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Roadside Zoos: How Regulation Has Created Worse Conditions for Animals

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I. Introduction

Viewing captive animals in zoos costs more than just the price of admission. Wild animals are observed by zoo-goers at the expense of their physical and psychological well-being. These animals are put on display for people's enjoyment and to earn money for the zoo, but in return they receive the bare minimum. The zoo system is structured in a way that allows for terrible conditions, little to no social interaction, and poor breeding practices in a completely legal manner.¹ Current federal and state laws are not strict enough to ensure proper environments for wild animals in zoo exhibitions.² These laws set bare minimum standards for spacing, care, and other necessities for these animals.³ Outside of these regulations, there are zoo accreditation organizations, that do set more stringent standards for the display of wild captive animals.⁴ However, not all accreditation organizations set higher standards, thus enabling the poor treatment of animals.⁵ Furthermore, not all exhibitions that feature wild captive animals even participate in the accreditation organizations, meaning that they only need to adhere to the bare minimum standards set by federal and state regulations.⁶

The worst part about the way zoos are currently organized, is that the current system authorizes the creation of roadside zoos. Roadside zoos are far worse than the typical zoos that most often come to mind. These types of zoos are often small and lack the proper care and environments needed for captive wild animals to thrive.⁷ The animals in these zoos sit in small

¹ Emily Jenks, *The Bear Necessities: Why Captive Exhibited Animals Need Stronger Regulations Based on their Species Specific Biological Needs*, 2019 Mich. St. L. Rev. 1081, 1085 (2019).

² Animal Legal Defense Fund, Captive Animals – most states have no laws governing captive wild animals, (2021). https://aldf.org/focus_area/captive-animals/#:~:text=The%20Animal%20Welfare%20Act%3A%20The,to%20some%20captive%20wild%20animals. (accessed Dec. 2, 2022).

³ *Id.*

⁴ Jenks, *supra*, note 1 at 1104.

⁵ *Id.*

⁶ *Id.*

⁷ Animal Legal Defense Fund, Roadside Zoos – Small, unaccredited zoos where wild and exotic animals suffer in captivity, (September 9, 2019), <https://aldf.org/issue/roadside-zoos/>. (accessed Dec. 2 2022).

confinements, do not have the necessary mental stimulation, and are often found in dangerous situations with their visitors.⁸ Many roadside centers are set up in a way so that they may adhere to the minimum federal and state regulations, but still provide poor conditions for the animals. Furthermore, these establishments either join less stringent accreditation organizations or choose to not join one at all. Roadside zoos tend to endanger the welfare of exotic animals and, more often than not, do so in a completely legal manner.

This paper will discuss roadside zoos and, their problems, and then recommend potential solutions to prevent their creation or their improper continuation. First, there will be a discussion of two current federal regulations of wild captive animals and how these statutes are problematic, followed by a discussion of two state anti-cruelty laws. Next, will be a review of what zoo accreditation is, what the more popular accreditation organizations are, and what they mean for wild captive animals. Then, there will be an outline of what roadsides are, how they exist, and why they are so problematic. Finally, the paper will close with a discussion of potential solutions to the roadside zoo problem.

II. Current Zoo Regulations and Why They Are Not Protective Enough

Despite the existence of federal and state laws concerning wild captive animals, the regulations resulting from these laws do very little to truly protect them. There are two federal regulations that cover these animals: the Animal Welfare Act (AWA) and the Endangered Species Act (ESA). These two federal laws and their subsequent regulations set bare minimum standards, unintentionally allowing for legal mistreatment of animals.⁹ Furthermore, the laws expressly exclude certain animals, leaving many animals without protections.¹⁰ The AWA lacks

⁸ *Id.*

⁹ Animal Legal Defense Fund, *supra*, note 2.

¹⁰ Dana Mirsky, *Very Complex Questions: Zoos, Animals, and the Law*, 46 Wm. & Mary Envtl. L & Pol'y Rev. 217, 221-223 (2021).

enforcement capacity due to poor resources and the omission of a citizen-suit provision.¹¹ The ESA is very limited in its application to animals in zoos.¹² Despite the importance of these federal statutes, they clearly have major shortcomings.

Although states are subject to the rules promulgated by the AWA and ESA, states are also free to enact their own anti-cruelty statutes to further protect animals.¹³ Some states enact anti-cruelty laws that are fairly basic and provide no additional protections for animals in zoos, while others do provide specific additional protections for animals kept in captivity.¹⁴ Unfortunately, there are also states that specifically exempt zoo animals from their anti-cruelty statutes, leaving these animals without any state law protection.¹⁵

A. The Animal Welfare Act

The AWA was enacted in 1966 and is the main federal law that is aimed to provide protection for the welfare of animals.¹⁶ This statute explicitly allows for regulations for the handling and treatment of animals, including animals used for exhibition purposes.¹⁷ One of the most important aspects of the statute is that it applies to any person or facility, including zoos, whether private or public, that exhibits the any of the animals protected by the statute.¹⁸ This is extremely important because subsection (h) of the statute exempts certain exhibitions of animals

¹¹ Animal Law Legal Center, Detailed Discussion of the Law Affecting Zoos (2004) <https://www.animallaw.info/article/detailed-discussion-laws-affecting-zoos#s6>. (accessed Dec.2, 2022).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Animal Law Legal Center, United States Annotated Code. Title 7. Agricultural. Chapter 54. Transportation, Sale, and Handling of Certain Animals (1970) <https://www.animallaw.info/statute/us-awa-animal-welfare-act>. (accessed Dec. 2, 2022).

¹⁷ 7 USC § 2131

¹⁸ 7 USC § 2132(h).

from the statute, so the express inclusions of zoos in the Act must be considered a major victory for wild captive animals.¹⁹

The AWA is enforced by the Secretary of Agriculture and the United States Department of Agriculture (USDA).²⁰ The USDA employs the Animal and Plant Health Inspection Service (APHIS) to enforce the Act as well.²¹ These entities enforce the Act by promulgating AWA standards, permitting exhibitions under the AWA, and conducting inspections.²² The standards promulgated concern the humane treatment, care, handling and transportation of animals by exhibitors and others that fall within the statute.²³ The permits are to be issued if an exhibitor complies with the standards that have been set under §2143 of the statute.²⁴

Despite these provisions of the AWA, the statute is certainly not without its faults. It is important to note that the AWA does not apply to every animal. Under Section 2131, its definitions section, the statute defines an animal as any warm-blooded animal.²⁵ This definition leaves out animals like insects, fish, and reptiles, all of which are often included in popular zoo exhibits. Zoos like the Smithsonian's National Zoo and the famous Bronx Zoo, have reptile house exhibits and other exhibits that include reptiles and fish.²⁶ It does not matter how popular these exhibits are or how many zoos decide to include these types of exhibits; they are not protected under the AWA. Their only protection, therefore, depends solely on their endangered status under the federal Endangered Species Act and on certain state anti-cruelty laws.

