

2018 FEDERAL LEGISLATIVE REVIEW

By
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2018 was a slow year for federal animal law legislation. Congress only signed the Endangered Salmon Predation Prevention Act into law, and that law permits the killing of sea lions to protect endangered salmon and steel-head populations. While Congress considered other animal legislation, none of this proposed legislation made it out of Congressional Committees and Subcommittees.

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I. INTRODUCTION

In early January 2018, the 115th Congress reconvened,¹ and a three-day shutdown of large swatches of the federal government almost immediately ensued.² Despite having a Republican President as well as Republican control of both chambers of Congress, many argued that Congress's 2018 legislative record was less than impressive.³

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¹ K&L Gates, *2018 Congressional Calendar* (Dec. 22, 2017), http://www.klgates.com/files/Publication/808a4484-a5de-4e91-83c4-f0c32f963f47/Presentation/Publication-Attachment/ffd1774e-399d-4789-b037-f3fc8037b744/2018_Congressional_Calendar.pdf [<https://perma.cc/9UKB-HECF>] (accessed Apr. 12, 2019).

² Sheryl Gay Stolberg & Thomas Kaplan, *Government Shutdown Ends After 3 Days of Recriminations*, N.Y. TIMES (Jan. 22, 2018), <https://www.nytimes.com/2018/01/22/us/politics/congress-votes-to-end-government-shutdown.html> [<https://perma.cc/D8MN-FSNU>] (accessed Apr. 12, 2019).

³ Frances E. Lee, *The 115th Congress and Questions of Party Unity in a Polarized Era*, 80 J. POL. 1464 (2018).

Scholars suggest many possible reasons for this failure to make any transformational policy, from overestimation of public support, lack of Republican cohesion, and strength of Democratic opposition.⁴ The year concluded as it started, with a government shutdown—the third shutdown of the year—beginning December 22nd and continuing into the new year.⁵

Ample legislation was proposed this year to remove many animals from the endangered species list including gray wolves,⁶ red wolves,⁷ and grizzly bears.⁸ However, the Endangered Salmon Predation Prevention Act was the only legislation focused on animals that was signed into law.⁹ This law and other proposed legislation will be discussed in this legislative review.

II. ENDANGERED SALMON PREDATION PREVENTION ACT

After various versions failed in House subcommittees in 2006,¹⁰ 2007,¹¹ and 2011,¹² the Endangered Salmon Predation Prevention Act finally became Public Law Number 115-329 in December 2018.¹³ The law amends the Marine Mammal Protection Act of 1972 and allows the National Oceanic and Atmospheric Administration (NOAA) to grant permits to Washington, Oregon, Idaho, the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation, and the Confederated Tribes and Bands of the Yakima Nation¹⁴ to protect Columbia River salmon by killing sea lions, the fish's natural predator.¹⁵ While the law authorizes sea lions to be killed, it limits the number to 10% of the annual potential biological removal level, or 10% of the maximum number of animals that may be removed from the marine mammal's stock while maintaining a sustainable population level.¹⁶ The Act states that

⁴ George C. Edwards III, *No Deal: Donald Trump's Leadership of Congress*, 15 THE FORUM: J. APPLIED RES. CONTEMP. POL. 451 (2017).

⁵ Julie Hirschfeld Davis & Emily Cochrane, *Government Shuts Down as Talks Fail to Break Impasse*, N.Y. TIMES (Dec. 21, 2018), <https://www.nytimes.com/2018/12/21/us/politics/trump-shutdown-border-wall.html> [https://perma.cc/5ZGX-EQWF] (accessed Apr. 12, 2019); Denise Lu & Anjali Singhvi, *Government Shutdown Timeline: See How the Effects are Piling Up*, N.Y. TIMES (Jan. 28, 2019), <https://www.nytimes.com/interactive/2019/01/08/us/politics/government-shut-down-calendar.html> [https://perma.cc/AJ9C-V62S] (accessed Apr. 12, 2019).

⁶ H.R. 6784, 115th Cong. (2d Sess. 2018).

⁷ H.R. 6119, 115th Cong. (2d Sess. 2018).

⁸ H.R. 6877, 115th Cong. (2d Sess. 2018).

⁹ S. 3119, 115th Cong. (2d Sess. 2018).

¹⁰ Endangered Salmon Predation Prevention Act, H.R. 6241, 109th Cong. (2006).

¹¹ Endangered Salmon Predation Prevention Act, H.R. 1769, 110th Cong. (2007).

¹² Endangered Salmon Predation Prevention Act, H.R. 946, 112th Cong. (2011).

¹³ Endangered Salmon Predation Prevention Act, S. 3119, 115th Cong. (2018).

¹⁴ *Endangered Salmon Predation Prevention Act*, CONGRESS.GOV, <https://www.congress.gov/bill/115th-congress/senate-bill/3119?r=1> [https://perma.cc/DWV6-DCMJ] (accessed Apr. 12, 2019).

¹⁵ *Id.*

¹⁶ *Id.*

NOAA “must suspend the issuance of permits if, after five years, lethal removal” is no longer necessary, and it will not issue permits if the sea lion population is depleted.¹⁷ Finally, the law requires that the sea lions be killed in a humane fashion.¹⁸ James Risch, a Republican Senator from Idaho, introduced the Act, and it was cosponsored by five other senators from the Pacific Northwest.¹⁹

While the culling of sea lions is controversial, “[i]n the Pacific Northwest, 19 populations of wild salmon and steelhead are listed as threatened under the Endangered Species Act.”²⁰ This law is designed to promote the recovery of these species, and the government intends to simultaneously continue to fund other, nonlethal deterrence methods.²¹

NOAA states that lethal methods are required since it has been using nonlethal “hazing” programs to deter the sea lions since 2008, but the population has only grown.²² The hazing involves driving boats near the sea lions and encouraging them to leave the area.²³ However, the sea lions return a few hours after the boats leave the scene.²⁴ Further, NOAA states that it will attempt to place sea lions into zoos or aquariums, but if it is not possible, individual sea lions who feed on salmon must be killed to prevent other sea lions from mimicking the behavior.²⁵

To reproduce, salmon must migrate up the Columbia River into Idaho, and sea lions often prey on the salmon making this journey, decimating the populations before they are able to lay eggs.²⁶ A 2016 study “determined that roughly 190 sea lions killed more than 9,500

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *All Information (Except Text) for S.3119-Endangered Salmon Predation Prevention Act*, CONGRESS.GOV, <https://www.congress.gov/bill/115th-congress/senate-bill/3119/all-info?r=1> [<https://perma.cc/N3DC-YWXX>] (accessed Apr. 12, 2019).

