophy/02-01.htm> (accessed Oct. 22, 2005).

Sanctuaries exist primarily as places of refuge for animals abused or rejected by these ventures and therefore are interested in seeing an end to them.⁴³ Placing wildlife sanctuaries in the same legal category as the profit-motivated wildlife industries they oppose approaches the absurd.

Nonetheless, throughout the 1990s, CDOW-licensed wildlife sanctuaries carried on their animal protection purposes, for the most part dutifully complying with CDOW's regulations regarding animal enclosures and other basic care requirements.⁴⁴ Many organizations also obtained licensing from other sources, including the state veterinarian's office, if their animals could also be classified as pet animals; USDA, if their animals were transported or exhibited; and FWS, if their animals were classified as endangered or threatened.⁴⁵ Thus there was an uneasy peace in the state between wildlife officials and sanctuary operators.

IV. THE SECOND STAGE: UPHEAVAL IN THE STATUS QUO

That delicate accord changed in 2003 when an employee at Big Cats of Serenity Springs was mauled and seriously injured by tigers as he cleaned their cage.⁴⁶ Serenity Springs was a CDOW-licensed non-profit facility that, in part, provided refuge for big cats at the time of the attack.⁴⁷ The incident at Serenity Springs prompted CDOW to in-

⁴³ The Rocky Mountain Wildlife Conservation Center puts it this way on its website:

Like guns, drugs and other contraband, law enforcement agencies are continually forced to confiscate animals from unlicensed individuals who attempt to keep them as pets in garages, basements, backyards and apartments. Additionally, many private collections exist in licensed facilities throughout the world—though licensing doesn't guarantee the proper or humane treatment of animals.

Much like domestic pet Humane Societies found thirty years ago . . . the answer to overpopulation and mistreatment of these animals isn't found in housing all the unwanted animals—rather, the solution lies in addressing the source. Regulation for humane treatment and proper licensing has gained little ground toward solving this problem—as the effectiveness and very existence of laws preventing breeding and private ownership vary from state to state and country to country. Like so many other social dilemmas, little was known about this hidden problem until recently, when innocent people began to get hurt, and abused animals began to escape or die.

Rocky Mt. Wildlife Conservation Ctr., *Captive Wildlife Management*, <http://www.wildlife-sanctuary.org/captivewildlife/page2.html> (accessed Oct. 22, 2005).

⁴⁴ See generally 2 Colo. Code Regs. 406-8 art. 1108-1109 (2005) (CDOW's animal facility requirements).

⁴⁵ See e.g. WOLF, *Credentials: Licenses*, <http://www.wolfsanctuary.net/03-credentials/03-01.htm#Licenses> (accessed Oct. 21, 2005) (showing that this wildlife sanctuary received licenses from the United States Department of Agriculture, the State of Colorado Department of Natural Resources, and the Colorado State Veterinarian's Office).

⁴⁶ Eileen Kelly, *Cat-Refuge Worker Survives Attack of 2 Tigers*, Denver Post B3 (July 1, 2003).

⁴⁷ Theo Stein, *Proposal Sets Limits on Wildlife Facilities*, Denver Post B4 (July 7, 2003).

investigate fencing and confinement regulations at wildlife sanctuaries generally.⁴⁸ This investigation, in turn, prompted CDOW to newly scrutinize the licensing of non-profit wildlife sanctuaries in the state.⁴⁹

Within a week of the attack, CDOW was reconsidering its approach to regulating sanctuaries.⁵⁰ CDOW staff denied that its re-evaluation of sanctuaries' status was related to the tiger attacks and stated that it was instead "an attempt to enforce a rule that's been on the books for 10 years."⁵¹

CDOW focused its scrutiny on the commercial use aspect of the "Commercial Wildlife Parks License" category.⁵² The CDOW commission soon determined that it had no statutory authority to license non-profit entities under that category.⁵³ Because there was no other category under which they could be licensed in the existing statute and regulations, CDOW took the position that no new non-profit wildlife sanctuaries could be licensed in the state.⁵⁴ The agency planned to grandfather in existing non-profit sanctuaries, but those facilities would not be able to move, expand, or establish satellite facilities, and no new sanctuaries would be licensed.⁵⁵ Such limitations disturbed sanctuary operators, who commented on the urgent need for sanctuary facilities; in 2003, thousands of hybrid wolf-dogs had already been turned away from Colorado sanctuaries in preceding years, and hundreds of confiscated big cats were in need of homes.⁵⁶

In September 2003, after significant public comment in opposition to the new approach, the CDOW commission resolved to strictly enforce the commercial use definition of commercial wildlife parks and to no longer allow licensure of non-profit facilities.⁵⁷ Non-profit sanctuaries licensed by CDOW on or before January 1, 2001 were grandfathered in, as promised, with the originally proposed limitations.⁵⁸

⁴⁸ Interview, *supra* n. 6.

⁴⁹ *Id.*

⁵⁰ Stein, *supra* n. 47, at B4.

⁵¹ *Id.*

⁵² Michele Arnold, *July 2003 Meeting Summary 3* (July 17, 2003) (available at <http://wildlife.state.co.us/WildlifeCommission/2003/July/Post-Mtg/PostWCmtg%20summary%20July%202003.pdf>); Colo. Wildlife Commn., *Chapter 11 - Wildlife Parks and Unregulated Wildlife: Attachment 5: Basis and Purpose Statement* 19 (Sept. 9-10, 2003) (available at <http://wildlife.state.co.us/WildlifeCommission/2003/Sept/minutes/att5.pdf>) [hereinafter Colo. Wildlife Commn., *Meeting Minutes*].

⁵³ Colo. Wildlife Commn., *Meeting Minutes*, *supra* n. 52, at 19.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Stein, *supra* n. 47, at B4.

⁵⁷ Colo. Wildlife Commn., *Meeting Minutes*, *supra* n. 52, at 19.

⁵⁸ *Id.* at 2.

V. THE THIRD STAGE: H.B. 04-1135

A. *The Proposed Bill*

Following the 2003 CDOW decision, state lawmakers introduced a bill that amended the wildlife statute with a licensing category specifically providing for wildlife sanctuaries.⁵⁹ It would seem apparent that if the governing statute provided for non-profit wildlife sanctuary licenses, then CDOW could no longer find such facilities inconsistent with the law.

The bill added a new section to the definitional portion of the title:

“Wildlife Sanctuary” means a place of refuge where a nonprofit entity . . . provides care for abused, neglected, unwanted, impounded, abandoned, orphaned, or displaced wildlife for their lifetime and . . . does not:

- (a) Use the animal for any type of entertainment;
- (b) Sell, trade, or barter the animal or the animal’s body parts, except as provided in section 33-4-102(14); or
- (c) Breed the animal.⁶⁰

The bill then went on to propose a new category in the CDOW special license section of the statute and to establish license and application requirements.⁶¹

The proposed bill exempted from CDOW licensing any wildlife sanctuary that was accredited by one of two major voluntary sanctuary accreditation groups, TAOS or the ASA: “[e]xcept as provided in this paragraph (d), this subsection (14) does not apply to any wildlife sanctuary that is accredited by [TAOS] or the [ASA].”⁶² The bill also provided that an accredited sanctuary must provide to CDOW a copy of its current accreditation and a yearly veterinarian’s certification of the animals’ health.⁶³ Furthermore, if a sanctuary were to lose its accreditation or fail to be accredited, it would need to be licensed by CDOW under the new licensing category unless it were re-accredited.⁶⁴

Finally, although the bill required the commission to establish a licensing category for wildlife sanctuaries, it did not require the commission to promulgate regulations to implement the category: “[t]he commission *may* adopt rules governing wildlife sanctuaries.”⁶⁵ This language had counterparts in the existing statute.⁶⁶ Prior to the amendments, the statute provided varying levels of rule-making responsibility for the commission.⁶⁷ The statute made it mandatory for

⁵⁹ Colo. H. 04-1135, 64th Gen. Assembly, 2d Reg. Sess. (Jan. 13, 2004) (on file with *Animal L.*).

⁶⁰ *Id.* at 2.

⁶¹ *Id.* at 3–4.

⁶² *Id.* at 4–5.

⁶³ *Id.* at 5.

⁶⁴ *Id.* at 5–6.

⁶⁵ Colo. H. 04-1135, 64th Gen. Assembly, 2d Reg. Sess. § 2, 2 (Jan. 13, 2004) (on file with *Animal L.*) (emphasis added).

⁶⁶ Colo. Rev. Stat. § 33-1-106 (2004).

