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## DON'T FENCE ME IN: A CASE AGAINST THE TAMING AND DOMESTICATION OF WILD ANIMALS

*Molly Kordas*\*

### I. INTRODUCTION

Stories of people who tried to domesticate large, dangerous, exotic pets like tigers, bears, and even venomous snakes have increasingly permeated news headlines over the last decade. However, many of the same concerns associated with these large predators arise for smaller and seemingly-harmless animals because people poorly understand them and wrongly assume them to be pets capable of domestication. Additionally, trends in popular culture often exacerbate the attempted domestication of small animals. On October 11, 2016, the Humane Society of the United States warned against the purchase of so-called “fad pets” in a fall issue of *Kind News Magazine*, a publication directed towards children.<sup>1</sup> The article states that movies, commercials or viral videos too commonly popularize certain pets, thereby inducing fads.<sup>2</sup> As the Humane Society pointed out, “the definition of a ‘fad’ is *something that is only popular for a short time*” and often these animals lose their popularity just as quickly.<sup>3</sup> Once pet owners discover they are ill-equipped, unprepared, or simply lose interest in caring for the small animals, they may neglect or abandon these “fad pets,” often resulting in the animals’ death.<sup>4</sup>

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<sup>1</sup> *Fad Pets, Sad Pets: Find Dory on the big screen, not in your fish tank.*, The Humane Society of the United States: *Kind News Magazine*, (Oct. – Nov. 2016), [http://www.humanesociety.org/news/magazines/kind\\_news/2016/10-11/dont-buy-fish-like-dory.html](http://www.humanesociety.org/news/magazines/kind_news/2016/10-11/dont-buy-fish-like-dory.html) [<https://perma.cc/M9PQ-X6AH>].

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

The United Kingdom's prominent animal welfare organization, RSPCA, also warned against the purchase of "fad pets."<sup>5</sup> The RSPCA strongly cautioned against buying animals without the appropriate education, research and dedication to care for them once the fad dies out.<sup>6</sup> The RSPCA specifically noted problems with unwanted owls after the Harry Potter series' popularity<sup>7</sup> and unwanted or mistreated clown fish after the box office success of Disney-Pixar's *Finding Nemo* in 2003.<sup>8</sup> Other examples of "fad pets" that resulted in abandonment and/or improper release include miniature or pygmy animals. Social media and internet videos often highlight their small size and juvenile features.<sup>9</sup> Other animal fads include hedgehogs,<sup>10</sup> goats<sup>11</sup> and "teacup pigs,"<sup>12</sup> which were most often baby pigs that breeders sold under false pretenses.<sup>13</sup>

A recent trend has popularized skunks as house-pets.<sup>14</sup> In recent decades, people have bred skunks without their defensive spray ability.<sup>15</sup> Many skunk owners show their enthusiasm for their pets by engaging in an

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<sup>5</sup> Laura Hughes, *RSPCA warns rise of 'fad pets' inspired by popular films is leading to widespread neglect of exotic animals*, *The Telegraph*, (Dec. 25, 2015), <https://www.telegraph.co.uk/news/12067812/RSPCA-warns-rise-of-fad-pets-inspired-by-popular-films-is-leading-to-widespread-neglect-of-exotic-animals.html> [<https://perma.cc/X3NB-8VXA>].

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*; see also, *Harry Potter' Fans Abandoning Pet Owls Following End of Series*, *HuffPost: Environment*, (May 22, 2012), [https://www.huffingtonpost.com/2012/05/22/harry-potter-fans-abandoned-owls-england\\_n\\_1537056.html](https://www.huffingtonpost.com/2012/05/22/harry-potter-fans-abandoned-owls-england_n_1537056.html) [<https://perma.cc/FZN8-ZMNH>].

<sup>8</sup> Hughes, *supra* note 5.