²⁰ Priscilla Long, *What Can Humans Do to Save the Pacific Northwest's Iconic Salmon?*, SMITHSONIAN MAG. (Oct. 2014), <https://www.smithsonianmag.com/science-nature/what-can-humans-do-save-pacific-northwests-iconic-salmon-180952769/> [<https://perma.cc/BXY2-CM4H>] (accessed Apr. 12, 2019).

²¹ Endangered Salmon Predation Prevention Act of 2018, Pub. L. No. 115-329, 132 Stat. 4475 (2018).

²² *Questions & Answers on the Endangered Salmon Predation Prevention Act*, NOAA (Dec. 2018), https://www.westcoast.fisheries.noaa.gov/protected_species/marine_mammals/predation_prevention.html [<https://perma.cc/B4RW-56AV>] (accessed Apr. 12, 2019).

²³ Robin Brown et al., *Field Report: 2012 Pinniped Research and Management Activities At and Below Bonneville Dam*, NOAA (Oct. 29, 2012), https://www.westcoast.fisheries.noaa.gov/publications/protected_species/marine_mammals/pinnipeds/sea_lion_removals/2012_states_field_rpt.pdf [<https://perma.cc/D8GJ-LDSW>] (accessed Apr. 12, 2019).

²⁴ *Questions & Answers on the Endangered Salmon Predation Prevention Act*, *supra* note 22.

²⁵ *Id.*

²⁶ Jane Stebbins, *Salmon Protection Act Passes Senate*, CURRY COASTAL PILOT (Dec. 7, 2018), <https://www.currypilot.com/news/6753165-151/salmon-protection-act-passes-senate> [<https://perma.cc/J8P8-TM8T>] (accessed Apr. 12, 2019).

salmon . . . representing a 5.8% loss in the population in just a quarter-mile stretch of the river.”²⁷ A study by Oregon State University found an 89% chance that steelhead, in the same family as salmon and also preyed upon by the sea lions, would become extinct if the sea lions were allowed to continue unfettered.²⁸ In the 1990s, the feeding practices of the sea lions caused a local extinction of steelhead in Ballard Locks, Washington.²⁹

Native American communities in the area rely on salmon for food and for ceremonial rituals, and they are worried about the threat.³⁰ One of these communities, the Swinomish Indian Tribal Community, who call themselves “the Salmon People,” have occupied this region for over 10,000 years.³¹ Prior to the passage of the law, Oregon and Washington wildlife managers were permitted to kill up to ninety-three sea lions per year at Bonneville Dam on the Washington-Oregon border of the Columbia River.³² As one member of the Confederated Tribes of the Umatilla Reservation commented, “[w]hen you destroy the salmon, you destroy me. . . . We are violating our own law by not doing everything we can to get [the salmon] back.”³³ Hopefully the passage of this law will result in a net good, saving the endangered salmon without harming too many sea lions in the process.

III. KITTENS IN TRAUMATIC TESTING ENDS NOW ACT OF 2018

The Kittens in Traumatic Testing Ends Now Act of 2018 (KITTEN Act) would have amended the Animal Welfare Act to limit experimen-

²⁷ *Position Statement on Endangered Salmon and Fisheries Predation Prevention Act and the Issue of Sea Lion Predation on the Columbia River*, AM. SPORTFISHING ASS'N (Mar. 2018), <https://asafishing.org/wp-content/uploads/Position-Statement-on-Endangered-Salmon-and-Fisheries-Predation-Prevention-Act-and-the-Issue-of-Sea-Lion-Predation-on-the-Columbia-River-March-2018.pdf> [<https://perma.cc/J8P8-TM8T>] (accessed Apr. 12, 2019).

²⁸ *Id.*

²⁹ *Id.*

³⁰ Darryl Fears, *As Salmon Vanish in the Dry Pacific Northwest, so Does Native Heritage*, WASH. POST (July 30, 2015), https://www.washingtonpost.com/national/health-science/as-salmon-vanish-in-the-dry-pacific-northwest-so-does-native-heritage/2015/07/30/2ae9f7a6-2f14-11e5-8f36-18d1d501920d_story.html?utm_term=.94f6c60e5afb [<https://perma.cc/YPE7-9LFW>] (accessed Apr. 12, 2019).

³¹ Saskia de Melker, *The Northwest's Salmon People Face a Future Without Fish*, OR. PUB. BROADCASTING (Aug. 9, 2018), <https://www.opb.org/news/article/salmon-climate-change-video-environment/> [<https://perma.cc/76N2-XPNT>] (accessed Apr. 12, 2019).

³² Gillian Flaccus, *Sea Lions Feasting on Endangered Salmon and Steelhead Fish in Pacific Northwest*, NAT'L POST (Mar. 22, 2018), <https://nationalpost.com/news/world/sea-lions-gobbling-fragile-fish-in-us-northwest-survival-war> [<https://perma.cc/XJ3K-H56A>] (accessed Apr. 12, 2019).