⁶⁷ *Id.*

the commission to adopt regulations for the conduct of fishing contests,⁶⁸ gave the commission "authority" to adopt regulations for management of hunting and processing of wildlife,⁶⁹ and stated that the commission "may" adopt rules for hunting of alternative livestock,⁷⁰ maintaining purity of wild herds of elk,⁷¹ and perimeter fencing for alternative livestock farms.⁷² Adoption of rules for wildlife sanctuaries was placed in the company of these other collateral and non-mandatory duties of the commission.⁷³

B. *The Legislative Hearings*

The most important amendment to House Bill 04-1135 occurred in negotiations before the proposed bill came up for its first legislative hearing.⁷⁴ According to the bill's sponsor, Representative Paul Weissman (D-Louisville), CDOW representatives would not support the bill unless the provision exempting TAOS or ASA accredited sanctuaries from licensing was removed.⁷⁵ CDOW's staff was uncomfortable with ceding oversight to organizations with which it was not familiar.⁷⁶

CDOW had previously exempted from its licensing requirements facilities accredited by the AZA,⁷⁷ but the agency did not have the same faith in TAOS or ASA.⁷⁸ Therefore, by the time the congressional committee members considered the bill, it no longer contained any exemption for accredited sanctuaries.⁷⁹

Opposition to the bill in the senate hearings took two main forms. First, the president of the Colorado Federation of Animal Welfare Associations (CFAWA) testified in opposition to the bill because it did not require CDOW to promulgate regulations to govern standards of animal care at wildlife sanctuaries.⁸⁰ CFAWA agreed that sanctuaries provide a valuable service to animals, but expressed fear that a lack of regulation and enforcement would allow substandard facilities to establish themselves and put animals into jeopardy.⁸¹ CFAWA was sup-

⁶⁸ *Id.* at § 33-1-106(2).

⁶⁹ *Id.* at §§ 33-1-106(1)(a), (d).

⁷⁰ *Id.* at § 33-1-106(4)(a)(I).

⁷¹ *Id.* at § 33-1-106(4)(a)(II).

⁷² Colo. Rev. Stat. § 33-1-106(4)(a)(IV) (2004).

⁷³ Compare Colo. H. 04-1135, 64th Gen. Assembly, 2d Reg. Sess. at 2 (on file with *Animal L.*) with Colo. Rev. Stat. § 33-1-106(6) (each providing that CDOW "may" adopt particular sets of rules or regulations).

⁷⁴ Interview with Paul Weissmann, Rep., Colo. H. Reps. (Sept. 10, 2004).

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ See Colo. Rev. Stat. § 33-4-102(13)(g)(I) (2003) (In 2003, AZA standards were incorporated in the statutes prior to the sanctuary bill amendment.).

⁷⁸ Interview, *supra* n. 74.

⁷⁹ Colo. H. 04-1135, 64th Gen. Assembly, 2d Reg. Sess. (Apr. 6, 2004) (on file with *Animal L.*).

⁸⁰ Telephone Interview with Martha Smith, Pres., Colo. Fedn. of Animal Welfare Assoc., Denver, Colo. (Mar. 30, 2005).

⁸¹ *Id.*

ported in its views by representatives of the Colorado Veterinary Medical Association (CVMA).⁸² Second, opponents of the bill also feared that lax oversight would encourage substandard facilities to relocate from outside Colorado, moving in from states with more stringent regulation of wildlife sanctuaries.⁸³

In addition, another strand of opposition was raised by a representative of the state's sheriffs.⁸⁴ The law enforcement community expressed concerns that the burden would fall on them when sanctuary animals escaped or when the non-profit organizations faced financial failure.⁸⁵ Subsequent events showed that CDOW officials shared these concerns.⁸⁶ The legislature did not share the misgivings, however, and the bill was passed without further substantive amendment and signed into law in May 2004.⁸⁷

VI. THE FOURTH STAGE: SEARCHING FOR REGULATIONS AND STANDARDS

At its May 2005 meeting, the CDOW commission considered initial proposals for how to structure the new licensing category for wildlife sanctuaries.⁸⁸ The issue paper submitted to the commissioners prior to the meeting stated that, after enactment of H.B. 04-1135:

This broad definition of "wildlife sanctuary" establishes Colorado as one of the final destinations for all such wildlife by any entity with a nonprofit status, as many other states are enacting restrictive legislation, particularly on captive, exotic wildlife. Colorado needs to place reasonable and prudent regulatory standards on sanctuaries to ensure the welfare of sanctuary species, the protection of Colorado's native wildlife species and the human safety of both public and sanctuary workers, and to complement Federal legislation⁸⁹

Four alternative ways to regulate sanctuaries were presented to the commissioners. The first alternative suggested that a sanctuary requesting a CDOW license would need to receive a "Related Facilities" certification from the AZA.⁹⁰ Under this first option, possession would be open to all wildlife species except CDOW-prohibited spe-

⁸² *Id.*

⁸³ Telephone Interview with Bonnie Mandell-Rice, Atty. for sanctuary proponents (Sept. 28, 2004).

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ See *infra* pt. VI (explaining CDOW staff and commissioners' concerns about sufficient regulation and enforcement for sanctuaries).

⁸⁷ See 2004 Colo. Sess. Laws 1323 (failing to address required promulgation of regulations or law enforcement responsibilities).

⁸⁸ Don Masden & Claudette Anderson, *Issues Submittal Form 2-3* (Apr. 18, 2005) (available at <http://wildlife.state.co.us/wildlifecommission/2005/may/PreMtg/ISSUES%20Ch11.pdf>).

⁸⁹ *Id.* at 2.

⁹⁰ *Id.*

cies.⁹¹ The second alternative suggested that AZA “Related Facilities” certification be required but that “existing ‘sanctuary’ type commercial wildlife parks . . . be grandfathered and continue to operate under existing . . . regulations.”⁹² The third alternative suggested that AZA “Related Facilities” certification be required and that possession be limited to “specific taxonomic group(s).”⁹³ Finally, the fourth alternative suggested staying with the status quo; no new regulations would be enacted.⁹⁴

At its July 2005 meeting, the commission presented and took public comment on its draft regulations implementing the wildlife sanctuary licensure category.⁹⁵ The draft contained the following proposed regulations, implementing the second alternative mentioned above:

2. A licensee must be certified by AZA as a “Related Facility” prior to the issuance of a Wildlife Sanctuary license.

4. Wildlife sanctuary-type commercial park facilities existing prior to July 1, 2005 may continue to operate as wildlife sanctuaries under Wildlife Parks Facility Requirements set forth in #1108, except that the addition of new animals, except replacement animals, to facilities existing prior to November 1, 2005 will only be authorized in AZA-certified facilities.⁹⁶

At the July meeting, CDOW staff repeatedly expressed its ongoing concerns about the safety of sanctuary animals, people, native wildlife, and the expenditure of state resources for sanctuary oversight.⁹⁷ CDOW Director Bruce McCloskey stated very clearly that the CDOW’s main concern should not be animal care, but animal containment.⁹⁸ In fact, two commissioners noted that exotic cats in wildlife sanctuaries “are not wildlife . . . [but] an animal that is probably better regulated by the state Department of Agriculture” than by CDOW.⁹⁹

Public representatives of the Colorado Wildlife Foundation, CVMA, and CFAWA also spoke, expressing their support for the proposal to require AZA certification because those organizations believed that only the AZA provided sufficient animal care standards to protect the animals’ welfare.¹⁰⁰

On September 8, 2005, CDOW commission met to vote on the proposed regulations.¹⁰¹ Although the September meeting was the third

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.* at 3 (alteration in original).

⁹⁴ Masden & Anderson, *supra* n. 88, at 3.

⁹⁵ Colo. Wildlife Commn., *Rule-Making Notice: Wildlife Commission Meeting July 14-15, 2005* (May 20, 2005) (available at <http://wildlife.state.co.us/WildlifeCommission/2005/July/Notice.July2005.pdf>).

⁹⁶ Colo. Wildlife Commn., *Draft Regulations*, *supra* n. 9, at 9–10.

⁹⁷ Colo. Div. of Wildlife, *Wildlife Commn. Meeting Transcr.* (July 14-15, 2005) (CD on file with *Animal L.*).