<sup>9</sup> Stacy Venzel, *14 Dwarf Pets That Will Make You Like Teeny Tiny Things*, *Wide Open Pets*, (2016), <http://www.wideopenpets.com/14-dwarf-pets-will-make-like-teeny-tiny-things/> [<https://perma.cc/CF6R-MA6N>].

<sup>10</sup> *African Pygmy Hedgehog Bath*, *Buzzfeed: Community*, (Oct. 1, 2015), [https://www.buzzfeed.com/vladimirs434570905/african-pygmy-hedgehog-bath-ouuf?utm\\_term=.itapxJneKB#.un5Enk8ZWJ](https://www.buzzfeed.com/vladimirs434570905/african-pygmy-hedgehog-bath-ouuf?utm_term=.itapxJneKB#.un5Enk8ZWJ) [<https://perma.cc/MQV3-T8C7>].

<sup>11</sup> Michelle Hofmann, *Forget potbellied pigs – raising goats is all the rage*, *Los Angeles Times: Home & Garden*, (Jul. 24, 2015), <http://www.latimes.com/home/la-hm-hobby-goats-20150725-story.html> [<https://perma.cc/7SE7-4SGH>].

<sup>12</sup> Barbara Williamson, *Teacup Pigs All the Rage, But Animal Welfare Group Urges People to Do Homework Before Taking One Home*, *Cision*, (Oct. 28, 2009), [http://www.prweb.com/releases/teacup\\_pigs/animal\\_welfare/prweb3119874.htm](http://www.prweb.com/releases/teacup_pigs/animal_welfare/prweb3119874.htm) [<https://perma.cc/4UB7-FZUX>].

<sup>13</sup> Pierce Nahigyan, *Teacup Pigs Are the Cutest Scam in the World*, *HuffPost*, (Dec. 6, 2016), [https://www.huffingtonpost.com/entry/teacup-pigs-are-the-cutest-scam-in-the-world\\_us\\_5846e78fe4b05236f1105fc1](https://www.huffingtonpost.com/entry/teacup-pigs-are-the-cutest-scam-in-the-world_us_5846e78fe4b05236f1105fc1) [<https://perma.cc/XB27-VZWE>].

<sup>14</sup> Allison Bagg, *This Video Might Change Your Entire View of Skunks: Domesticated Skunks Are the New Micro Pig*, *BuzzFeed*, (Feb. 20, 2015), [https://www.buzzfeed.com/abagg/youre-going-to-want-a-pet-skunk-after-watching-this-adorable?utm\\_term=.uc2eVvERl0#.ovqxBZd3JA](https://www.buzzfeed.com/abagg/youre-going-to-want-a-pet-skunk-after-watching-this-adorable?utm_term=.uc2eVvERl0#.ovqxBZd3JA) [<https://perma.cc/6UYT-WXWR>].

<sup>15</sup> PBS (WTTW), *Is That Skunk? Do Skunks Make Good Pets?*, (Nov. 20, 2008), <http://www.pbs.org/wnet/nature/is-that-skunk-do-skunks-make-good-pets/4569/>.

annual celebration in Ohio, called “Skunk Fest.”<sup>16</sup> What “started as a fun picnic for skunk owners,” has now become a popular annual event allowing owners to meet, fundraise and engage in competitions like the “Skunk Royal Court Contest,” which crowns a King, Queen, Prince, and Princess each year.<sup>17</sup>

The domestication problem, however, extends far beyond the concept of “fad pets.” Keeping a wild animal in captivity often results in neglect, abandonment and death.<sup>18</sup> Mistreatment of animals, which comes in many forms, can occur when fads inevitably die out, but it may also occur when individuals buy new, domestic breeds of previously wild animals, or attempt to capture and domesticate wild animals on their own.

Human attempts to domesticate wild animals are detrimental to the health and welfare of the animals and the humans. This article focuses on the harms resulting from the attempted domestication of small, typically non-dangerous, mammals. It analyzes federal and state laws that address the private ownership and possession of wild animals, explores the statutory and regulatory gaps allowing for such ownership, and suggests a remedy in the form of state prohibitions on the act of domestication itself. This article advances the proposition that ambiguities and a lack of regulation of the domestication of wild animals are not only dangerous to human health, but also negatively impact each animal and further damage the species as a whole.