³³ *Indian Fishing*, NW. POWER & CONSERVATION COUNCIL (2018), <https://www.nwcouncil.org/reports/columbia-river-history/indianfishing> [<https://perma.cc/SM3J-AV3C>] (accessed Apr. 12, 2019).

tation on cats in scientific studies.³⁴ This proposed bill sought to prohibit the purchase, breeding, transport, housing, feeding, maintaining, disposing, or conducting of experiments on cats that would cause the animals pain or stress.³⁵ Democratic Senator Jeff Merkley from Oregon³⁶ and Republican Representative Mike Bishop from Michigan introduced the bill in their respective houses of Congress.³⁷ Although the bill had an additional sixty-two cosponsors,³⁸ the KITTEN Act was referred to the House Subcommittee on Livestock and Foreign Agriculture, where it remained for the rest of the session.³⁹

The USDA breeds up to 100 kittens a year to research toxoplasmosis, “a parasitic illness, which can be serious for unborn children and people with compromised immune systems.”⁴⁰ Cats are purposefully fed parasite-infected meat—because cats are the only animals whose feces contain this parasite—and the parasites are then harvested from their feces.⁴¹ Before the kittens are three months old, they are euthanized, even though they could be treated for the parasite and later adopted, after being cured.⁴² The USDA argues that it euthanizes kittens rather than placing them for adoption because of the possibility that they could pose a health risk to their new families.⁴³ Furthermore, the USDA’s Agricultural Research Service has called the estimated 100 kittens bred per year a “serious over-estimation,” and proclaimed the use of kittens “essential” to their research.⁴⁴ Senator Merkley disagrees with the USDA, stating his belief that the cats can be treated for their illnesses, and go on to live healthy lives.⁴⁵ He expressed hope that the bill will be a bipartisan effort going forward in the new year.⁴⁶

³⁴ KITTEN Act of 2018, S. 3780, 115th Cong. (2018).

³⁵ *Id.*

³⁶ *Id.*

³⁷ KITTEN Act of 2018, H.R. 5780, 115th Cong. (2018).

³⁸ *U.S. HR 5780: KITTEN Act of 2018 Kittens in Traumatic Testing Ends Now Act of 2018*, LEGISLATION (2018), <https://www.billtrack50.com/BillDetail/982474> [<https://perma.cc/C85L-6MMV>] (accessed Apr. 12, 2019).

³⁹ *Id.*

⁴⁰ *Animal Testing: US Senate Bill Seeks an End to Kitten Research Deaths*, BBC NEWS (Dec. 20, 2018), <https://www.bbc.com/news/world-us-canada-46630721> [<https://perma.cc/J9E6-7XYN>] (accessed Apr. 12, 2019).

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Gregory Wallace, *Merkley Bill Would Stop USDA from Euthanizing Kittens*, CNN (Dec. 19, 2018), <https://www.cnn.com/2018/12/19/politics/kitten-testing-usda-bill/index.html?no-st=1548125992> [<https://perma.cc/2SY2-ZNNH>] (accessed Apr. 12, 2019).

⁴⁵ *Id.*

⁴⁶ *Id.*

IV. NATIONAL ANIMAL RESCUE DAY

In 2017, Congress supported “National Purebred Dog Day,”⁴⁷ despite the animal law community’s contentions that the breeding of purebred dogs can lead to genetic deformities from inbreeding, encourages puppy mills, and causes overcrowding in shelters.⁴⁸ In 2018, Congress recognized the importance of companion animal adoption by considering a proposition to designate the first Saturday in October “National Animal Rescue Day.”⁴⁹ The bill sought to “educate the public on the importance of spaying and neutering animals” and to encourage the adoption of animals.⁵⁰ The bill was introduced by Democratic Representative Donald Norcross from New Jersey.⁵¹ Encouraged by his constituents, Norcross hoped the bill would reduce the number of stray and abandoned animals, reduce euthanasia rates, and encourage the public to support animal shelters via donations and adoptions.⁵² The local animal shelter in Norcross’s district has a 91% adoption rate, higher than many other areas of the country.⁵³

Up to six million dogs and cats are placed into shelters each year, and between half and two thirds of those animals are euthanized. Many other shelters are in need of medical supplies and food to care for the influx of animals they receive.⁵⁴ The hope with this bill was that by increasing awareness about animal rescue programs, the number of animals placed in shelters or euthanized would decrease.⁵⁵ Additionally, the bill hoped to help alleviate crowded shelters by educating

⁴⁷ S. Res. 144, 115th Cong. (2017); H.R. Con. Res. 46, 115th Cong. (2017).

⁴⁸ See *Dog Overpopulation and Puppy Mills*, INT’L SOC’Y FOR ANIMAL RIGHTS (2019), <https://isaronline.org/programs/dog-and-cat-overpopulation/dog-overpopulation-and-puppy-mills/> [<https://perma.cc/44YE-UWLM>] (accessed Apr. 12, 2019) (“Puppy mills are commercial breeding facilities which mass produce dogs solely for profit, often forsaking all else, including proper care, nutrition, and socialization. Approximately 90% of all puppies sold in pet shops are the product of these unscrupulous breeders who indiscriminately breed dogs without regard for the animals’ feelings, well-being, temperament, or health.”); *Puppy Mills*, PETA, <https://www.peta.org/issues/animal-companion-issues/pet-trade/puppy-mills/> [<https://perma.cc/BE7B-BRD6>] (accessed Apr. 12, 2019) (“Puppy mills are a well-kept secret of the pet-trade industry. They supply animals to pet stores and purebred enthusiasts without any concern for the millions of animals who will die in animal shelters as a result. It’s standard practice for puppy mills to keep animals in cramped, crude, and filthy conditions without proper veterinary care or socialization.”).

⁴⁹ H.R. Res. 776, 115th Cong. (2018).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Ally Kehoe, *Norcross Calls for Animal Rescue Day*, U.S. CONGRESSMAN DONALD NORCROSS, (Apr. 2, 2018), <https://norcross.house.gov/media-center/press-releases/norcross-calls-national-animal-rescue-day> [<https://perma.cc/V8FW-U59K>] (accessed Apr. 12, 2019).