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Wildlife Commn. Meeting Transcr.*, *supra* n. 10 (September meeting).

and last step in the commission's rule-making process for sanctuary regulations, the commission decided to continue the matter until its November 2005 meeting.¹⁰² The commission's reluctance to conduct a final vote on the regulations had nothing to do with the issue of AZA certification, but rather stemmed from confusion and dissatisfaction with two other, unrelated amendments that had been made or suggested since the July meeting on the proposed regulations.¹⁰³ Therefore, although the sanctuary regulations have not yet been finalized at the time of this writing, there is every indication that the final sanctuary regulations will contain the requirement that wildlife sanctuaries attain AZA related facilities certification to be eligible for a CDOW license to operate in the state.¹⁰⁴

VII. WHY AZA CERTIFICATION IS INAPPROPRIATE FOR PRIVATE, NON-PROFIT WILDLIFE SANCTUARIES

CDOW has repeatedly relied on the AZA and its accreditation and certification functions to provide standards of confinement and care for facilities over which CDOW otherwise would have jurisdiction. For example, CDOW has a licensing classification for zoological parks, which have the primary purpose of "exhibition of captive wild or exotic animals for the education of the general public."¹⁰⁵ Both CDOW and the General Assembly exempt from such licensure any zoo accredited by the AZA.¹⁰⁶ The AZA accredits commercial facilities such as traditional zoos, and it also certifies what it calls related facilities, which are wildlife organizations that differ in mission and structure from zoos.¹⁰⁷

As soon as it began consideration of regulations for wildlife sanctuaries under H.B. 04-1135, CDOW showed a preference for AZA certification to supply the necessary standards.¹⁰⁸ At the July meeting,

¹⁰² *Id.*

¹⁰³ *Id.* The proposed regulations were amended with a provision requiring that all sanctuary animals be surgically sterilized immediately upon their arrival at the sanctuary and another provision limiting authorization for existing and grandfathered sanctuaries to expand their operations. *Id.* Pat Craig, Director of RMWCC, spoke to the commissioners and suggested to them that these two provisions would effectively close down his sanctuary because of the increased burden they would impose; but he also suggested that the goals behind the two provisions could be met in less onerous ways. *Id.* The commissioners continued the matter for further consideration of suggested means to ameliorate the burden of these two provisions. *Id.* No discussion was had regarding AZA or TAOS accreditation or certification standards. *Id.*

¹⁰⁴ *Wildlife Commn. Meeting Transcr.*, *supra* n. 10 (September meeting).

¹⁰⁵ Colo. Rev. Stat. § 33-4-102(13)(a)(I); 2 Colo. Code Regs. 406-8(1104)(A)(5).

¹⁰⁶ Colo. Rev. Stat. § 33-4-102(13)(g); 2 Colo. Code Regs. 406-8(1104)(A)(5)(a).

¹⁰⁷ Am. Zoo and Aquarium Assn., *Guide to Certification of Related Facilities (and Accreditation / Certification Standards)* 6-10 (2005 ed.) (on file with *Animal L.*) [hereinafter Am. Zoo and Aquarium Assn., *AZA Guide*].

¹⁰⁸ Colo. Wildlife Commn., *Issues - May 2005 - Wildlife Commission Meeting 7-8* (April 18, 2005) (available at <http://wildlife.state.co.us/WildlifeCommission/2005/May/PreMtg/ISSUES%20Ch11.pdf>).

CDOW staff advised the commissioners at length that the AZA and its related facilities certification standards are superior to those of TAOS and the ASA.¹⁰⁹ Despite looking at the newly-published TAOS accreditation manual, CDOW staff still recommended full reliance on the AZA.¹¹⁰ Staff cited the following reasons to prefer the AZA: (1) the AZA is over one hundred years old and has thirty or more full-time employees, (2) the AZA actively monitors facilities and has a history of revoking accreditation, and (3) the AZA was established with the main purpose of accrediting animal facilities.¹¹¹ In contrast, CDOW staff told the commissioners that TAOS is a young organization with only one employee, has never revoked accreditation, although it has refused to renew, and was not established primarily as an accreditation group, but rather as a sanctuary support network and information clearing-house.¹¹² Therefore, CDOW staff emphasized its recommendation that all non-profit wildlife sanctuaries in the state have AZA related facilities certification as a prerequisite of CDOW licensing.¹¹³

There are three major problems with CDOW's reliance on the AZA for implementing standards in the context of wildlife sanctuaries in Colorado. First, the AZA has recently been under fire from animal welfare advocates and under media scrutiny for lax oversight, inadequate inspections, and policies that do not adequately protect animals from neglect and death in accredited facilities.¹¹⁴ Without further investigation, it is not clear that CDOW's reliance continues to be well-placed.

Second, the proposed regulations impose double requirements on wildlife sanctuaries, in contrast to the regulation of other special license holders. Commercial facilities exhibiting animals to the public may choose to pay one hundred dollars for a CDOW zoological park license, under which they must comply with CDOW regulations, or to pay approximately fourteen hundred dollars for AZA accreditation, under which they must comply with AZA requirements.¹¹⁵ Under the proposed regulations, wildlife sanctuaries must do both.¹¹⁶

Third, and most critical for consideration by all parties interested in wildlife sanctuary operations nationwide, the AZA related facilities

¹⁰⁹ *Id.*

¹¹⁰ *Wildlife Commn. Meeting Transcr., supra* n. 97 (July meeting).

¹¹¹ *Wildlife Commn. Meeting Transcr., supra* n. 97 (July meeting).

¹¹² *Wildlife Commn. Meeting Transcr., supra* n. 97 (July meeting).

¹¹³ *Wildlife Commn. Meeting Transcr., supra* n. 97 (July meeting).

¹¹⁴ Michael Satchell, *Cruel and Usual*, U.S. News & World Report 28 (Aug. 5, 2002) (documenting AZA transfers of animals to substandard facilities, admitted by AZA members); Dennis Wagner, *Claws Come Out in Fights over Zoos*, USA Today 03A (June 3, 2005); Christy Strawser, *Elephants Should Go to Sanctuary, Zoo Director Says*, The Daily Oakland Press (July 1, 2005) (available at http://theoaklandpress.com/stories/091904/loc_20040919007.shtml).

¹¹⁵ See *infra* pt. VII(G) (explaining application requirements for AZA related facilities certification and TAOS accreditation).

¹¹⁶ See Colo. Wildlife Commn., *Draft Regulations, supra* n. 9, at 9 (describing wildlife sanctuary licensing requirements to comply with AZA standards and pay license fee of one hundred dollars).

requirements are simply inappropriate for non-profit wildlife sanctuaries. Furthermore, TAOS and ASA provide standards that are at least equivalent to and often exceed the AZA standards in critical ways and are carefully designed for non-profit sanctuaries. The remainder of this article compares the AZA related facilities certification standards with the TAOS accreditation standards¹¹⁷ and shows that the TAOS standards are more efficient, comprehensive, and stringent, and would better effectuate the goals and resolve the concerns of CDOW.

Specifically, the standards are compared in those areas of most concern to CDOW staff and other sanctuary skeptics: standards of care, emergency preparedness, financial stability, veterinary care, general facility requirements, acquisition and disposition of animals, and accreditation or certification requirements.

In addition, enforcement is an important theme in CDOW and citizen groups' opposition to TAOS as an accrediting partner. CDOW staff has advised the commission that the AZA can adequately enforce its accreditation standards.¹¹⁸ As noted by CDOW, TAOS is a younger organization than the AZA, is staffed primarily by volunteers,¹¹⁹ and has only recently published its lengthy accreditation standards.¹²⁰ However, these facts do not necessarily mean that TAOS is incapable of adequately enforcing its accreditation requirements.

When a sanctuary is inspected for TAOS accreditation, a volunteer with professional qualifications in the specific kind of animal care taking place at the sanctuary is chosen to do the inspection.¹²¹ Both

¹¹⁷ ASA also provides extensive standards of care that are very similar to those promulgated by TAOS. This article focuses on the TAOS standards in its comparison with the AZA because the TAOS standards are published, they cover more areas than the ASA standards do, and TAOS thus far has accredited more sanctuaries nationwide than ASA. See TAOS, The Association of Sanctuaries, *Sanctuaries Listed A to Z*, <http://www.taosanctuaries.org/sanctuaries/atoz.htm> (accessed Oct. 22, 2005) (listing forty TAOS-accredited sanctuaries); American Sanctuary Association, *Accredited Sanctuaries*, <http://www.asaanimalssanctuaries.org/Sanctuaries/Sanctuaries.htm> (accessed Oct. 22, 2005) (listing thirty-four ASA-accredited sanctuaries). Sanctuary proponents in Colorado are comfortable with both organizations' accreditation authority, as evidenced by the fact that both were offered as valid accreditors in the exemption provision of the original version of H.B. 04-1135, and many sanctuaries are accredited by both organizations. See Colo. H. 04-1135, 64th Gen. Assembly, 2d Reg. Sess. at §§ 5(d)(I)–(II) (on file with *Animal L.*) (proposed section exempted both TAOS and ASA accredited sanctuaries from CDOW regulation).