¹⁹ *Id.*

²⁰ 7 USC §2133.

²¹ Jenks, *supra*, note 1 at 1096.

²² Genevieve K. Croft, The Animal Welfare Act: Background and Selected Issues, Congressional Research Service (July 14, 2022) <https://crsreports.congress.gov/product/pdf/R/R47179>. (accessed Dec. 4, 2022).

²³ 7 USC §2143.

²⁴ *Id.*

²⁵ 7 USC §2132.

²⁶ Smithsonian's National Zoo, Exhibits (2022) <https://nationalzoo.si.edu/animals/exhibits>; Bronx Zoo, Exhibits, (2022) <https://bronxzoo.com/things-to-do/exhibits>. (accessed Dec. 2, 2022).

One of the most glaring problems with the AWA is that it sets extremely minimal standards for the animals it does seek to protect. The statute states that the Secretary of Agriculture or the USDA will set standards that include minimum requirements for areas like handling, care, treatment, etc.²⁷ While it may be great that there are standards like these set-in place, they are simply far too minimal to ensure the safety of animals. For example, with regard to zoos, the standards set only require that an animal be able to have enough room to sit and stand, and that the animal have access to food and water.²⁸ These low standards are not enough to truly protect the best interests of the animals.²⁹ The statute also does not require specific standards based on an animal's species.³⁰ Obviously, different species have different needs, but the AWA does not cover the more specific needs of individual species.³¹ For example, there is no mental stimulation requirement for any animals other than primates, even though other species might need mental stimulation in order to live better lives.³² The standards that are set by the AWA and the regulations subsequently promulgated are clearly not enough to truly ensure that exhibited animals are protected from inhumane treatment.

Another downside to the AWA is that its permitting procedures lead to poor enforcement of the Act. As discussed above, the USDA and the APHIS are authorized to hand out permits to those that meet their promulgated standards. To obtain a permit, an exhibitor must initially meet the standards set in place.³³ However, this procedure is problematic for two reasons. First, because the standards required by the Act and set by the regulatory bodies are very minimal,

²⁷ 7 USC §2143.

²⁸ Rebecca L. Jodidio, *The Animal Welfare Act is Lacking: How to Update the Federal Statute to Improve Zoo Animal Welfare*, 12 *Golden Gate U. Envtl. L.J.* 53, 57 (2020).

²⁹ Jenks, *supra*, note 1 at 1095.

³⁰ *Id.* at 1096.

³¹ *Id.*

³² Animal Legal Defense Fund, *supra*, note 2.

³³ *Id.*

initial compliance with these standards are rather easy to meet.³⁴ When standards are lax, a permit can be issued to virtually anyone. Since there may be a significant number of unqualified exhibitors holding valid permits, animals held in captivity are potentially exposed to unnecessarily dangerous and inhumane conditions. Second, the USDA has made it clear that their renewal process does not require an exhibitor to demonstrate compliance once again with the standards set by regulations.³⁵ In *Animal Legal Defense Fund v. United States Department of Agriculture*, the USDA claimed, and the court agreed, that its renewal policy is not conditioned on compliance with the AWA standards, but that it is enough that the exhibitors presented initial compliance.³⁶ The USDA also states that the exhibitors just have a legal duty to maintain these standards and may become subject to random inspections.³⁷ Thus, this relaxed renewal process makes it so that exhibitors only need to demonstrate compliance one time for the entire duration of their exhibition.

Furthermore, the APHIS has established poor enforcement practices of the AWA due to its lack of resources and leniency. The USDA employs the APHIS to enforce the Acts' standards through inspections.³⁸ However, there are over 2,000 licensed facilities but only 104 APHIS inspectors.³⁹ There is such a large disparity between the number of facilities and the number of inspectors, that some critics claim it is nearly impossible to perform an adequate inspection of each facility.⁴⁰ The USDA, through APHIS, also does not do a great job at enforcing the AWA because it does not impose adequate penalties on those exhibitors that violate the Act.⁴¹ Furthermore, the APHIS often prefers to give merely warnings rather than

³⁴ Jenks, *supra*, note 1 at 1092.

³⁵ *Id.* at 1094.

³⁶ *Animal Legal Defense Fund v. United States Department of Agriculture*, 789 F.3d 1206, 1223 (11th Cir. 2015).

³⁷ *Id.*

³⁸ Jenks, *supra*, note 1 at 1096.

³⁹ Animal Law Legal Center, *supra*, note 11.

⁴⁰ *Id.*

⁴¹ Jenks, *supra*, note 1 at 1097.

penalties and fines.⁴² When penalties are given, they are typically much smaller than the maximum penalties allowed by the AWA.⁴³ Since the APHIS has set such a poor precedent of imposing penalties, facilities are less likely to care if they have violations of the AWA. Moreover, the APHIS continues to renew licenses even if a facility has had AWA violations.⁴⁴ These licenses are even renewed if the facility has a pending violation that hasn't been fixed or is currently under investigation.⁴⁵ These too frequent automatic renewals demonstrate to facilities that they do not need to fix or worry about their violations of the AWA since they may probably just be renewed anyway.

One final problem concerning the AWA is that it lacks a citizen-suit provision. Without such a provision, a plaintiff must prove that they have standing to sue under the AWA, which is not an easy task.⁴⁶ Prior to 1998, standing had rarely been found by the courts in these types of cases.⁴⁷

Then, in *Animal Legal Defense Fund v. Glickman*, the DC Circuit Court provided some relief of the rigid standing requirement previously imposed. In this case, the court ruled that the plaintiff had achieved standing due to a permissible “aesthetic injury,” after having continually viewed animals enduring extremely inhumane conditions.⁴⁸ To achieve standing, the plaintiff had to prove that he suffered an injury, that the injury was traceable to the defendant’s conduct, and that a judicial ruling would redress his complaint.⁴⁹ The court found that the plaintiff satisfied these requirements because he suffered an aesthetic injury originating primarily from

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Jodidio, *supra*, note 28 at 56.

⁴⁵ *Id.*

⁴⁶ Animal Law Legal Center, *supra*, note 11.

⁴⁷ *Id.*

⁴⁸ *Glickman v. Animal Legal Defense Fund*, 154 F.3d 426, 432 (D.C. Cir. 1998).

⁴⁹ *Id.* at 431.

the defendant's conduct, which had placed the animals in inhumane conditions, and that a judicial ruling against the defendant could fix these conditions.⁵⁰

Despite the federal circuit court's relaxing of the standing requirement in *Glickman*, a plaintiff must still bear the burden of meeting one more element to establish standing: the United States Supreme Court has further held that a plaintiff must also meet the requirement of "prudential standing."⁵¹ In *Glickman*, fortunately, the court found that the plaintiff's injury was within the Act's zone of interests because the AWA is intended to protect the welfare of animals, and the plaintiff was seeking to do just that.⁵² Nevertheless, even though in *Glickman*, the plaintiff achieved standing, it is clear that the ability of a plaintiff to be able to sue under the AWA, can indeed prove very difficult and sometimes insurmountable.