⁵³ *Local Congressman Pushes for Resolution Promoting National Animal Rescue Day*, SNJ TODAY (July 24, 2018) <http://www.snjtoday.com/story/37862063/local-congressman-pushes-for-resolution-promoting-national-animal-rescue-day> [<https://perma.cc/Z62V-GBGL>] (accessed Apr. 12, 2019).

⁵⁴ H.R. Res. 776.

⁵⁵ *Id.*

the public about spaying and neutering.⁵⁶ The text of the “National Animal Rescue Day” bill mentions Winslow, a basset hound who has underdeveloped rear legs as a result of spending the first eight months of his life confined in a too-small cage.⁵⁷ Winslow was placed into multiple shelters before he was finally adopted.⁵⁸ National Animal Rescue Day emphasizes the importance of adoption events and supporting shelters to help companion animals like Winslow.⁵⁹

This House Resolution was first introduced in 2007 by Democratic Representative Robert E. Andrews from New Jersey.⁶⁰ However, the Resolution never made it past the House Committee on Oversight and Government Reform.⁶¹ The Resolution suffered the same fate in 2009,⁶² 2011,⁶³ and 2013.⁶⁴ In 2016, Democratic Senator Robert Menendez from New Jersey sponsored the Resolution, and the Senate agreed by unanimous consent, but in a common pattern, it stalled in a House subcommittee.⁶⁵ With the Resolution’s return to the House in 2018, there was hope that it could finally pass. Congressman Norcross, the 2018 sponsor of the Resolution, invited Congress to “look into [their] hearts and encourage successful rescues.”⁶⁶ While Norcross was not successful in 2018, hopefully this desire to spread awareness will continue and the Resolution will finally be adopted in the next session.

V. FAIRNESS TO PET OWNERS ACT OF 2018

The Fairness to Pet Owners Act returned to Congress in 2018⁶⁷ after first floundering in 2011.⁶⁸ The bill would have required “veterinarian[s] to provide a copy of each prescription for . . . companion animal[s], whether or not requested by the pet owner.”⁶⁹ Moreover, the bill would have prohibited veterinarians from charging a fee to write a prescription for pet medications, “enabl[ing] pet owners to bargain hunt in pharmacies for their pet medications.”⁷⁰ The American Veteri-

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ H.R. Res. 749, 110th Cong. (2007).

⁶¹ *Id.*

⁶² H.R. Res. 767, 111th Cong. (2009).

⁶³ H.R. Res. 220, 112th Cong. (2011).

⁶⁴ H.R. Res. 63, 112th Cong. (2013).

⁶⁵ S.Res. 594, 114th Cong. (2016).

⁶⁶ Kehoe, *supra* note 52.

⁶⁷ Fairness to Pet Owners Act of 2018, S. 2651, 115th Cong. (2d Sess. 2018); Fairness to Pet Owners Act of 2018, H.R. 5472, 115th Cong. (2d Sess. 2018).

⁶⁸ Jennifer Fiala, *AVMA: Fairness to Pet Owners Act ‘Dead’*, VIN NEWS SERV. (Aug. 9, 2012), <https://news.vin.com/VINNews.aspx?articleId=23744> [<https://perma.cc/EK7C-AXHE>] (accessed Apr. 12, 2019).

⁶⁹ Patty Khuly, *Drug Wars: Is the Fairness to Pet Owners Act Truly Fair?*, VET-STREET (June 18, 2014), <http://www.vetstreet.com/our-pet-experts/drug-wars-is-the-fairness-to-pet-owners-act-truly-fair> [<https://perma.cc/Y8FG-EJJE>] (accessed Apr. 12, 2019).

⁷⁰ Fiala, *supra* note 68.

nary Medical Association (AVMA) has opposed the bill since its first introduction because veterinarians often rely on in-house pharmacy sales to help offset the business expense of providing medical care.⁷¹ The AVMA further asserted that the ethical obligations of veterinarians already require them to issue prescriptions to customers when asked, and that the bill is therefore confusing and unnecessary.⁷² A study by Brakke Consulting, a firm specializing in animal health and nutrition, pet care, and veterinary services, concluded that “only 34% of pet owners would only buy from the veterinarian regardless,” demonstrating the impact it could have on the practice.⁷³ The sales that veterinarians rely on to offset costs could be drastically reduced. The AVMA warns that since many veterinary clinics are small businesses, the regulatory burden of the bill could cause pet care costs to rise in response.⁷⁴ Opponents to the bill argue that aside from offsetting veterinary service costs, veterinarians are the safest parties to dole out pet prescriptions, as they are best suited to manage possible drug interactions, dosages, and ingredients.⁷⁵

Despite the opposition of hundreds of veterinary practitioners, Wal-Mart and other large businesses support the bill to ensure that customers know they can choose where they purchase medications for their pets.⁷⁶ Supporters of the legislation say there is a conflict of interest in allowing veterinarians to both prescribe and sell medication, something physicians cannot do with human patients.⁷⁷ Supporters claim that manufacturers often sell exclusively to veterinarians, which allows vets to set their own inflated prices and reap high profit margins.⁷⁸ Supporters contend that pharmacists often teach students in veterinary schools how to fill pet medications, so surely pharmacists are qualified to dispense medications from prescriptions written by veterinarians.⁷⁹

⁷¹ *Id.*

⁷² *Id.*

⁷³ Julie Scheidegger, *It's Back: New Fairness to Pet Owners Act Introduced in U.S. House*, DVM360 MAG. (Feb. 28, 2014), <http://veterinarynews.dvm360.com/its-back-new-fairness-pet-owners-act-introduced-us-house> [https://perma.cc/T2L8-GQF7] (accessed Apr. 12, 2019).

⁷⁴ *Familiar Veterinary Bills Introduced in Congress*, DVM360 MAG. (May 16, 2017), <http://veterinarynews.dvm360.com/familiar-veterinary-bills-introduced-congress> [https://perma.cc/XU9B-7F4B] (accessed Apr. 12, 2019).

⁷⁵ Khuly, *supra* note 69.

⁷⁶ Fiala, *supra* note 68.