¹¹⁸ See Colo. Wildlife Commn., *supra* n. 108, at 2–3 (CDOW proposing three alternatives all requiring compliance with AZA certification but not TAOS standards).

¹¹⁹ See TAOS, The Association of Sanctuaries, *How Does TAOS Operate?* <http://www.taosanctuaries.org/about/index.htm> (accessed Oct. 22, 2005) (“TAOS has a very small staff and large number of volunteers”).

¹²⁰ On the relative longevity of TAOS and AZA programs, compare TAOS, The Association of Sanctuaries, *TAOS Manual of Accreditation* I.4 (2005) (on file with *Animal L.*) [hereinafter TAOS, *TAOS Manual*] (describing efforts to improve standards at sanctuaries beginning in 2003, the result of which, “in early 2005, was this Manual of Accreditation”) with Am. Zoo and Aquarium Assn., *AZA Guide*, *supra* n. 107, at 7 (describing process of developing accreditation program between 1971 and 1974).

¹²¹ TAOS, *TAOS Manual*, *supra* n. 120, at I.3.

TAOS officials and the applicant are involved in the selection process to determine if there are any objections to the inspector.¹²² If the inspector is not experienced with the care required for the species kept at the sanctuary, the inspector will consult with other TAOS members who have professional experience with that particular species.¹²³

Similarly, the AZA uses volunteers with experience in animal care and facility operations to conduct inspections.¹²⁴ Inspectors are selected from a pool of trained volunteers.¹²⁵ The AZA sends at least two inspectors, one of whom is a veterinarian, to each inspection.¹²⁶ The AZA relies on animal care professionals from AZA-member institutions because the organization believes these people have the integrity of the program at heart and are unlikely to have any conflict of interest in the applicant's success.¹²⁷

Thus, the only significant difference between TAOS and AZA enforcement is that the AZA has been operating its program for a longer time. Both organizations pull volunteer inspectors, trained for accreditation or certification inspections, from an existing pool of professionals in the animal care field. Both organizations will revoke approval or decline to renew approval if their standards are violated. TAOS is a younger organization, but private, non-profit wildlife sanctuaries are also a relatively new phenomenon. While CDOW has long put its regulatory trust in the well-established AZA, there is no systemic reason why TAOS should not be afforded the same trust, considering that TAOS's accreditation standards for sanctuaries are superior in many ways to AZA's related facility standards.

A. *Standards of Care*

Opponents of H.B. 04-1135 were particularly concerned that CDOW does not have sufficient standards of care in place to ensure the proper care of animals in newly licensed wildlife sanctuaries.¹²⁸ Such concerns are thoroughly addressed in the accreditation standards of TAOS, which, as discussed below, include comprehensive standards of care, both in a generic sense and also in more detail for several particular species. The AZA standards proposed by CDOW, however, are less specific and less comprehensive, providing specific guidelines only for elephants.¹²⁹

¹²² *Id.*

¹²³ *Id.*

¹²⁴ Telephone Interview with Denny Lewis, Dir. of Accreditation, AZA (Aug. 23, 2005).

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ See Telephone Interview, *supra* nn. 80-82 and accompanying text (discussing various groups that expressed their support for the requirement of AZA certification).

¹²⁹ Am. Zoo and Aquarium Assn., *AZA Guide*, *supra* n. 107, at 53-60.

TAOS and AZA standards require adequate animal enclosures to ensure the animals' physical, social, and psychological well-being.¹³⁰ Both sets of standards require appropriate, healthful, balanced diets and access to fresh water.¹³¹ In addition, they require protection from the elements and proper temperature control¹³² as well as full-time, round-the-clock access to veterinary care, either by the staff or by contract.¹³³ Furthermore, TAOS and AZA standards require sufficient staff for animal care, as well as recommended opportunities for staff training in animal care, medical, and emergency protocols.¹³⁴

The AZA standards require written enrichment programs to promote "species-appropriate behavioral opportunities" for each facility.¹³⁵ They also include highly detailed requirements for the care of elephants, including standards on lighting, humidity, space, confinement, food and water, group composition, group size, reproduction, behavioral management and training, and restraint.¹³⁶ There are no comparable specifics with regard to other species except in terms of certain quarantine protocols.¹³⁷

In contrast, the TAOS standards supply in-depth animal care standards, both generic and species specific. The generic standards require that enclosures consider the particular animals' sensory sensitivities,¹³⁸ and that all animals are provided with sufficient environmental complexity for their psychological, social, and behavioral needs.¹³⁹ In addition, the standards state that feeding will be conducted in combination with enrichment activities on a regular basis.¹⁴⁰ Furthermore, abnormally behaving animals are given the opportunity to learn appropriate behaviors,¹⁴¹ groups of animals are housed together and carefully monitored for compatibility,¹⁴² and new animals are carefully introduced to groups before they are housed together.¹⁴³

¹³⁰ *Id.* at 38; TAOS, *TAOS Manual*, *supra* n. 120, at 1.5.3.

¹³¹ Am. Zoo and Aquarium Assn., *AZA Guide*, *supra* n. 107, at 43, 55–56 (only mentioning water requirements in regard to the elephant-specific standard); TAOS, *TAOS Manual*, *supra* n. 120, at 2.1.3.

¹³² Am. Zoo and Aquarium Assn., *AZA Guide*, *supra* n. 107, at 42; TAOS, *TAOS Manual*, *supra* n. 120, at 2.1.3.

¹³³ Am. Zoo and Aquarium Assn., *AZA Guide*, *supra* n. 107, at 43; TAOS, *TAOS Manual*, *supra* n. 120, at 2.2.1.

¹³⁴ Am. Zoo and Aquarium Assn., *AZA Guide*, *supra* n. 107, at 36; TAOS, *TAOS Manual*, *supra* n. 120, at 1.3.1, 1.3.3.

¹³⁵ Am. Zoo and Aquarium Assn., *AZA Guide*, *supra* n. 107, at 42.

¹³⁶ *Id.* at 53–60.

¹³⁷ See generally Am. Zoo and Aquarium Assn., *AZA Guide*, *supra* n. 107, at 47–52 (providing specific quarantine procedures for primates, hoofstock, small mammals/carnivores, birds, reptiles/amphibians).

¹³⁸ TAOS, *TAOS Manual*, *supra* n. 120, at 2.1.3.

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 2.1.3, 2.1.4.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

In addition, TAOS provides specific care standards for elephants, foxes and coyotes, wild cats, wolves and high-content wolf-dogs, non-human primates, black bears, birds, and farmed animals.¹⁴⁴ As an example, the species-specific standards for wolves and wolf-dogs go into depth about acquisition, enclosures, group size, shelter and privacy, sanitation, feeding, social and environmental enrichment, medical and quarantine protocols, provisions for the safety of animals and humans, and emergency procedures.¹⁴⁵

TAOS also addresses other areas of animal care and protection in greater detail. For example, TAOS prohibits any breeding or commercial use of animals or animal parts.¹⁴⁶ Animal handling must be performed or supervised by qualified staff and intimidation, food deprivation, or punishment cannot be used to manage the animals.¹⁴⁷ TAOS requires that sanctuary staff never indicate in any way to the public that wild animals are tractable, particularly in the way the animals are handled.¹⁴⁸ TAOS specifically addresses the transportation of animals, requiring that means and methods consider the animals' temperament and compliance with local, state, and federal law.¹⁴⁹ Thus, it is clear that the TAOS standards of care for animals, both generally and in species-specific categories, are more specific and comprehensive than the AZA related facilities standards.

B. Emergency Preparedness

Several types of emergencies may arise at wildlife facilities including animal escapes, injuries to humans, injuries to animals, natural hazards, and disease outbreaks. The AZA and TAOS standards address all types of emergencies, but the TAOS standards are more stringent than AZA's.

Both organizations require facilities to have adequate power and lighting, as well as back-up power supplies.¹⁵⁰ They require safety and first aid procedures to be in place for any injuries.¹⁵¹ Both require first aid procedures to be readily available to staff.¹⁵² TAOS requires, while AZA recommends, that staff recognize abnormal behavior or signs of illness in the animals.¹⁵³ Both provide for cooperative agreements with local law enforcement, as well as staff training and safety provisions

¹⁴⁴ TAOS, *TAOS Manual*, *supra* n. 120, at 2.3.1.1–2.3.8.9.

¹⁴⁵ *Id.* at 2.3.1.1–2.3.1.10.

¹⁴⁶ *Id.* at 1.1.1, 1.1.2.

¹⁴⁷ *Id.* at 1.1.2.

¹⁴⁸ *Id.* at 1.1.2, 1.7.1.

¹⁴⁹ *Id.* at 2.1.1.