The AWA does set a good baseline for the protection of exhibited animals, but it does not do enough. The statute is not strict enough and does not mandate enough requirements to protect the best interests of the animals. The enforcement of the statute is ineffective due to lack of resources and poor precedent set by the USDA and APHIS. Finally, it is extremely difficult for individuals to bring suits on behalf of animals, making it even less likely that these animals get proper protections. It is clear that the AWA needs to be amended or supplemented to fully protect exhibited animals.

B. The Endangered Species Act (ESA)

The ESA was enacted in 1973 with the goal of protecting animal species that are formally listed as either threatened or endangered.⁵³ By means of the ESA, Congress intended to encourage conservation efforts to protect threatened or endangered species and their

⁵⁰ *Id.* at 445.

⁵¹ *Id.* at 431.

⁵² *Id.* at 444.

⁵³ 16 USC §1531(b)

ecosystems.⁵⁴ The ESA allows the Secretary of the Interior to regulate the Act by determining which species may be added to the threatened or endangered list, and by issuing permits to those who wish to import or export the protected species in interstate commerce.⁵⁵ The Secretary of the Interior employs the Fish and Wildlife Service (FWS) to enforce the ESA.⁵⁶ The ESA prohibits the “taking” of these endangered or threatened species in interstate commerce.⁵⁷ A “take” under the ESA is defined as to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect.”⁵⁸ Although the ESA does apply to animals in captivity in zoos, its application to these animals is extremely limited.

Clearly, the first step to protection under the ESA, is for an animal to be recognized as an endangered or threatened species. If an animal is not listed as threatened or endangered by the Secretary of the Interior or the FWS, the ESA will not be a means of protection for the animal.⁵⁹

Although the ESA intends to protect endangered and threatened species, it only does so under a limited set of circumstances when it comes to wild, captive animals in zoos. It is important to understand that the ESA does not directly regulate the welfare of these animals, but rather regulates the taking of these animals and their movement in interstate commerce.⁶⁰ However, both of these delineated areas are extremely limited and come with certain exemptions that leave zoo animals in danger.

Moreover, there is a major exemption in the taking section of the statute that narrows it even further and protects the animals even less.⁶¹ Harassment under the taking section means:

⁵⁴ *Id.*

⁵⁵ 16 USC §1532(15); §1538(d).

⁵⁶ Animal Law Legal Center, *supra*, note 11.

⁵⁷ 16 USC §1538(a)(1)(B).

⁵⁸ 16 USC §1532(19).

⁵⁹ Animal Legal Defense Fund, *supra*, note 2.

⁶⁰ *Id.*

⁶¹ Jenks, *supra*, note 1 at 1101.

an intentional or negligent act or omission in which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering.⁶²

However, the statute states that typical animal husbandry practices that meet the AWA standards are exempt from this section of the statute.⁶³ A senior officer of the FWS has stated that the agency accepts that animal husbandry includes zoo exhibitions of wildlife.⁶⁴ Therefore, any facility that meets the extremely minimal and often ignored AWA standards is exempt from the harassment prohibition under the taking section of the ESA.⁶⁵

There are also limitations under the interstate commerce aspect of the statute. Under the ESA, the movement, importation or exportation, of endangered or threatened species in interstate commerce is usually prohibited, but there are exceptions.⁶⁶ The Secretary of the Interior may issue a permit to move these animals for scientific purposes or to enhance survival of the animals.⁶⁷ As long as the Secretary issues the permit in good faith and no provisions of the ESA are violated, then the permit to move and import these animals will be issued.⁶⁸ Unfortunately, the standards set for obtaining these permits are very easy, thus making it so that endangered and threatened species in zoos can be transferred outside the facility without a violation of the ESA.⁶⁹ For example, the FWS, acting on behalf of the Secretary, typically allows these permits under the “enhancing survival” section of the statute and usually only requires that zoos donate money to a conservation program to meet the exception.⁷⁰ These donations do not always aid in the

⁶² 50 CFR §17.3(c).

⁶³ *Id.*

⁶⁴ Animal Law Legal Center, *supra*, note 11.

⁶⁵ *Id.*

⁶⁶ 16 USC §1538.

⁶⁷ 16 USC §1539(a).

⁶⁸ 16 USC §1539(d).

⁶⁹ Jenks, *supra*, note 1 at 1102.

⁷⁰ *Id.*

conservation of these animals, but the FWS has deemed the action sufficient enough to allow for the movement of these animals.⁷¹

Although there is a citizen-suit provision in the ESA, there have not been many successful suits under the ESA for wild captive animals for a very long time. In 2014, the Animal Legal Defense Fund brought suit against a roadside zoo called Cricket Hollow for its mistreatment of its animals.⁷² In 2018, the Court of Appeals in the 8th Circuit held that there may be a violation of the ESA when captive animals in zoos are not given proper care.⁷³ The circuit court ruled in favor of the Animal Legal Defense Fund and found that the Cricket Hollow roadside zoo violated the ESA due to its mistreatment of the endangered and threatened species exhibited there.⁷⁴ This was the first time that the ESA was used to protect wild captive animals.⁷⁵

Just like the AWA, the ESA is intended to help protect endangered and threatened species. However, the statute comes with too many exemptions and not enough protections to effectively protect wild captive animals, despite their endangered status. Enforcement has proven ineffective because of the Act's low standards for permitting and its exclusion of many animal husbandry practices. Additionally, the citizen-suit provision has also proven ineffective given its low usability and low success rate, but hopefully this may be changing. Overall, the ESA could be very beneficial to wild captive endangered species in zoos, but so far it has missed the mark.

C. State Laws

⁷¹ *Id.*

⁷² *Kuehl v. Sellner*, 887 F.3d 845, 848-849 (8th Cir. 2018).

⁷³ *Id.* at 852.

⁷⁴ *Id.* The animals exhibited at Cricket Hollow were endangered, therefore falling under the ESA. For the zoo to obtain a permit under the ESA to import these animals, the zoo had to meet the standards under the AWA. The conditions in zoo did not meet these standards, and therefore were in violation of both the AWA and the ESA.

⁷⁵ Animal Legal Defense Fund, *supra*, note 2.

States are free to enact additional laws to further protect animals, including animals kept in captivity. Every state has enacted their own anti-cruelty statutes, but they are not all the same.⁷⁶ The lack of uniformity among state laws leaves certain zoo animals with better protections in some states and worse protections in others.⁷⁷

New Jersey enacted its own anti-cruelty statute in 2006.⁷⁸ The NJ statute defines cruelty broadly and includes overworking, torturing, tormenting, causing death or serious bodily injury, and failing as an owner of an animal.⁷⁹ This statute does not exclude certain species of animals, but it does have exemptions based on the type of activity involving the animals.⁸⁰ For example, certain science experiments and ordinary livestock operations are excluded under the statute.⁸¹ Although the statute does not exempt zoo operations, it does not provide any additional protections for animals in zoos by imposing stricter treatment requirements for zoo animals.⁸² The statute does, however, prevent certain roadside zoos from operating.⁸³ The statute expressly prohibits: “keep or exhibit a wild animal at a roadside stand or market located along a public street or highway of this State; a gasoline station; or a shopping mall, or part of the premises thereof.”⁸⁴ The New Jersey statute does an alright job of providing further protections for zoo animals, but zoo animals would benefit if the statute imposed more specific treatment and care standards for these animals.