⁷⁷ *Providing a Prescription is Better for Pet Owners*, ADVOCACY FOR PETS & AFFORDABLE WELLNESS (2019), <https://www.apaw.org/learn-more/providing-a-prescription-is-better-for-pet-owners/> [https://perma.cc/JNQ4-B6WH] (accessed Apr. 12, 2019).

⁷⁸ *Why is a Federal Law the Solution*, ADVOCACY FOR PETS & AFFORDABLE WELLNESS (2019), <https://www.apaw.org/learn-more/why-is-a-federal-law-the-solution/> [https://perma.cc/UZW2-Z3HZ] (accessed Apr. 12, 2019).

⁷⁹ *Pharmacists are Qualified to Dispense Pet Medications*, ADVOCACY FOR PETS & AFFORDABLE WELLNESS (2019), <https://www.apaw.org/learn-more/pharmacists-are-qualified-to-dispense-pet-medications/> [https://perma.cc/9FWZ-H4AR] (accessed Apr. 12, 2019).

In 2018, the bill was introduced in the Senate by Democrat Richard Blumenthal from Connecticut⁸⁰ and in the House by Republican Chris Collins from New York.⁸¹ The bill stalled in April in the Senate Committee on Commerce, Science, and Transportation⁸² and the House Committee on Energy and Commerce.⁸³ Prescriptions for pet medicines are still available upon request, and pet medications can be purchased from online retailers.⁸⁴

VI. PREVENT ALL SORING TACTICS ACT OF 2018

Once again, the Prevent All Soring Tactics (PAST) Act was introduced, but relegated to the Senate Committee on Commerce, Science, and Transportation without being passed.⁸⁵ This was the sixth time the bill had been introduced, and each time, it has floundered in the committees and subcommittees of Congress.⁸⁶ In 2018, the bill was introduced by Republican Senator Mike Crapo of Idaho.⁸⁷ PAST would have amended the “Horse Protection Act to establish a new system for inspecting horses for soring,”⁸⁸ a type of abuse inflicted on the feet and legs of competition horses.⁸⁹ Soring has been illegal since the 1970s, yet continues today because of subpar inspection procedures.⁹⁰

Tennessee Walking Horses, Spotted Saddle Horses, and Racking Horses compete in an exaggerated high stepping gait called the Big Lick.⁹¹ To gain an unfair advantage, an estimated 98% of Big Lick trainers use some type of soring tactic on their horses.⁹² The trainers apply chemicals such as mustard oil, diesel fuel, or kerosene to horses’ feet, then wrap the legs in plastic wrap to “cook” the chemicals into the skin, inflicting severe pain.⁹³ Other methods include inserting objects into the tender parts of the horses’ feet, then making them stand for hours in pain or striking their ankles with metal chains.⁹⁴ To further

⁸⁰ Fairness to Pet Owners Act of 2018, S. 2651, 115th Cong. (2018).

⁸¹ Fairness to Pet Owners Act of 2018, H.R. 5472, 115th Cong. (2018).

⁸² S. 2651.

⁸³ H.R. 5472.

⁸⁴ *Prescription Mandates: New Bill, Same Problems*, AVMA (May 8, 2018), <https://atwork.avma.org/2018/05/08/prescription-mandates-new-bill-same-problems/> [https://perma.cc/59PM-M4RY] (accessed Apr. 12, 2019).

⁸⁵ Prevent All Soring Tactics (PAST) Act, S. 2957, 115th Cong. (2018).

⁸⁶ H.R. 1518, 113th Cong. (2013); S. 1406, 113th Cong. (2013); H.R. 3268, 114th Cong. (2015); S. 1121, 114th Cong. (2015); H.R. 1847, 115th Cong. (2017); S. 2957, 115th Cong. (2018).

⁸⁷ S. 2957.

⁸⁸ *Id.*

⁸⁹ *Prevent All Soring Tactics (PAST) Act*, ANIMAL WELFARE INST. (2018), <https://awionline.org/content/prevent-all-soring-tactics-past-act> [https://perma.cc/SJ92-VCPG] (accessed Apr. 12, 2019).

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *What is Soring?*, HUMANE SOC’Y U.S. (2018), <https://www.humanesociety.org/resources/what-soring> [https://perma.cc/5YTG-BFQY] (accessed Apr. 12, 2019).

⁹⁴ *Id.*

accentuate the unnatural gait, the horses are given “heavy stacks,” similar to high heel platform shoes, that they must wear at all times, rather than regular, flat horseshoes.⁹⁵

Despite being illegal for over forty years, soring remains extremely common in Tennessee, Kentucky, and other southeastern states where horse competitions are popular.⁹⁶ Since the Horse Protection Act requires horses entering shows or exhibitions to be inspected for soring by looking for clues such as missing hair, scars, or cuts, trainers turn to other painful measures to conceal their illegal methods.⁹⁷ One approach is sloughing off the scarred tissue on the horses’ legs and feet with salicylic acid.⁹⁸ Some trainers conduct repeated mock inspections where they beat horses who react to the pain in their feet so that the horses learn to fear the beating more than the pain felt during the physical examination.⁹⁹ Other approaches include applying numbing agents to the horses’ legs before inspection or using alligator clips attached to sensitive body parts so the horses are more distracted by that new pain than the pain in their legs.¹⁰⁰ Being subjected to such stressful and uncomfortable tactics can cause the horses to die prematurely from colic and exposure to the toxic chemicals repeatedly applied to their skin.¹⁰¹

A large part of why these practices continue is because the USDA lacks the economic resources to inspect all horse shows, so the horse competition industry runs the Horse Protection Act enforcement system.¹⁰² Inspectors are often times exhibitors themselves, and they do not issue citations to those who hire them.¹⁰³ This self-policing system does not work effectively. An undercover investigation in 2012 conducted by the Humane Society of the United States, for example, successfully proved that one trainer, Jackie McConnell, violated the Horse Protection Act fifty-two times without receiving a citation.¹⁰⁴

If PAST was approved, it would reallocate USDA resources to impose stricter inspections, ending the self-policing system without increasing government spending.¹⁰⁵ The Act would also strengthen the penalties for violations by turning acts that are now only misdemeanors into three-year jailable offenses with maximum fines of \$5,000 per offense.¹⁰⁶ If an offender received three violations, it could result in their permanent disqualification from any horse show, exhibition, sale,

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Prevent All Soring Tactics (PAST) Act*, *supra* note 89.