¹⁵⁰ Am. Zoo and Aquarium Assn., *AZA Guide*, *supra* n. 107, at 38; TAOS, *TAOS Manual*, *supra* n. 120, at 1.5.1.

¹⁵¹ Am. Zoo and Aquarium Assn., *AZA Guide*, *supra* n. 107, at 38–40; TAOS, *TAOS Manual*, *supra* n. 120, at 1.6.2.

¹⁵² Am. Zoo and Aquarium Assn., *AZA Guide*, *supra* n. 107, at 38; TAOS, *TAOS Manual*, *supra* n. 120, at 1.6.2.

¹⁵³ Am. Zoo and Aquarium Assn., *AZA Guide*, *supra* n. 107, at 39; TAOS, *TAOS Manual*, *supra* n. 120, at 2.2.2.

for the use of firearms.¹⁵⁴ Both require animal re-capture equipment to be available to trained personnel,¹⁵⁵ quarantine procedures and facilities to monitor and prevent disease transmission,¹⁵⁶ and a perimeter fence that is separated from the enclosure fences inside.¹⁵⁷ They also require that staff be supplied with written emergency procedures for the handling of toxic materials, escaped animals, natural disasters, power failures, and attacks by dangerous animals, as well as a first aid plan.¹⁵⁸

The AZA standards require security and proper placement of alarm systems.¹⁵⁹ The AZA also requires that sanctuary staff practice emergency drills, particularly for animal escape incidents¹⁶⁰ and that animal escape procedures be posted throughout the facility.¹⁶¹

TAOS requires written plans for bio-safety protocols.¹⁶² TAOS also requires that designated personnel be trained in physical and chemical animal restraint procedures, as well as necessary medical procedures in the event of emergency restraints.¹⁶³ TAOS requires that all employees are specifically trained in zoonotic diseases—those that are capable of transfer from animals to humans—relevant to the animals in their care.¹⁶⁴ Any staff working with animals in which tuberculosis could be present must have yearly screenings.¹⁶⁵ TAOS also specifically requires that all disease outbreaks, escaped animals, and exposures to infectious pathogens be reported to the relevant outside agencies.¹⁶⁶

Thus, the TAOS standards are more detailed and comprehensive with regard to response to potential emergency situations than the AZA standards.

C. Financial Stability

Another concern voiced by opponents of H.B. 04-1135 and CDOW personnel is that even the best-intentioned non-profit wildlife sanc-

¹⁵⁴ Am. Zoo and Aquarium Assn., *AZA Guide*, *supra* n. 107, at 39–40; TAOS, *TAOS Manual*, *supra* n. 120, at 1.6.1–1.6.2.

¹⁵⁵ Am. Zoo and Aquarium Assn., *AZA Guide*, *supra* n. 107, at 43; TAOS, *TAOS Manual*, *supra* n. 120, at 1.6.1, 1.3.2, 2.2.5.

¹⁵⁶ Am. Zoo and Aquarium Assn., *AZA Guide*, *supra* n. 107, at 48–53; TAOS, *TAOS Manual*, *supra* n. 120, at 1.5.1–1.5.2.

¹⁵⁷ Am. Zoo and Aquarium Assn., *AZA Guide*, *supra* n. 107, at 40; TAOS, *TAOS Manual*, *supra* n. 120, at 1.5.3.

¹⁵⁸ Am. Zoo and Aquarium Assn., *AZA Guide*, *supra* n. 107, at 38–39, 43; TAOS, *TAOS Manual*, *supra* n. 120, at 1.6.1–1.6.2.

¹⁵⁹ Am. Zoo and Aquarium Assn., *AZA Guide*, *supra* n. 107, at 38.

¹⁶⁰ *Id.* at 29, 39.

¹⁶¹ *Id.* at 30.

¹⁶² TAOS, *TAOS Manual*, *supra* n. 120, at 1.6.2.

¹⁶³ *Id.* at 1.6.1.

¹⁶⁴ *Id.* at 1.3.3.

¹⁶⁵ *Id.* at 2.2.7.

¹⁶⁶ *Id.* at 2.2.7.

tuaries are vulnerable to financial hardship or dissolution.¹⁶⁷ In that case, animals may be subject to inadequate treatment and other animal care facilities or law enforcement agencies may be required to take in dozens of wild animals left without support. There is no dispute that operating a non-profit facility to house, feed, and care for large, wild, and potentially dangerous animals is a challenging endeavor.

TAOS and AZA standards consider the organizational structure and financial condition of the facilities they inspect.¹⁶⁸ Both require a director, working in conjunction with a board or other governing authority, to be responsible for day-to-day management of operations.¹⁶⁹ They require financial reporting to show that a suitable budget is in place and that funding streams meet requirements;¹⁷⁰ they ensure that sufficient insurance policies are in place;¹⁷¹ and they consider the budgeting process, looking for evidence of plans and resources to support solvency for three to five years.¹⁷² Both require operating budgets and strategic plans for development.¹⁷³

TAOS-accredited wildlife sanctuaries are necessarily non-profit organizations, so TAOS accreditation includes standards related to this status.¹⁷⁴ Fund-raising activities and administrative costs may not exceed thirty percent of total expenses.¹⁷⁵ Any public activities or public relations information must provide only accurate information about the facility itself and its mission.¹⁷⁶

Aside from non-profit-related requirements, TAOS also specifically requires other financial safeguards. TAOS requires that the organization own or have a long-term lease on the property.¹⁷⁷ TAOS requires a written contingency plan for the lifetime care of the animals regardless of changes in the sanctuary's personnel.¹⁷⁸ TAOS requires generally accepted accounting procedures in accord with the Financial

¹⁶⁷ See *supra* nn. 80–85 and accompanying text (concerning opposition to the bill in the senate hearings, including the law enforcement community which expressed concern that the burden would fall on them when non-profit organizations faced financial failure).

¹⁶⁸ Am. Zoo and Aquarium Assn., *AZA Guide*, *supra* n. 107, at 37; TAOS, *TAOS Manual*, *supra* n. 120, at 1.2.1, 1.4.1–1.4.2.

¹⁶⁹ Am. Zoo and Aquarium Assn., *AZA Guide*, *supra* n. 107, at 35; TAOS, *TAOS Manual*, *supra* n. 120, at 1.2.1.

¹⁷⁰ Am. Zoo and Aquarium Assn., *AZA Guide*, *supra* n. 107, at 37; TAOS, *TAOS Manual*, *supra* n. 120, at 1.4.1.

¹⁷¹ Am. Zoo and Aquarium Assn., *AZA Guide*, *supra* n. 107, at 37; TAOS, *TAOS Manual*, *supra* n. 120, at 1.4.2.

¹⁷² Am. Zoo and Aquarium Assn., *AZA Guide*, *supra* n. 107, at 37; TAOS, *TAOS Manual*, *supra* n. 120, at 1.2.2, 1.4.1.

¹⁷³ Am. Zoo and Aquarium Assn., *AZA Guide*, *supra* n. 107, at 37; TAOS, *TAOS Manual*, *supra* n. 120, at 1.2.2.

¹⁷⁴ TAOS, *TAOS Manual*, *supra* n. 120, at 1.2.1.; see 26 U.S.C. § 501(c)(3) (2000) (exempting non-profit animal welfare organizations from regular taxation).

¹⁷⁵ TAOS, *TAOS Manual*, *supra* n. 120, at 1.4.1.

¹⁷⁶ *Id.* at 1.4.1.

¹⁷⁷ *Id.* at 1.2.2.

¹⁷⁸ *Id.* at 1.2.2.

Accounting Standards Board¹⁷⁹ as well as strict separation and recodation of the facility's finances.¹⁸⁰

Thus, although non-profit entities face different financial challenges than their commercial counterparts, the TAOS requirements are more specific and stringent than the AZA's, both in general financial practices and non-profit-specific requirements. TAOS accreditation requires a greater degree of assurance of a facility's current financial health and its contingency plans for the future.

D. Veterinary Care

As mentioned above, TAOS and AZA require that staff or contractual veterinary personnel be available twenty-four hours a day.¹⁸¹ Both require an emphasis on disease prevention.¹⁸² Both encourage necropsy and other testing on deceased animals,¹⁸³ and that drugs and their administration be in compliance with Federal Drug Administration standards.¹⁸⁴ Both require appropriate diets and procedures for avoiding disease transmission.¹⁸⁵

Despite these similarities, the TAOS veterinary care standards are more specific than the AZA standards. In addition to the primary veterinarian, TAOS requires designated personnel to be trained in basic veterinary medicine.¹⁸⁶ TAOS encourages necropsy and testing not only on deceased sanctuary animals but on any domestic, feral, or wild animals that are found deceased on the site.¹⁸⁷ TAOS generally requires an emphasis on disease prevention and specifically requires regular immunization, parasite control, and dental monitoring.¹⁸⁸ In accord with its requirement that sanctuary animals not be allowed to breed, TAOS requires a veterinarian-supervised program of contraception, utilizing means such as separation of the sexes, surgical procedures, or chemical contraception.¹⁸⁹ The TAOS standards are also more specific about the training that employees must receive and the monitoring that must be done with regard to zoonotic diseases.¹⁹⁰

¹⁷⁹ *Id.* at 1.4.1.