⁷⁶ Animal Law Legal Center, *supra*, note 11.

⁷⁷ *Id.*

⁷⁸ Animal Law Legal Center, New Jersey Statutes Annotated. Title 4. Agricultural and Domestic Animals. Chapter 22. Prevention of Cruelty to Animals. Title 2c. (2022). <https://www.animallaw.info/statute/nj-cruelty-consolidated-cruelty-statutes#s26>. (accessed Dec. 4, 2022).

⁷⁹ NJSA 4:22-26(a)(1)-(5).

⁸⁰ Animal Law Legal Center, *supra*, note 78.

⁸¹ *Id.*

⁸² NJSA 4:22-10

⁸³ NJSA 4:22-26(n)

⁸⁴ *Id.*

Pennsylvania's anti-cruelty statute is seen as one of the strongest protections for zoo animals because the statute specifically mentions its intent to protect such animals.⁸⁵ The Pennsylvania statute also defines cruelty broadly and includes overloading, poor treatment, abusing, neglecting, and ignoring needs such as food, water, and shelter.⁸⁶ Furthermore, the Pennsylvania statute provides specific treatment requirements for animals to zoos to ensure their safety and protection.⁸⁷ The statute details requirements for sanitation, nutrition, safety, health and welfare, and housing of animals kept in zoos.⁸⁸ The Pennsylvania statute seems to do a great job at providing additional protections for animals in zoos because of these specific requirements and its intention to protect these animals.

III. Zoo Accreditation and What it Means for Wild Captive Animals

A zoo accreditation institution is not mandated by any legal body. There is no statute requiring membership, nor any case law interpretation of such a requirement.⁸⁹ These accreditation institutions supposedly exist for the benefit of zoos and their animals. These accreditation organizations all set different standards, which means that some provide better benefits for the zoos and protections for the animals, while others are just seen as status enhancers and nothing more.⁹⁰ A zoo typically joins one of these institutions to prove their legitimacy to other exhibitors and to the public.⁹¹ When a zoo joins a more prestigious accreditation organization, it may be seen in a better light with the public and with other zoos.⁹²

⁸⁵ Animal Law Legal Center, *supra*, note 11.

⁸⁶ 18 PA Cons. Stat. §5511(c)

⁸⁷ 58 PA. Code §147.281.

⁸⁸ *Id.*

⁸⁹ Jenks, *supra*, note 1 at 1104.

⁹⁰ Rachel Garner, How to Understand Zoo Accreditation, Why Animals Do the Thing (July 4, 2016) <https://www.whyanimalsdothething.com/how-to-understand-zoos-accrediation>. (accessed Dec. 4, 2022).

⁹¹ Jenks, *supra*, note 1 at 1104.

⁹² *Id.*

However, those zoos that join the less notable organizations, still receive potential public relations benefits, while also not enhancing the protections of their animals.⁹³

There are two major zoo accreditation institutions, the Association of Zoos and Aquariums and the Zoological Association of America.⁹⁴ Both of these organizations are not without their faults, although, one of these organizations is considerably worse, and is often the organization that roadside zoos choose to join.

A. The Association of Zoos and Aquariums

The Association of Zoos and Aquariums (AZA) is governed by all federal laws and subsequent regulations, but also sets its own standards.⁹⁵ This organization has received support from members of the House of Representatives through the Congressional Zoo and Aquarium Caucus.⁹⁶ The AZA is considered the most credible accreditation institution in the industry because of its high standards, and its application process.⁹⁷ Out of the 3,000 zoos that the USDA has acknowledged, only about 10% of them have been selected for accreditation by the AZA.⁹⁸

Thus, the AZA sets very high standards for its zoo members to follow to ensure the welfare of the animals. These standards are more stringent than any federal law or any other accreditation organization.⁹⁹ Members under the AZA must follow its strict breeding regimes that require members to track the history of the animal's genes and strictly prohibits crossbreeding to create anomalies.¹⁰⁰ For example, its zoos cannot create the crossbreed of the

⁹³ *Id.*

⁹⁴ Garner, *supra*, note 73.

⁹⁵ Animal Law Legal Center, *supra*, note 11.

⁹⁶ Jodidio, *supra*, note 28 at 62.

⁹⁷ *Id.*

⁹⁸ Garner, *supra*, note 90.

⁹⁹ Jenks, *supra*, note 1 at 1104.

¹⁰⁰ *Id.* at 1105.

liger, by breeding a lion and a tiger together.¹⁰¹ The AZA also sets standards for the animals' nutrition, spacing, safety, comfort, physical health, and proper grouping or socialization.¹⁰² For instance, to protect the safety of zoo keepers and elephants in zoos, the AZA established a policy prohibiting zoo keepers from being in same space with elephants, with very limited exceptions.¹⁰³ The standards set by the AZA are acknowledged to be a very positive thing for animals in zoos.

The application process of the AZA also makes it the most legitimate of the zoo accreditation organizations. An applicant must submit detailed paperwork describing its animal management, what its facility is like, and how it will meet the AZA's standards.¹⁰⁴ Once the application with all of the proper paperwork has been submitted, a committee of up to four people will visit the zoo and inspect it over multiple days.¹⁰⁵ After the inspection, the committee prepares a report, which gets sent to a committee of 16 experts who will make the final decision.¹⁰⁶ A member who wishes to retain its AZA membership, must repeat this process every five years.¹⁰⁷ There is no simpler renewal process, which means the entire process, including the initial application, must be fully re-done.¹⁰⁸

Despite the higher standards set by the AZA and its lengthy application process, there are still issues that arise under AZA accredited zoos. For example, the Wildlife Safari Zoo in Oregon was under fire for allowing visitors to pay trainers to use bull hooks on the elephants so that the elephants would spray the visitors' cars with their trunks.¹⁰⁹ Using a bull hook on an elephant

¹⁰¹ *Id.*

¹⁰² Jodidio, *supra*, note 28 at 62.

¹⁰³ *Id.* at 64.

¹⁰⁴ Garner, *supra*, note 90.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ Jenks, *supra*, note 1 at 1105.

simply for the entertainment of visitors is not something that should be allowed under AZA standards, but the AZA found no problem with it.¹¹⁰

Overall, it appears that the AZA does a great job of ensuring the welfare of wild captive animals in zoos. Since its standards are so high and their application process so rigorous, those who become members are seen to be more legitimate and have better and more humane animal practices. Due to its high standards for the treatment of captive animals, roadside zoos have a difficult time gaining accreditation under this organization. Thus, roadside zoos often lack the most prestigious accreditation, potentially making them less attractive to visitors.