⁹⁹ *What is Soring?*, *supra* note 93.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Prevent All Soring Tactics (PAST) Act*, *supra* note 89.

¹⁰⁴ *Id.*; *What is Soring?*, *supra* note 93.

¹⁰⁵ *Prevent All Soring Tactics (PAST) Act*, *supra* note 89.

¹⁰⁶ *Id.*

or auction.¹⁰⁷ The AVMA,¹⁰⁸ the American Horse Council, and many other horse-interest groups supported the legislation.¹⁰⁹ The PAST Act also received over 100,000 public comments in support and was backed by 224 members of Congress.¹¹⁰

VII. CONSERVING ECOSYSTEMS BY CEASING THE IMPORTATION OF LARGE ANIMAL TROPHIES ACT

The Conserving Ecosystems by Ceasing the Importation of Large Animal Trophies Act (CECIL Act) was reintroduced in the House in 2018 by Arizona Democrat, Raúl Grijalva.¹¹¹ The resolution was first introduced in the House in 2015 before dying in the Subcommittee on Trade.¹¹² If passed, the CECIL Act would have amended the Endangered Species Act of 1973 “to prohibit import and export of any species listed . . . under [the Endangered Species] Act as a threatened species or endangered species, and for other purposes.”¹¹³

The current law only protects the import and export of species whose status has been officially designated as threatened or endangered by the U.S. Fish and Wildlife Service, a process that can take over a year to complete.¹¹⁴ The CECIL Act would have protected those species that are proposed for listing but have not fully completed the process. When the Act was first introduced, Democratic Senator Bob Menendez from New Jersey said that the expansion was necessary because “[w]hen we have enough concern about the future of a species to propose it for listing, we should not be killing it for sport.”¹¹⁵

The Act is named after Cecil, a black-maned lion killed in Zimbabwe by an American trophy hunter.¹¹⁶ When Cecil was killed, he was thirteen years old and living in a protected habitat called the

¹⁰⁷ *Id.*

¹⁰⁸ *Prevent All Soring Tactics Act*, AM. VETERINARY MED. ASS’N, <https://www.avma.org/Advocacy/National/Congress/Pages/Prevent-All-Soring-Tactics-Act.aspx> [https://perma.cc/DP29-KUVR] (accessed Apr. 12, 2019).

¹⁰⁹ *Prevent All Soring Tactics Act of 2015*, AM. HORSE COUNCIL, <https://www.horsecouncil.org/issues/prevent-all-soring-tactics-act-of-2015-2/> [https://perma.cc/446U-BYV5] (accessed Apr. 12, 2019).

¹¹⁰ Kitty Block, *Let’s Make This the Year We End Horse Soring by Passing the PAST Act*, HUMANE SOC’Y U.S.: KITTY BLOCK’S BLOG (May 24, 2018), <https://blog.humanesociety.org/2018/05/lets-make-year-end-horse-soring-passing-past-act.html> [https://perma.cc/56F9-C6Q7] (accessed Apr. 12, 2019).

¹¹¹ CECIL Act, H.R. 6885, 115th Cong. (2018).

¹¹² CECIL Act, H.R. 3526, 114th Cong. (2015).

¹¹³ H.R. 6885.

¹¹⁴ Christina Wilkie, *Senators Introduce CECIL Act After Outcry Over Killed African Lion*, HUFFINGTON POST (July 31, 2015), https://www.huffingtonpost.com/entry/senate-cecil-the-lion-act_us_55bbaeebe4b0b23e3ce29e46 [https://perma.cc/R75S-UQYW] (accessed Apr. 12, 2019).

¹¹⁵ *Id.*

¹¹⁶ *Banning Trophy Hunting*, HUMANE SOC’Y U.S., <https://www.humanesociety.org/all-our-fights/banning-trophy-hunting> [https://perma.cc/H4HP-4ECN] (accessed Apr. 12, 2019); Wilkie, *supra* note 114.

Hwange National Park,¹¹⁷ in addition to being on a list of species proposed to be added to the Endangered Species Act.¹¹⁸ Walter Palmer, a Minnesota dentist and repeat trophy hunter with a prior felony charge for shooting a black bear in Wisconsin in 2006,¹¹⁹ lured Cecil out of his protected habitat with bait, shot him with a bow, and stalked him for nearly two days before fatally shooting him.¹²⁰ After this violent act, Palmer took only Cecil's skin and head back to America and mounted it as a trophy, leaving the rest of the carcass behind in a bush.¹²¹ Palmer paid \$55,000 to engage in this sport hunting.¹²² If the CECIL Act had been the law at the time, a permit from the U.S. Secretary of Interior would have been required to import Cecil's body parts into the U.S.¹²³ Without the glamor of the trophy, there is less of an incentive for trophy hunters to spend time and money to engage in this exotic hunting.

The resolution was reintroduced after Andrew Loveridge, a lion researcher, published a book detailing previously unreported details about Cecil's killing.¹²⁴ Prior to the killing, Loveridge had studied Cecil for eight years. For his study, Loveridge fitted Cecil with a GPS collar, which was active at his time of death and helped paint the picture of what happened that day.¹²⁵ Despite the suffering that Palmer inflicted on Cecil, he was only convicted of making false statements to a federal officer, a felony, and was given a fine of less than \$3,000 and a year of probation.¹²⁶ While Zimbabwe dropped its original pursuit of extradition for Palmer, he still faced backlash from protestors outside his dental practice.¹²⁷

¹¹⁷ *Born Free USA Endorses CECIL Act Introduced by Representative Raúl Grijalva*, BORN FREE USA (Oct. 3, 2018), <https://www.bornfreeusa.org/2018/10/03/born-free-usa-endorses-cecil-act-introduced-by-representative-raul-grijalva/> [https://perma.cc/JLU6-5RZ6] (accessed Apr. 12, 2019); *Cecil the Lion: Zimbabwe Hunter Bailed Over Killing*, BBC (July 29, 2015), <https://www.bbc.com/news/world-us-canada-33699346> [https://perma.cc/8RLA-RGSC] (accessed Apr. 12, 2019).