¹⁸⁰ *Id.* at 1.4.1.

¹⁸¹ Am. Zoo and Aquarium Assn., *AZA Guide*, *supra* n. 107, at 43; TAOS, *TAOS Manual*, *supra* n. 120, at 2.2.1.

¹⁸² Am. Zoo and Aquarium Assn., *AZA Guide*, *supra* n. 107, at 43; TAOS, *TAOS Manual*, *supra* n. 120, at 2.2.4.

¹⁸³ Am. Zoo and Aquarium Assn., *AZA Guide*, *supra* n. 107, at 43; TAOS, *TAOS Manual*, *supra* n. 120, at 2.2.6.

¹⁸⁴ Am. Zoo and Aquarium Assn., *AZA Guide*, *supra* n. 107, at 43; TAOS, *TAOS Manual*, *supra* n. 120, at 2.2.6.

¹⁸⁵ Am. Zoo and Aquarium Assn., *AZA Guide*, *supra* n. 107, at 43; TAOS, *TAOS Manual*, *supra* n. 120, at 2.2.5.

¹⁸⁶ TAOS, *TAOS Manual*, *supra* n. 120, at 2.2.2.

¹⁸⁷ *Id.* at 2.2.6.

¹⁸⁸ *Id.* at 2.2.5-2.2.6.

¹⁸⁹ *Id.* at 2.2.5.

¹⁹⁰ *Id.* at 1.3.3, 2.2.6-2.2.7.

Thus, the TAOS standards for veterinary care are more thorough than the AZA with regard to the animals' current and future health, as well as the protection of other animals and humans in the area of the sanctuary.

E. General Facility Requirements

Aside from the specific requirements for enclosures mentioned above, both sets of standards supply general requirements for the sanctuary facility. TAOS and AZA require that the facility is kept clean and healthful.¹⁹¹ They require separate areas for quarantine and for food storage and preparation,¹⁹² and adequate ventilation, lighting, and electric power.¹⁹³

The TAOS standards go further in this general area, requiring the facility to meet Occupational Safety and Health Administration standards and other relevant health regulations.¹⁹⁴ TAOS requires careful selection of the sanctuary location considering potential natural threats and potential impact on people and communities nearby.¹⁹⁵ TAOS specifically requires that the food preparation and storage areas are kept separate from any potentially hazardous or contaminated materials.¹⁹⁶ The TAOS standards require that the barrier materials meet local, state, and federal regulations.¹⁹⁷ All barriers must be cleared of vegetation.¹⁹⁸ Each enclosure must include within it a smaller, locked area for confinement.¹⁹⁹ Non-vehicle entries into enclosures holding potentially dangerous animals must employ a double locking gate system.²⁰⁰ TAOS specifically requires regular maintenance inspections by sanctuary staff.²⁰¹

Thus, with regard to the condition of the facility and protection of animal and human health and safety, the TAOS standards are more stringent and thorough than the AZA standards.

F. Acquisition and Disposition of Animals

TAOS and AZA standards address the manner in which animals may be taken into and removed from a facility. Both require that accu-

¹⁹¹ Am. Zoo and Aquarium Assn., *AZA Guide*, *supra* n. 107, at 37; TAOS, *TAOS Manual*, *supra* n. 120, at 1.5.1.

¹⁹² Am. Zoo and Aquarium Assn., *AZA Guide*, *supra* n. 107, at 37, 47-52; TAOS, *TAOS Manual*, *supra* n. 120, at 1.5.1-1.5.2.

¹⁹³ Am. Zoo and Aquarium Assn., *AZA Guide*, *supra* n. 107, at 38; TAOS, *TAOS Manual*, *supra* n. 120, at 1.5.1.

¹⁹⁴ TAOS, *TAOS Manual*, *supra* n. 120, at 1.5.1.

¹⁹⁵ *Id.* at 1.5.1.

¹⁹⁶ *Id.* at 1.5.2.

¹⁹⁷ *Id.* at 1.5.3.

¹⁹⁸ *Id.* at 1.5.4.

¹⁹⁹ *Id.* at 1.5.3.

²⁰⁰ TAOS, *TAOS Manual*, *supra* n. 120, at 1.5.3.

²⁰¹ *Id.* at 1.5.4.

rate records be kept of animals coming and going from the facility.²⁰² They require that acquisitions and dispositions of animals comply with local, state, and federal law²⁰³ and that the health and well-being of animals in residence be considered before additional animals are acquired.²⁰⁴

The AZA standards require that any animals taken from the wild be removed in compliance with local, state, and federal law, and that the taking poses no detriment to wild populations or species.²⁰⁵ AZA also allows for temporary acquisition of animals for certain purposes.²⁰⁶ As far as disposition, AZA prohibits conveyance to auctions or to parties who would use the animals for hunting.²⁰⁷ Animals may be transferred to non-AZA member institutions if their mission and standards are compatible in the view of the AZA member transferring facility.²⁰⁸ Animals, except for non-human primates or inherently dangerous wild animals, may be passed into the pet trade if such transfer is considered beneficial.²⁰⁹

TAOS prohibits any commercial trade in animals, either into or out of the sanctuary.²¹⁰ TAOS also requires that sanctuaries accept responsibility for acquired animals for the duration of their lives.²¹¹ Animals may be acquired only if the sanctuary has ample financial and physical capacity.²¹² In accordance with its mission, TAOS does not regulate acquisition of animals from the wild, because sanctuaries are exclusively rescue organizations for animals from private or commercial wildlife ventures.²¹³ TAOS lists acceptable reasons for animals to leave the sanctuary, including the animal's death, transfer to a medical rehabilitator, transfer to another, better-equipped sanctuary, or financial insolvency.²¹⁴ TAOS allows the transfer of animals only to facilities with appropriate and sufficient resources and expertise.²¹⁵

Thus, the TAOS and AZA standards for acquisition and disposition differ in ways related to the missions of the facilities they cover. The AZA provides for commercial trade of animals, and its standards

²⁰² Am. Zoo and Aquarium Assn., *AZA Guide*, *supra* n. 107, at 70, 72; TAOS, *TAOS Manual*, *supra* n. 120, at 1.1.1.

²⁰³ Am. Zoo and Aquarium Assn., *AZA Guide*, *supra* n. 107, at 70–71; TAOS, *TAOS Manual*, *supra* n. 120, at 1.1.1.

²⁰⁴ Am. Zoo and Aquarium Assn., *AZA Guide*, *supra* n. 107, at 70; TAOS, *TAOS Manual*, *supra* n. 120, at 1.1.1.

²⁰⁵ Am. Zoo and Aquarium Assn., *AZA Guide*, *supra* n. 107, at 70.

²⁰⁶ *Id.*

²⁰⁷ *Id.* at 71.

²⁰⁸ *Id.* at 72.

²⁰⁹ *Id.* at 72–73.

²¹⁰ TAOS, *TAOS Manual*, *supra* n. 120, at 1.1.2.

²¹¹ *Id.* at 1.1.1.

²¹² *Id.*

²¹³ See TAOS, The Association of Sanctuaries, *supra* n. 17, at <http://www.taosanctuaries.org/about/index.htm> and accompanying text (quoting TAOS's description of the purpose of its member groups).

²¹⁴ TAOS, *TAOS Manual*, *supra* n. 120, at 1.1.3.

²¹⁵ *Id.*

are necessarily broader to cover those transactions. TAOS focuses on the non-commercial movement of animals into the most appropriate settings for their lifetimes, and the standards are therefore narrowly focused to that context. For facilities that meet the TAOS definition of a wildlife sanctuary, these narrowly focused and protective standards are more appropriate than the general AZA standards.