B. The Zoological Association of America

The Zoological Association of America (ZAA) is an accreditation institution with minimal standards and not a whole lot of protection for wild captive animals in zoos.¹¹¹ When a zoo cannot meet the standards of the AZA, it may turn to the ZAA in order to obtain some kind of accreditation to make them seem more credible.¹¹² The ZAA is often the accreditation organization that roadside zoos are members of, which will be further discussed later on.

Some critics of the ZAA speculate that it made its name in order to confuse the public.¹¹³ These critics argue that the ZAA purposely chose an acronym similar to that of the AZA, to conflate the two organizations.¹¹⁴ The ZAA would do this to make the public believe that its members have the most prestigious accreditation and are therefore more legitimate.¹¹⁵

¹¹⁰ *Id.*

¹¹¹ *Id.* at 1106.

¹¹² *Id.*

¹¹³ Jodidio, *supra*, note 28 at 63.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

The ZAA does not established particularly strict standards. Its standards are more relaxed and provide its members with more freedom in how they wish to run their zoos.¹¹⁶ For example, the ZAA created a policy stating that the amount of physical contact zoo keepers have with exhibited elephants should be decided by each individual member, rather than the organization set a strict limit.¹¹⁷ The ZAA also allows for less thorough inspections and less restrictive breeding practices.¹¹⁸ For example, the ZAA allows for breeding practices based on the desired color of a certain species.¹¹⁹ Member zoos are therefore able to breed white tigers because they are rare and the public wants to see them.¹²⁰ These practices seem to be more focused on creating successful businesses, rather than the protection of animal welfare.

The ZAA does have a fairly lengthy application process, but as long as its standards remain easy to meet, the process is not nearly as burdensome as the AZA's. With respect to the ZAA, a facility must submit a paper application, followed by a site inspection.¹²¹ After the inspection, a committee will make a decision and then, if approved, the facility will move on to the next step.¹²² The next step requires the zoo to fill out another application, also followed by inspection and final approval.¹²³ After three months, the zoo can finally apply for accreditation which requires \$700 in fees and another application. Then the ZAA board will make a final approval.¹²⁴ Once approved, facilities must reapply every five years.¹²⁵ Despite this lengthy and expensive process, the ZAA's standards remain more relaxed and not as strict as the AZA's;

¹¹⁶ Jenks, *supra*, note 1 at 1106.

¹¹⁷ Jodidio, *supra*, note 28 at 63.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ Garner, *supra*, note 90.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

hence, completing this process and getting approved is usually not a difficult task for applicants to acquire ZAA membership.

The ZAA is definitely the least respected of the two most well-known accreditation institutions. Its lower standards make its application process relatively easy to satisfy. Furthermore, the required standards are mostly focused on the business of the zoo, rather than the protection of the animals. Consequently, the ZAA may be a big roadblock when trying to ensure the safety of wild captive animals.

IV. What are Roadside Zoos and Why are They Deeply Problematic?

The term roadside zoo is not defined in any online dictionary. Rather, it is a term that society has given to small menageries, where animals are kept in captivity with poor conditions.¹²⁶ The AZA does not define roadside zoo, but calls them “menageries with inexperienced handlers and often inhumane conditions.”¹²⁷ Many roadside facilities differ from popular AZA member zoos, like the Bronx Zoo, because of their poor conditions, mistreatment of animals, and lack of resources.¹²⁸ These zoos typically do not meet accreditation requirements, and thus have little to no sizing or staffing requirements.¹²⁹ These zoos exist because of lax federal regulation and enforcement, the existence of less prestigious accreditation institutions, and what they offer to the public.¹³⁰

Poor federal regulations are a major reason that these roadside zoos exist. As discussed above, the AWA imposes very minimal standards on the welfare of captive animals.¹³¹ Since

¹²⁶ Animal Legal Defense Fund, *supra*, note 7.

¹²⁷ Association of Zoos & Aquariums, The Accreditation Standards & Related Policies (2022), <https://assets.speakcdn.com/assets/2332/aza-accreditation-standards.pdf>.

¹²⁸ *Id.*

¹²⁹ Jonathan Peloquin, *Amending the Endangered Species Act: Wildlife Protection in a Post-Tiger King Society*, 90 Geo. Wash. L. Rev. Arguendo 1, 6 (2022).

¹³⁰ Animal Legal Defense Fund, *supra*, note 7.

¹³¹ Jodidio, *supra*, note 28 at 57.

these standards are so low, roadside zoos are able to keep their animals in such poor conditions, but they remain completely legal operations.¹³² Wild captive animals in many roadside zoos are placed in muddy enclosures, with the bare minimum food and water, and receive the bare minimum veterinary care that is mandated by the AWA.¹³³ There is often little to no mental stimulation for the animals, including little to no social interaction with other animals.¹³⁴ The animals in these zoos frequently live in an environment that is nothing like their natural habitat.¹³⁵ Despite these terrible conditions, AWA mandates and the Act's subsequent regulations do not require any further regulations by zoos.¹³⁶ Since many roadside zoo operations are legal under the AWA, they have little to no incentive to provide better care and more expensive care for captive animals.

The lack of enforcement of the AWA is also a major reason as to why roadside zoos are so prevalent. By virtue of the USDA's poor enforcement of the AWA, roadside zoos are able to maintain their permits under the AWA, allowing them to benefit from this legal status.¹³⁷ Furthermore, because the USDA renews permits regardless of current AWA violations, many roadside zoos have little to no incentive to fix their violations and may continue to acquire new violations.¹³⁸ These poor enforcement practices provide no motivation for a roadside zoo to change its practices because it understands it will not be fined and will continue to have its license automatically renewed.

The Endangered Species Act also has done little to prevent roadside zoos from operating. As above-mentioned, the ESA only prevents the taking of wild animals and their transport through

¹³² Jenks, *supra*, note 1 at 1085.

¹³³ Animal Legal Defense Fund, *supra*, note 7.

¹³⁴ *Id.*

¹³⁵ Jenks, *supra*, note 1 at 1085.

¹³⁶ Animal Legal Defense Fund, *supra*, note 7.

¹³⁷ Jenks, *supra*, note 1 at 1098-99.

¹³⁸ *Id.*

interstate commerce.¹³⁹ Since the harassment portion of the taking section does not apply to facilities that meet AWA standards, and AWA standards are so easy to meet, roadsides are hardly ever deemed noncompliant with the taking provision of the ESA.¹⁴⁰ Moreover, due to the exceptions for the importation or exportation of wild animals in the ESA, roadsides are able to obtain endangered, wild animals very easily.¹⁴¹ All that these roadsides must do, in order to obtain a permit under the ESA to transport wild animals in interstate commerce, is to make a monetary donation to an animal conservation group.¹⁴² Due to these relaxed permitting standards under the ESA, roadside zoos may continue to acquire endangered and threatened species rather easily.