¹¹⁸ Wilkie, *supra* note 114.

¹¹⁹ Adam B. Lerner, *Sen. Menendez Intros CECIL Act to Restrict Big-Game Hunting*, POLITICO (July 31, 2015), <https://www.politico.com/story/2015/07/bob-menendez-cecil-lion-act-legislation-curb-hunting-africa-species-120857> [https://perma.cc/PLJ2-2BQ7] (accessed Apr. 12, 2019).

¹²⁰ Wilkie, *supra* note 114.

¹²¹ *Id.*

¹²² Dan Kedmey, *U.S. Lawmakers Draft 'CECIL Act' to Curb Trophy Hunters*, TIME (July 31, 2015), <http://time.com/3981032/cecil-lion-bill-trophy-hunters/> [https://perma.cc/TLU3-GEM9] (accessed Apr. 12, 2019).

¹²³ Wilkie, *supra* note 114.

¹²⁴ Wildlife Watch, *Exclusive: An Inside Look at Cecil the Lion's Final Hours*, NAT'L GEOGRAPHIC (Mar. 3, 2018), <https://news.nationalgeographic.com/2018/03/wildlife-watch-cecil-trophy-hunting-andrew-loveridge/> [https://perma.cc/GQ25-2ZRS] (accessed Apr. 12, 2019).

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Zimbabwe Official: U.S. Dentist Not Wanted for Killing Cecil the Lion*, CHI. TRIBUNE (Oct. 12, 2015), <https://www.chicagotribune.com/news/ct-cecil-the-lion-extradition-20151012-story.html> [https://perma.cc/GJ9J-GFAH] (accessed Apr. 12, 2019).

Regardless of the backlash, Tootabi Hunting Safaris, a big-game hunting company in Africa,¹²⁸ has seen a 54% increase in revenue. The company credits this increase in revenue “to the killing of Cecil because, before then, people didn’t know legal hunting was possible.”¹²⁹ On average, approximately 126,000 wildlife trophies per year from 1,200 different species are imported into America, including wolves, bears, mountain lions, and bobcats.¹³⁰ Between 2014 and 2015, 1.26 million wildlife trophies in total were imported to the U.S.¹³¹ If the CECIL Act had passed, the importation of these kinds of trophies from species proposed for listing as endangered or threatened would be outlawed.¹³²

VIII. BIG CAT PUBLIC SAFETY ACT

Another Bill introduced by Senator Blumenthal, who was previously noted for introducing the Fairness to Pet Owners Act of 2018, was the Big Cat Public Safety Act.¹³³ The Act would have amended the Captive Wildlife Safety Act to prohibit private individuals from breeding and possessing lions, tigers, leopards, cheetahs, jaguars, and cougars.¹³⁴ Individuals who already own these exotic cats are allowed to keep the cats they currently own, but may not buy or breed any more.¹³⁵ There are also exemptions in the Act for zoos, sanctuaries, and universities that meet the required standards of care.¹³⁶

The Act was designed to protect these large cats from unsafe or abusive circumstances that are also dangerous to surrounding communities.¹³⁷ More of these exotic cats live in neighborhoods than people may realize, with only about 12.5–17.5% of tigers in the U.S. living in zoos. In the U.S., there are an estimated 10,000–20,000 big cats owned as pets living in basements, backyards, or improperly equipped roadside zoos.¹³⁸

While most states have laws banning or restricting ownership of these animals, these laws vary and do not offer a uniform level of pro-

¹²⁸ Elle Hunt, *Who Would Want to Kill a Lion? Inside the Minds of Trophy Hunters*, GUARDIAN (Nov. 4, 2018), <https://www.theguardian.com/environment/2018/nov/04/trophy-hunters-who-would-kill-lion-elephant-big-game-hunting> [https://perma.cc/VY3H-LPPX] (accessed Apr. 12, 2019).

¹²⁹ *Id.*

¹³⁰ *Banning Trophy Hunting*, *supra* note 116.

¹³¹ *Id.*

¹³² H.R. 6885.

¹³³ Big Cat Public Safety Act, S. 2990, 115th Cong. (2018).

¹³⁴ *Big Cat Public Safety Act*, ANIMAL WELFARE INST. (2018), <https://awionline.org/legislation/big-cat-public-safety-act> [https://perma.cc/T6AA-HB66] (accessed Apr. 12, 2019).

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

tection for animals and public safety.¹³⁹ As of May 2017, five states have no laws addressing the private ownership of exotic cats: Wisconsin, North Carolina, South Carolina, Nevada, and Alabama.¹⁴⁰ Animals suffer the consequences of being kept in these unnatural environments. The animals grow large, are difficult to take care of, and are unable to be successfully released back into the wild, so they often become burdens on sanctuaries that must care for them when they are given up.¹⁴¹ Many animals who are not given away are kept in cages that are too small.¹⁴² Investigations show that big cats spend an estimated 91–99% of their time in these cramped cages.¹⁴³ In one undercover video, the footage “shows a circus trainer beating a tiger thirty-one times in two minutes.”¹⁴⁴ Another tiger died after traveling in the desert from California to Arizona and being deprived of water for over six hours.¹⁴⁵ The circus that owned the tiger then tried to hide the tiger’s death from USDA inspectors.¹⁴⁶

Big cats are often bred for certain physical traits that are highly desired by humans, like white fur in tigers.¹⁴⁷ White tigers are not their own sub-species, they are merely a rare color.¹⁴⁸ There is therefore no legitimate conservation goal in breeding them—it merely pleases humans.¹⁴⁹ Breeding these animals can result in congenital defects like cleft palates, cataracts, club feet, and hip dysplasia, since they are often inbred to increase the likelihood of having cubs with the desirable traits.¹⁵⁰ Roadside zoos are known for separating cubs from their mothers to give photo and handling opportunities to the public, but this can lead to physical harm by taxing the cubs’ underdeveloped immune systems, and psychological harm by disturbing the mother-cub bonding experience.¹⁵¹ These petting and photo opportunities are the number one cause of abuse for these animals.¹⁵² While humans may get temporary entertainment from these activities, the animals continue to suffer long-term.