G. Accreditation or Certification Requirements

Although there are similarities between the application processes for TAOS and AZA recognition, this is another area where the TAOS process is both more appropriate and more efficient for wildlife sanctuaries. Both agencies require an application, a site inspection, and a subsequent decision by the agency, as well as a renewal which parallels the original application process.²¹⁶ TAOS and AZA require record inspection, including a yearly inventory of the animals on site, animals' medical records, records of acquisition and disposition, necropsy and incident reports, and daily logs kept on each animal.²¹⁷

The TAOS process is less expensive than the AZA process. AZA requires an accreditation filing fee of six hundred dollars and a deposit of eight hundred dollars to cover the inspectors' expenses.²¹⁸ If the expenses are greater than eight hundred dollars, the facility will be billed for the excess, and if they are less than eight hundred dollars, the facility will be reimbursed.²¹⁹ TAOS asks for one-quarter of one percent of the facility's annual operating budget, with a minimum of one hundred and fifty dollars and a maximum of five hundred dollars.²²⁰ Inspections are carried out by volunteers from the area where the sanctuary is located,²²¹ so additional expenses are limited.

The timeline for renewal of TAOS accreditation is shorter than the renewal period for AZA certification. TAOS requires renewal, including re-inspection, every three years.²²² TAOS will carry out interim inspections if it receives complaints about a facility.²²³ AZA certification is renewed, with a re-inspection, only every five years.²²⁴ AZA may carry out interim inspections at its discretion, if the facility relocates, or if an incident arises that causes serious injury.²²⁵

²¹⁶ Am. Zoo and Aquarium Assn., *AZA Guide*, *supra* n. 107, at 11, 20; TAOS, *TAOS Manual*, *supra* n. 120, at I.1-I.2.

²¹⁷ Am. Zoo and Aquarium Assn., *AZA Guide*, *supra* n. 107, at 26-27, 40-41; TAOS, *TAOS Manual*, *supra* n. 120, at 1.1.1.

²¹⁸ Am. Zoo and Aquarium Assn., *AZA Guide*, *supra* n. 107, at 12.

²¹⁹ *Id.*

²²⁰ TAOS, *TAOS Manual*, *supra* n. 120, at I.1-I.2.

²²¹ *Id.* at I.3.

²²² *Id.* at I.2.

²²³ E-mail from Craig Brestrup, Secretary, The Assn. of Sanctuaries, to Katherine A. Burke, Assoc. Atty., Maynes, Bradford, Shipps & Sheftel, LLP, *TAOS Inspections* (Nov. 21, 2005, 6:08 a.m. CST) (copy on file with *Animal L.*).

²²⁴ Am. Zoo and Aquarium Assn., *AZA Guide*, *supra* n. 107, at 20.

²²⁵ Telephone Interview, *supra* n. 124.

For these reasons, TAOS accreditation is more accessible to non-profit wildlife sanctuaries than AZA certification. As discussed above, TAOS accreditation also provides more safeguards for animals and humans through its more frequent inspections and scrutiny. The TAOS standards are more efficient and better-tailored to resolving the particular concerns about substandard facilities expressed by CDOW.

H. *The Case for Trusting New Accrediting Agencies*

Another reason that regulators should place trust in agencies like TAOS is that they carry on in the venerable tradition of voluntary self-regulation of professions and industries. The AZA has been the established accrediting agency for zoos and commercial wildlife facilities since it introduced the first program in America in 1974.²²⁶ TAOS and the ASA have now arisen as accrediting agencies particularly focused on non-profit wildlife sanctuaries.

“Accreditation” has been defined as:

[T]he formal expression by a private body of an authoritative opinion concerning the acceptability, under objective quality standards fairly applied, of the services rendered by a particular institutional provider. Accrediting parallels in all pertinent respects comparable activity by other private bodies in certifying the quality of industrial products or in credentialing technical personnel in various fields.²²⁷

Accrediting agencies do not wield the same power to compel compliance as government regulators. When a government agency adopts an accrediting group’s standards as part of its regulatory scheme, it imbues the accreditation program with the exclusionary and compulsive power of government.²²⁸ In this way, accrediting agencies can fulfill some of the functions of government agencies, providing state-of-the-art standards and oversight backed by effective enforcement.

However, when governmental entities rely on private accreditation in part to carry out their regulatory functions, they should not “slip[] into a regulatory mode, selecting one accreditor as, in effect, the official one or expecting competing accreditors to enforce essentially the same requirements.”²²⁹ Such particularized reliance deprives both license applicants and those they serve of alternative information and opinions on their operations.²³⁰

Strong accreditation programs for non-profit organizations generally exhibit five traits: mandatory accreditation or certification efforts, regulation of a well-defined subset of non-profit organizations, a direct relationship between accreditation and material regulatory or private benefits, external enforcement mechanisms, and strong ongoing learn-

²²⁶ Am. Zoo and Aquarium Assn., *AZA Guide*, *supra* n. 107, at 7.

²²⁷ Clark C. Havighurst, *Foreword: The Place of Private Accrediting Among the Instruments of Government*, 57 L. & Contemp. Probs. 1, 2 (Autumn 1994).

²²⁸ *Id.* at 3.

²²⁹ *Id.* at 10.

²³⁰ *Id.* at 11.

ing and resource processes.²³¹ The trait that most distinguishes strong from weak programs is the existence of material regulatory or private benefits accruing from accreditation.²³²

CDOW has repeatedly relied on the AZA as an accrediting agency and regulatory partner. Such continuous reliance can be detrimental for several reasons. As mentioned above, AZA-accredited institutions have received publicity recently for glaring failures in animal care, indicating that AZA may no longer wield the strength or depth of influence that it once did.²³³ Also, as highlighted by Professor Havighurst, repeated reliance on a single accrediting group deprives wildlife sanctuaries and the public of newer, and potentially better, information and procedures provided by other groups.²³⁴

TAOS exhibits three of the five traits of a strong accreditation program: mandatory accreditation efforts, regulation of a distinct set of non-profit organizations, and strong ongoing learning programs. The other two traits would be met by a regulatory partnership with CDOW. If CDOW were to place reliance on TAOS accreditation and exempt TAOS-accredited sanctuaries from its licensing requirements, the partnership would provide a clear relationship between accreditation and regulatory benefits for sanctuary organizations. Similarly, continued reporting to CDOW and the loss of exemption resulting from accreditation violations would provide external enforcement of TAOS' accreditation standards. State agencies' willingness to first investigate and then trust new accreditors like TAOS will foster the development of better and more refined accreditation programs.

I. Inappropriate Requirements by the AZA

Finally, in addition to the ways that TAOS standards are better-tailored to private sanctuaries and superior to AZA standards for the protection of animals and people involved with sanctuaries, AZA related facilities certification includes certain requirements that are wholly inappropriate for non-profit wildlife sanctuaries. AZA certification for a related facility, such as a wildlife sanctuary, is regulated by the same set of standards as is AZA accreditation for a commercial facility, such as a public zoo.²³⁵ However, related facility certification does not require compliance with every standard to which a commercial zoo would be held. For example, in contrast to a commercial zoo or other facility, a related facility would not be assessed on the following, if not specifically appropriate to its operation: education and interpre-

²³¹ Mark Sidel, *The Guardians Guarding Themselves: A Comparative Perspective on Non-Profit Self-Regulation*, 80 Chi.-Kent L. Rev. 803, 827 (2005).

²³² *Id.* at 828.

²³³ See *supra* n. 114 and accompanying text (documenting AZA transfers of animals to substandard facilities, admitted by AZA members).

²³⁴ Havighurst, *supra* nn. 227-228 and accompanying text.

²³⁵ See Am. Zoo and Aquarium Assn., *AZA Guide*, *supra* n. 107, at 6 (listing both institutional and related facilities in the accreditation definition section).

tation programs, research programs, facilities, and aesthetics designed for public visitation.²³⁶

However, all AZA members, including all related facilities, must have an Institutional Collection Plan (ICP) in place and must participate in AZA conservation programs, specifically its Species Survival Plan (SSP) program.²³⁷

An ICP describes the animals that the facility expects to maintain.²³⁸ It must include a “statement of justification” for the keeping of each species and individual maintained at the facility.²³⁹ The ICP is an integral part of the AZA’s global species conservation mission, and should include in its justifications the animals’ status in the wild, status in commercial facilities, and other conservation-oriented factors.²⁴⁰ Because the mission of wildlife sanctuaries is the protection and care of individual animals,²⁴¹ requiring this added statement of justification for their maintenance is, at the least, unnecessary.

Even more burdensome is the required participation in the SSP program. The SSP is designed to conserve and increase populations of particular animal species that are federally listed as endangered or threatened or which are “flagship species” of aesthetic importance.²⁴² The mission of the program includes:

[Organizing] scientifically-controlled managed breeding programs for selected [species] . . . [cooperating] with other institutions and agencies to ensure integrated conservation strategies . . . [increasing] public awareness of wildlife conservation issues . . . [and conducting] basic and applied research [on the animals] . . .