The lack of uniform state laws also allows many troublesome roadside zoos to operate. As discussed above, some states completely exempt animals in zoos from their anti-cruelty statutes, making it so that roadside zoos only need to abide by federal laws.¹⁴³ Furthermore, even if a state does not exempt a zoo from its anti-cruelty statutes, not all states impose additional protections for zoo animals, so it is still easy for many roadside zoos to operate legally under state and federal law, while maintaining poor conditions.¹⁴⁴

The existence of the ZAA is another reason why roadsides are so prevalent and have so many visitors. As discussed, the ZAA has often confused people into believing that they are the AZA; thus, many visitors think that these roadsides are accredited under the more credible organization.¹⁴⁵ Moreover, the ZAA does not have requirements that are much stricter than the minimal requirements already set by the AWA, so it is extremely easy for roadsides to become

¹³⁹ Animal Legal Defense Fund, *supra*, note 7.

¹⁴⁰ Jenks, *supra*, note 1 at 1100-01.

¹⁴¹ *Id.*

¹⁴² *Id.* at 1102.

¹⁴³ Animal Law Legal Center, *supra*, note 11.

¹⁴⁴ *Id.*

¹⁴⁵ Jodidio, *supra*, note 28 at 64.

accredited by this institution.¹⁴⁶ Therefore, roadside zoos are able to satisfy all legal requirements under the AWA and ESA, and also can obtain private accreditation, hence, putting them in great standing with public, but too often at the detrimental cost of wild captive animals.

Many roadside zoos are quite popular with the public because they offer the chance to directly interact with wild animals.¹⁴⁷ Roadside zoos know that the public enjoys being up-close with these animals and taking photos to show their friends and families; therefore, they often promote these kinds of experiences, sometimes putting both the public and the animals in danger.¹⁴⁸

An example of a roadside zoo that appealed to the public and caused serious harm to animals is the Fur-Ever Wild zoo.¹⁴⁹ At this roadside, it charged the public to feed and play with endangered gray wolf puppies.¹⁵⁰ However, once the puppies became too old for the public to play with, the zoo would kill the wolves, skin them, and sell their fur.¹⁵¹ The roadside even stated that over the course of five years, 68 wolves died on their property.¹⁵² Since Fur-Ever Wild was using gray wolves, which are endangered, the ESA applied.¹⁵³ In 2017, the Animal Legal Defense Fund brought a lawsuit against Fur-Ever Wild, and argued that the roadside zoo had violated the ESA when it skinned and killed the wolves, which appeared to be in direct violation of the takings clause of the statute.¹⁵⁴ A 2018 settlement between Fur-Ever Wild and the Eureka Township of South Dakota also settled the Animal Legal Defense Fund's claim, and Fur-Ever

¹⁴⁶ *Id.*

¹⁴⁷ Animal Legal Defense Fund, *supra*, note 7.

¹⁴⁸ Jenks, *supra*, note 1 at 1084-85.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ Matthew Russell, This Minnesota 'Fur Farm' Has Been Masquerading as an Educational Facility, but the Truth is Coming Out, The Animal Rescue Site (January 16, 2018) <https://blog.theanimalrescuesite.greatergood.com/furever-wild/>. (accessed Dec. 2, 2022).

¹⁵² Jenks, *supra*, note 1 at 1085.

¹⁵³ Russel, *supra*, note 151.

¹⁵⁴ *Id.*

Wild was ordered to relinquish all but one of its gray wolf puppies.¹⁵⁵ Furthermore, Fur-Ever agreed to not kill gray wolves or sell their pelts.¹⁵⁶ This settlement seems to be a major victory for wild captive animals in roadside zoos, and there will hopefully be more victories to come.

Another example of a roadside zoo is the Cricket Hollow Zoo. That zoo housed over 300 animals, including tigers, lemurs, birds and wolves.¹⁵⁷ There were only two full time employees, the owners of the zoo, and sometimes voluntary assistance from others.¹⁵⁸ Four people visited the roadside in 2012 and 2013 and found horrible conditions.¹⁵⁹ They found feces in the cages, terrible odors, and a lack of mental stimulation to keep the animals busy.¹⁶⁰ Specifically, they noticed that the lemurs had only one log and the tigers only had one ball to keep them entertained.¹⁶¹ Since lemurs and tigers are endangered species, the requirements of the ESA applied to Cricket Hollow.¹⁶² These conditions were not good enough to support the physical and mental well-being of the animals, so the Animal Legal Defense Fund sued under the ESA.¹⁶³ The District Court found, and the 8th Federal Circuit agreed, that Cricket Hollow was not exempt from the harassment section of the ESA because they did not meet the minimum standards under the AWA.¹⁶⁴ Due to the lack of an exemption, the courts found that the roadside had violated both the AWA and the ESA because of the poor conditions and treatment of its animals.¹⁶⁵ Although this lawsuit was a major win on behalf of wild captive animals in roadside zoos, this case (decided only in 2018) and was the first successful suit under the ESA.¹⁶⁶ This ongoing

¹⁵⁵ Animal Legal Defense Fund, *Fur-Ever Wild Agrees to Not Kill Gray Wolves as Lawsuit Settles*, (Dec. 17, 2019) <https://aldf.org/article/fur-ever-wild-agrees-to-not-kill-endangered-wolves-as-lawsuit-settles/>. (Dec. 4, 2022).

¹⁵⁶ *Id.*

¹⁵⁷ *Kuehl v. Sellner*, 887 F.3d at 848.

¹⁵⁸ *Id.* at 849.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ Animal Legal Defense Fund, *supra*, note 7.

¹⁶⁴ *Kuehl v. Sellner*, 887 F.3d at 852-53.

¹⁶⁵ Animal Legal Defense Fund, *supra*, note 7.

¹⁶⁶ *Id.*

failure to bring and win lawsuits against poor performing roadsides – using either of the two federal statutes – demonstrates that it is still difficult to sue them successful, but hopefully the Cricket Hollow will lead to more positive action.

Thus, it is clear that roadside zoos still remain problematic for captive animals, but, unfortunately, they will continue to exist if regulation and accreditation stays the way it is now. Federal agencies and their enforcement regulations do not provide the proper incentives for roadsides zoos to adhere to stricter and more expensive standards. State laws are not uniform and do not provide additional protections for captive animals. Private accreditation organizations also do not do enough to prevent the legitimacy of troublesome roadside zoos, which continue to confuse the public about the quality of their animal protection. Furthermore, private suits have also not proven to be successful in the elimination of poor run roadside zoos. So, there must be reforms made if troublesome roadside zoos are to improve or else cease to exist.