¹³⁹ *A Bi-Partisan Issue We Can All Support – Big Cat Public Safety Act*, WILDCAT SANCTUARY (May 22, 2018), <https://www.wildcatsanctuary.org/big-cat-public-safety-act/> [https://perma.cc/WAN8-355A] (accessed Apr. 12, 2019).

¹⁴⁰ *Id.*

¹⁴¹ *Big Cat Public Safety Act*, *supra* note 134.

¹⁴² *Id.*

¹⁴³ Brianna Grant, *The Captive Wildlife Safety Act and the Need for Further Legislation: An Overview*, BLUE SKY TIGER SANCTUARY (Jan. 24, 2018), https://blueskytiger-sanctuary.org/2018/01/24/the-captive-wildlife-safety-act/#_edn6 [https://perma.cc/6XM2-FBBL] (accessed Apr. 12, 2019).

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Big Cat Public Safety Act*, *supra* note 134.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Big Cat Act*, BIG CAT RESCUE, (Dec. 20, 2018) <https://bigcatrescue.org/big-cat-act/> [https://perma.cc/DSY4-7SG9] (accessed Apr. 12, 2019).

Keeping exotic cats in unnatural habitats also has public safety concerns. Between 1990 and 2018, animals owned by private individuals and roadside zoos have caused at least 365 maulings of humans, including the deaths of nineteen adults and four children.¹⁵³ Additionally, if animals escape, it results in major safety concerns for first responders.¹⁵⁴ For example, in 2011, a man in Ohio who kept exotic animals in his backyard opened all of their cages before killing himself—monkeys, wolves, bears, and big cats like tigers, leopards, and lions were loose in the neighborhood.¹⁵⁵ For the safety of the public, fifty animals were killed, including thirty-eight big cats, before they could enter heavily populated areas.¹⁵⁶

In addition to these negative aspects of big cat ownership, it can also contribute to the illegal international wildlife trafficking of animal skins and bones.¹⁵⁷ Illegal poachers and traders may own big cats under the false pretext of conservation.¹⁵⁸ It is unknown how many of these animals are killed to support this market.¹⁵⁹

This bill would have amended the Captive Wildlife Safety Act, which in turn amended the Lacey Act. The Captive Wildlife Safety Act restricts interstate transport of big cats unless an entity is exempted from the rule.¹⁶⁰ Those who want to own the animals can receive donations or purchase them as long as the transport do not cross state lines.¹⁶¹ Additionally, traveling or roadside zoos and circuses are included in the list of exempted entities.¹⁶² The Big Cat Safety Act would have helped close these loopholes. Penalties for violation of the Act would have included the confiscation of vehicles or other equipment used in the possession or breeding, fines up to \$20,000, and up to five years in jail.¹⁶³

¹⁵³ See *Big Cat Public Safety Act*, *supra* note 134 (“Big cats cannot be domesticated. Unlike companion animals who have been domesticated over centuries, big cats always retain their natural instinct to hunt and attack, no matter how they are raised.”); *Stopping Private Ownership of Captive Big Cats*, INT’L FUND FOR ANIMAL WELFARE (May 20, 2012), https://s3.amazonaws.com/ifaw-pantheon/sites/default/files/legacy/Big-Cats-Fact-Sheet_2016.pdf [<https://perma.cc/CE9E-E8XQ>] (accessed Apr. 12, 2019) (“Since 1990, there have been over 740 dangerous incidents involving big cats – tigers, lions, cougars, and other species.”).

¹⁵⁴ *Big Cat Public Safety Act*, *supra* note 134.

¹⁵⁵ *Big Cat Act*, *supra* note 152.

¹⁵⁶ *Id.*

¹⁵⁷ *Big Cat Public Safety Act*, *supra* note 134.

¹⁵⁸ *Id.*

¹⁵⁹ *Big Cat Act*, *supra* note 152.

¹⁶⁰ Captive Wildlife Safety Act, FELINE CONSERVATION FED’N (2018), https://www.felineconservation.org/captive_wildlife_safety_act.html [<https://perma.cc/X3XM-XW87>] (accessed Apr. 12, 2019).

¹⁶¹ *Id.*

¹⁶² Grant, *supra* note 143.

¹⁶³ *Big Cat Act*, *supra* note 152.

IX. CONCLUSION

The year 2018 was a slow year for animal protection law reform with only the Endangered Salmon Predation Prevention Act becoming law. Since that law authorizes sea lions to be killed to protect salmon and steelhead,¹⁶⁴ it will likely receive a mixed reception from the animal law community. Much of the proposed legislation detailed above has been reintroduced to Congress numerous times, just like the Endangered Salmon Predation Prevention Act which took four attempts to finally become law. In 2019, the animal law community can look forward to the revival of some of 2018's proposed legislation and hopefully the passage of stronger animal protection laws.

¹⁶⁴ Cassandra Profita, *Bill To Allow Killing Columbia River Sea Lions to Help Salmon Heads to President Trump's Desk*, NW. PUB. BROADCASTING (Dec. 12, 2018), <https://www.nwpb.org/2018/12/12/bill-to-allow-killing-columbia-river-sea-lions-to-help-salmon-heads-to-president-trumps-desk/> [<https://perma.cc/DSY4-7SG9>] (accessed Apr. 12, 2019).