[Developing] and [testing] various technologies relevant to field conservation. [Reintroducing] captive-bred wildlife into restored or secure habitat as appropriate and necessary.²⁴³

Any AZA facility holding an animal that is a member of an SSP species is required to have a “representative who attends SSP meetings and coordinates relevant SSP activities at their institution.”²⁴⁴ “Studbooks” are kept for each SSP species, which contain all “vital records of an entire managed population . . . including births, deaths,

²³⁶ See *id.* at 29, 32–33 (noting that “it is understood that not all accreditable institutions can be expected to excel in all points of reference equally” and listing these areas of focus for accreditation inspections).

²³⁷ *Id.* at 32, 40.

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ See *supra* pt. II (defining wildlife sanctuary).

²⁴² Am. Zoo and Aquarium Assn., *Species Survival Plan® Program: How Are Species Selected?* <http://www.aza.org/ConScience/ConScienceSSPFact/> (accessed Oct. 21, 2005).

²⁴³ Am. Zoo and Aquarium Assn., *What is the Mission of the Species Survival Plans?* <http://www.aza.org/ConScience/ConScienceSSPFact/> (accessed Oct. 21, 2005).

²⁴⁴ Am. Zoo and Aquarium Assn., *How are SSPs Administered?* <http://www.aza.org/ConScience/ConScienceSSPFact/> (accessed Oct. 21, 2005).

transfers and family lineage.”²⁴⁵ SSP member facilities are required to submit information on their animals for the studbook.²⁴⁶

The AZA makes no exceptions for participation in the SSP. Full participation is defined as follows:

All AZA Members [owning] or holding SSP taxa, or supporting a SSP program without holding animals[,] must assign an institutional representative to the SSP

Institutions must provide all relevant data on their animal collections to the SSP Coordinator and studbook keeper.

All AZA [Members] owning, holding, and supporting institutions must state the level at which they can participate (breeding, holding, or support).

All AZA [Members] owning, holding, and supporting institutions will be required to participate in the SSP partnership process.²⁴⁷

Related facilities must participate in the SSP program, but they may decide at what level they will participate in SSP programs.²⁴⁸ Nonetheless, while related facilities may choose not to engage in the SSP programs at the full participation level, two bottom-line requirements are not negotiable. First, in its code of ethics, the AZA requires its member facilities to go through the SSP program in order to acquire or dispose of any animal under an SSP.²⁴⁹ Second, a related facility that comes into possession of an SSP animal that is of sufficient genetic purity would be required to transfer that animal to another AZA facility for breeding.²⁵⁰

Furthermore, the AZA “strongly recommends” that a facility holding animals under SSPs also participate in the International Species Information System (ISIS).²⁵¹ ISIS “[facilitates] international collaboration in the collection and sharing of information on animals and their environments for zoos, aquariums and related organizations.”²⁵² Like the SSP program, ISIS coordinates captive-wildlife breeding programs as an effort at species conservation.²⁵³ Colorado sanctuary animals that fall under SSPs, and thus whose keepers would be subject to SSP and ISIS requirements, include particular species of lions, cheetahs, tigers, and wolves.²⁵⁴

Sanctuary operators may be personally in favor of global species protection, conservation, and reintroduction. The mission of sanctuary

²⁴⁵ Am. Zoo and Aquarium Assn., *What is a Studbook?* <http://www.aza.org/ConScience/ConScienceSSPFact/> (accessed Oct. 21, 2005).

²⁴⁶ Am. Zoo and Aquarium Assn., *AZA Guide*, *supra* n. 107, at 66.

²⁴⁷ *Id.* at 66.

²⁴⁸ *Id.* at 32.

²⁴⁹ *Id.* at 76–77.

²⁵⁰ See *Wildlife Commn. Meeting Transcr.*, *supra* n. 97 (July meeting).

²⁵¹ Am. Zoo and Aquarium Assn., *AZA Guide*, *supra* n. 107, at 41.

²⁵² International Species Information System, *The ISIS Mission*, <http://www.isis.org/CMSHOME/>; *select* Learn more about ISIS, *select* ISIS vision, mission, values and beliefs (accessed Oct. 21, 2005).

²⁵³ *Id.*

²⁵⁴ Am. Zoo and Aquarium Assn., *supra* n. 242, at <http://www.aza.org/ConScience/ConScienceSSPFact/>.

organizations, however, is to house particular animals previously taken from the wild and exploited by human beings.²⁵⁵ Most wildlife sanctuaries as organizations are interested in stopping the exploitation and proliferation of wild animals in captivity.²⁵⁶ Breeding of their animals is therefore prohibited by TAOS and by Colorado's wildlife sanctuary statute.²⁵⁷ Requiring such a facility to make its animals or facilities available for a breeding program, however well-intentioned, is anathema to the mission of the sanctuary. Similarly, conducting research on wild animals or testing field techniques on them is directly opposed to sanctuaries' prohibition on unnecessary human interference with the animals. Furthermore, participation in SSP, ISIS, and other conservation programs, such as advocacy for management and preservation of SSP animals' home habitats around the world,²⁵⁸ diverts precious resources from non-profit sanctuaries working to support the health and well-being of their particular animal charges.

Not only are the AZA standards less stringent and comprehensive than the TAOS standards in the areas of animal care and safety, but AZA standards also require participation in programs that are in direct conflict with the purpose of non-profit sanctuaries.²⁵⁹ The superior and carefully tailored TAOS accreditation program is also less expensive and more accessible to non-profit sanctuaries. Of particular interest is the fact that the very concerns regarding wildlife sanctuaries expressed by CDOW officials and H.B. 04-1135 opponents are better addressed by the TAOS accreditation standards than by AZA related facilities certification.

VIII. CONCLUSION

Wildlife sanctuary owners would likely be the first to express a desire that sanctuaries go out of business. As active advocates against commercial exploitation of wild animals, sanctuary operators would love to see an end to the flood of animals fleeing inappropriate captivity. In this way, the interests of sanctuary operators are aligned with the opponents of H.B. 04-1135 and CDOW officials; neither group wants to see a proliferation of animal facilities in Colorado that fail to provide adequate care and protection to animals.

²⁵⁵ See *supra* pt. II (defining wildlife sanctuary).

²⁵⁶ See *supra* n. 11 (discussing the protective nature of one wildlife sanctuary).

²⁵⁷ Colo. Rev. Stat. § 33-4-102(52); TAOS, *TAOS Manual*, *supra* n. 120, at I.B.

²⁵⁸ Am. Zoo and Aquarium Assn., *Conservation Action Partnerships (CAPs) Fact Sheet*, <http://www.aza.org/ConScience/ConScienceCAPFact/> (accessed Oct. 21, 2005) (In the section titled "What Is a CAP?," the AZA states that "AZA [Conservation Action Partnerships], established in 1991, are special committees designed to help coordinate the conservation and scientific activities of AZA institutions working in specific geographical regions of the world. Attention is being focused on regions abundant in unique wildlife and habitat.").

²⁵⁹ *Supra* pt. VII (explaining the similarities and differences between TAOS and AZA standards and why AZA certification is inappropriate for private, non-profit wildlife sanctuaries).

However, sanctuary skeptics and opponents apparently do not recognize the depth, breadth, stringency, and accessibility of TAOS and ASA accreditation as a solution to these concerns. The TAOS standards, used here as an illustration, show that these voluntary accreditation groups are capable of providing species-specific, sanctuary-specific, state-of-the-art standards by which sanctuaries may be required to operate. Not only are the existing standards more stringent, comprehensive, and carefully tailored than the AZA related facility certification standards, but they offer all the benefits of voluntary self-regulation by accreditation: continued development of state-of-the-art approaches; reduction in state agency resource expenditures; and mutually beneficial relationships between accreditors, agencies, and organizations. A partnership between state wildlife regulatory agencies and groups like TAOS can create an accreditation program exhibiting the five traits expected of the best accreditation systems while relieving the regulatory and enforcement burdens of the state agencies. While the issue of enforcement is largely beyond the scope of this article, TAOS has in place an inspection and enforcement program that is very similar to that of the AZA.

Not everyone would be willing to spend his or her life working day in and day out to care for potentially dangerous wild animals just to protect them from euthanasia. However, as long as there are those who would, and as long as state officials and lawmakers recognize the value of such efforts, regulators should be willing to look for ways to resolve the concerns and needs of all stakeholders. In Colorado, CDOW has thus far missed an opportunity to find such a resolution through the adoption of TAOS accreditation as a licensing tool. Reliance on TAOS as a regulatory partner would provide all stakeholders in the wildlife sanctuary issue with the combination of careful regulation, compassionate care, and cooperative regulatory relationships that they desire.