V. Solutions to the Roadside Zoo Problem

There are several actions that can be implemented to help fix the problems of roadside zoos. The main focus of any of these solutions must be the improvement of these problematic roadside zoos. Solutions must truly consider the welfare of captive wild animals and the places they are allowed to live. Potential solutions to the roadside zoo problem include updating federal regulations, encouraging new state legislation, changes to the accreditation system, and better and more accurate notice to the public about what really happens at a roadside zoo.

A. Updating Federal Regulations

As discussed previously, there are major exemptions and loopholes within the current system of federal regulation of captive wild animals. These animals would benefit, and many roadsides would suffer, if these loopholes were closed and exemptions erased.

First, the AWA needs to toughen its required standards. The standards imposed by the AWA are extremely minimal and make it very easy for many roadside zoos to conform to legal standards while maintaining unhealthy conditions for animals.¹⁶⁷ Captive wild animals would not be subject to such poor conditions if the AWA had heightened standards.¹⁶⁸ With an increase in minimum standards necessary to run a zoo, roadsides would improve or disappear as many do not have the resources or funding to meet stricter requirements.¹⁶⁹ Roadside zoos should have to increase their space for their captive animals, provide greater veterinary care, and hire more staff in order to hopefully meet new, stricter requirements under the AWA.¹⁷⁰ The criteria established by the AZA and its enforcement procedures demonstrates that stricter standards can lead to more credible and trustworthy zoos. So, the AWA should enforce similar requirements for all zoos – including roadsides.¹⁷¹ Even just this simple strengthening of AWA minimum requirements would create a major change in the existence of roadside zoos.

The AWA also needs better enforcement by the USDA to ensure the improvement or demise of roadsides. One of the major problems with enforcement under the USDA is lack of resources. There are thousands of facilities operating traditional and roadside zoos under the AWA, but only a few hundred inspectors.¹⁷² If the number of inspectors were increased, facilities would be thoroughly and properly inspected, resulting in an increase in violations and penalties.¹⁷³ The cost of hiring more inspectors could be borne by increasing the permitting fee under the AWA or by placing a small fee on visitors who patronize zoos that charge admission fees.

¹⁶⁷ Jenks, *supra*, note 1 at 1085.

¹⁶⁸ Jodidio, *supra*, note 28 at 75.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² Animal Law Legal Center, *supra*, note 11.

¹⁷³ Jodidio, *supra*, note 28 at 74.

Increasing inspectors is not enough, however. There needs to be real enforcement of penalties and fines so that roadsides do not continue to violate the AWA. Under the current enforcement system, roadsides are mostly free to ignore their violations and do little or nothing to correct them because minimal, if any, penalties are given, hence providing little incentive to fix their problems.¹⁷⁴ If the USDA were to impose heavier penalties and fines, roadsides would have to put more resources into fixing their violations, which might be no easy task.¹⁷⁵ Enforcement of the AWA could be further improved by changing the automatic renewal process. Current procedures allow the USDA to automatically renew licenses requiring the display of wild animals without consideration of pending and potential AWA violations.¹⁷⁶ Automatic renewal makes it so that roadsides can have current violations or undiscovered violations on their premises, but still maintain their permits to exhibit wild animals.¹⁷⁷ If the USDA were to abandon this policy, many roadsides would never get their licenses renewed because of their perpetual violations of the AWA.¹⁷⁸

The AWA should also expand its regulations in order to have specific standards for certain species. Currently, only primate at zoos receive special treatment, but there are other species that are also deserving of specific requirements.¹⁷⁹ Some additional animals require more needs than others, and this should be reflected in the AWA regulations to prevent roadside zoos from abusing animals that require more attention.¹⁸⁰ Some critics of roadsides have also suggested setting more rigid licensing restrictions when there are violations of the welfare of particular animals.¹⁸¹ For example, bears need certain environments to live in comfort, and the

¹⁷⁴ Jenks, *supra*, note 1 at 1097.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* at 1098-1099.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ Animal Legal Defense Fund, *supra*, note 2.

¹⁸⁰ Jodidio, *supra*, note 28 at 73.

¹⁸¹ Cassidy Cohick, The Forgotten Cool Cats and Kittens: How a Lack of Federal Oversight in the USDA Led to Inhumane Loopholes in the Exploitation of Big Cats in America, 6 Admin. L. Rev. Accord 125, 145-146 (2021).

AWA does not ensure that they receive these environments.¹⁸² Bears also need cooling baths or shade so their paws do not burn during the hot months, but the AWA does not provide for these specific standards either.¹⁸³ Lack of such species specific standards allows roadsides to keep animals that have a lot of needs to survive, without providing for those needs

To further prevent abuses, some critics have urged that renewal licenses not be given to roadsides and other facilities that do not provide quality care for big cat species, like tigers.¹⁸⁴ If a facility has multiple violations due to their inhumane treatment of tigers, the facility should not be allowed to maintain these animals again, or should even potentially lose its entire license altogether because of these infractions.¹⁸⁵ This type of species-specific regulation would help to ensure that popular animals, like big cats, are either taken care of properly in facilities or are not in certain facilities, like roadsides, at all.¹⁸⁶

The AWA could further help animals in roadside zoos if the Act had a citizen-suit provision. Although the citizen-suit provision of the ESA has not won animals too many victories – yet, it is certainly better than the zero suits brought under the AWA.¹⁸⁷ Without a citizen-suit provision, individuals cannot sue to protect captive wild animals from the conditions in roadside zoos.¹⁸⁸ Allowing citizens to sue would lead to more changes and closures of roadside zoos, furthering the protection of these animals.¹⁸⁹

The welfare of captive wild animals and the ultimate improvement of demise of roadside zoos would be furthered if the AWA were to ban direct social interactions between the public

¹⁸² Jodidio, *supra*, note 28 at 73.

¹⁸³ *Id.*

¹⁸⁴ Cohick, *supra*, note 181 at 146.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ Animal Legal Defense Fund, *supra*, note 2.

¹⁸⁸ Jenks, *supra*, note 1 at 1125

¹⁸⁹ *Id.*

and the wild animals. Roadsides often gain so much attention because they invite the public to directly interact with wild animals through bottle feedings or pettings.¹⁹⁰ If the AWA were to ban these types of interactions, not only would the public and animals be protected from dangerous interactions with one another, roadsides would lose a major reason for the public to visit them.¹⁹¹ If the public could no longer pay roadsides to have these direct interactions, many animals would be less valuable to roadsides, leaving some of them little options to continue their operations.¹⁹² Losing the income from this potential ban would certainly aid in the demise of many poorly run institutions.¹⁹³

Another action that could help improve or remove troublesome roadside zoos could occur by means of an updated regulation promulgated under the ESA. Under current ESA regulations, harassment is not a portion of the takings section when it comes to accepted animal husbandry practices, and a permit to transport endangered species in interstate commerce is fairly easy to obtain.¹⁹⁴ If the ESA were to revise its regulation to include “harass” under the takings section, roadsides might very often be in violation of the ESA and would either have to spend resources to fix their violations or just close up shop.¹⁹⁵

Furthermore, if regulations under the ESA were to make it more difficult to obtain a permit to transport endangered or threatened species in interstate commerce, some poorly run roadside zoos might never be able to obtain these permits, and would therefore never be able to acquire possession of such species.¹⁹⁶ To gain these permits, APHIS, the Act’s regulatory

¹⁹⁰ *Id.* at 1084-1085.

¹⁹¹ Jennifer Jacquet, America, Stop Visiting Roadside Zoos – They Make Money From the Inhumane Treatment of Animals, *The Guardian* (November 27, 2016) <https://www.theguardian.com/sustainable-business/2016/nov/27/roadside-zoos-america-animal-cruelty-welfare>. (accessed Dec. 4, 2022).

¹⁹² *Id.*

¹⁹³ Jodidio, *supra*, note 28 at 76.

¹⁹⁴ Animal Legal Defense Fund, *supra*, note 2.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

agency, thus needs to require more than a mere donation from roadside donors for the purpose of conservation.¹⁹⁷ A zoo would actually have to prove that the animals in its facilities are being used for real scientific or conservation purposes in order to obtain these permits.¹⁹⁸ With that requirement, many roadsides could never house these special status animals.

B. Encouraging Better State Anti-Cruelty Laws

Another potential solution is to encourage states to enact stricter anti-cruelty statutes. Although states are subject to federal laws, they are free to create their own laws to protect animals, including animals in zoos.¹⁹⁹ In fact, every state has already enacted its own anti-cruelty statute.²⁰⁰ However, to better protect animals in zoos at the state level, these statutes must be strengthened, and exemptions must be taken out. The best example of the types of anti-cruelty laws states should enact would be the Pennsylvania law. As discussed previously, the Pennsylvania statute mentions a specific intent to protect zoo animals and provides for specific treatment, housing, and care requirements for such animals.²⁰¹

However, not all states would want to make drastic changes to their statutes to match the Pennsylvania statute, but drastic changes are not necessary to improve the roadside zoo problem. Although imposing specific treatment standards for animals in zoos would be the most beneficial for these animals, states may opt for a route similar to the one New Jersey took, and simply ban certain roadside zoos at certain locations.²⁰² If states were to impose a prohibition as simple as this, very troublesome roadsides that do not provide for proper conditions would be forced to make changes or to close operations.

¹⁹⁷ Jenks, *supra*, note 1 at 1102.

¹⁹⁸ *Id.*

¹⁹⁹ Animal Law Legal Center, *supra*, note 11.

²⁰⁰ *Id.*

²⁰¹ PA. Code 58 §5511.

²⁰² NJSA 4:22-26(n)

C. Updating the Accreditation Landscape

One final answer to the roadside zoo problem is for accreditation organizations to update and strengthen their standards. Although the AZA currently sets the best standards for animals in zoos now, the welfare of animals would further be benefited if the AZA agreed to set species specific standards, similar to those that were suggested for the AWA.²⁰³ If roadsides already find it difficult to become accredited by the AZA, the imposition of stricter AZA standards that provide specific requirements for specific species, would make it even more difficult for them.²⁰⁴

However, the more relevant problem really lies with the ZAA, not the AZA. Since the AZA has such high standards, roadsides typically do not gain accreditation under them, and instead turn to the ZAA for such status.²⁰⁵ Yet, since it is unlikely that the ZAA would change its name, which remains a problem because the public may confuse it for the AZA, there must be a change in its standards.²⁰⁶ If the ZAA were to raise its standards, to require criteria similar to that of the AZA, roadsides would not be able to continue to easily gain private accreditation under the organization, and therefore making the roadside less credible to the public.²⁰⁷ Many roadside zoos cannot meet high, or even moderate standards, so an overall increase in standards would be detrimental to the existence of these zoos.²⁰⁸ If these roadsides can no longer gain private accreditation, the public is less likely to visit them, therefore threatening their revenue and their ability to operate.

These potential solutions may very well go a long way toward solving the current roadside zoo problem. Roadside zoos thrive on low standards, poor enforcement, and public

²⁰³ *Id.* at 1130.

²⁰⁴ *Id.*

²⁰⁵ Jodidio, *supra*, note 28 at 64.

²⁰⁶ Jenks, *supra*, note 1 at 1102.

²⁰⁷ *Id.* at 1130.

²⁰⁸ *Id.*

interest. If regulations are tightened and enforced properly, many roadside zoos will never obtain permits and therefore never house wild captive animals in their facilities. Moreover, if people and animal interactions are outright banned or least severely restricted, roadside zoos will lose a major revenue source, making it extremely difficult to remain in business.

VI. Conclusion

Although all zoos may be controversial, roadside zoos pose a particularly serious threat to the welfare of captive wild animals. The truth is that viewing animals in captivity in zoos has become so common in society, that it is not possible to eliminate zoos altogether.²⁰⁹ Therefore, the government and zoo facilities have a duty to protect these animals from danger.²¹⁰ This should start with the drastic improvement or outright elimination of roadside zoos.

Too often, roadside zoos place captive wild animals in harm's way. These facilities typically provide the bare minimum, which ultimately leads to inhumane conditions and inadequate care. Under the current federal regulation regime, these roadside zoos are operating legally.²¹¹ But, federal standards are too low and contain too many loopholes, allowing for roadside zoos to operate in compliance with the law despite their often deplorable conditions.²¹² Roadside zoos are even able to achieve what appears to be a highly respected private accreditation, but one that is actually based on very low standards. Unfortunately, visitors see that these roadside zoos are in compliance with the law and have apparently high-level private accreditation status, making them seem extremely credible to someone who does not know the real circumstances.²¹³

²⁰⁹ *Id.* at 1086-1087.

²¹⁰ *Id.*

²¹¹ Animal Legal Defense Fund, *supra*, note 2.

²¹² *Id.*

²¹³ Jodidio, *supra*, note 28 at 54.

Consequently, these zoos continue to attract vast numbers of patrons because they tend to offer exciting experiences with their animals. Patrons can take pictures, pet, or bottle feed these animals, an opportunity they may never enjoy again.²¹⁴ So as long as these facilities continue to offer such experiences, patrons keep on visiting them.

In order to greatly improve the quality or stop the existence of roadside zoos, reforms must be made. Federal regulation must be strengthened, and standards must be raised. There should not be too many loopholes or exemptions, which make it easier for roadsides to remain in business. Federal regulation must ban or severely limit interactions between the public and these animals, making these zoos less popular and ensuring a loss of a major source of their income. States should also be encouraged to update their anti-cruelty statutes to provide additional protections for these animals. Private accreditation institutions must also raise their standards and refrain from giving membership to roadside zoos with inhumane conditions. Until such reforms are made, roadside zoos will continue to exist in the same condition they are now, placing thousands of animals in danger every year.

²¹⁴ Animal Legal Defense Fund, *supra*, note 7.