Section II provides an overview of what makes an animal wild or domestic, examples of “fad pets,” and other instances where domestication of animals went wrong. Section III discusses the risks of domesticating wild animals including: dangers to human health and wellbeing, harms to the animals, and the potential long-term hazards associated with conforming the traits and behaviors of wild animals to satisfy the whims and pleasures of humankind. Section IV identifies the lack of federal regulation of the domestication of animals. Section V explores various state level regulations on the domestication of animals. Section VI presents a case study of the State of Washington’s statutory and regulatory scheme that demonstrates the need

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<sup>16</sup> *Join Us for SkunkFest, our annual gathering for merriment and mirth*, Skunk Fest, <http://www.skunkhaven.net/SkunkFest.htm> [<https://perma.cc/8FE8-HPVJ>] (last updated Mar. 4, 2017).

<sup>17</sup> *Id.*

<sup>18</sup> Alyce Miller and Anuj Shah, *Invented Cages: The Plight of Wild Animals in Captivity*, 1 J. Animal L. 23, 30 (2005).

for clear, unambiguous legislation to protect wild animals from domestication. Finally, Section VII explores possible legal solutions and recommendations to address the growing problem of domestication.

## II. BACKGROUND

### *A. Defining Domestication*

Congress<sup>19</sup> and the United States Department of Agriculture,<sup>20</sup> through the Animal Welfare Act and implementing regulations, define “animal” as “any live or dead dog, cat, monkey (nonhuman primate mammal), guinea pig, hamster, rabbit, or such other warm-blooded animal, as the Secretary may determine is being used, is intended for use, for research, testing, experimentation, or exhibition purposes, or as a pet.”<sup>21</sup> Although federal laws and regulations identify specific animals to which they apply, no current federal statute or rule defines “domestic animal,” preventing regulation of domestication on the federal level. Repeated successful and unsuccessful attempts to domesticate dangerous animals, and especially smaller mammals, further complicate the process of defining at what point a wild animal becomes truly domestic. The natural and biological sciences community has explored this problem of delineating between wild and domestic animals.

Scientific communities typically define domestication broadly as the “process of adapting wild plants and animals for human use.”<sup>22</sup> Unlike various and wide-ranging legal definition,<sup>23</sup> this scientific view acknowledges that domestication is indeed a long-term process, not merely a determination of whether an animal can be a pet. The scientific definition’s inclusion of the phrase “human use” is central to understanding how a wild animal or a particular species can, if ever, be domesticated, and the effects of that domestication (or attempted domestication). Jared Diamond argues in his oft-cited work “Guns, Germs, and Steel” that “domestication involves wild

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<sup>19</sup> Animal Welfare Act, 7 U.S.C. § 2132(g) (West 2018).

<sup>20</sup> USDA Animal Welfare, 9 C.F.R. § 1.1 (West 2018).

<sup>21</sup> Animal Welfare Act § 2.

<sup>22</sup> Kim Rutledge et al., *Domestication*, National Geographic: Education, <https://www.nationalgeographic.org/encyclopedia/domestication/> [https://perma.cc/NA7S-9NWM] (last updated Jan. 21, 2011).

<sup>23</sup> See *infra* Section V

animals' being transformed into something more useful to humans,"<sup>24</sup> further defining "truly domesticated animals"<sup>25</sup> as those that are "selectively bred in captivity and thereby modified from [their] wild ancestors, for use by humans who control the animal's breeding and food supply."<sup>26</sup>

Importantly, Diamond argues that keeping wild animals as pets and taming them is only a part of the process of domestication.<sup>27</sup> While many wild animals have reached that first stage, "only a few emerged on the other side as domestic animals" because few species are suitable for domestication.<sup>28</sup> Diamond notes that most animal species are unsuitable as domesticated pets based on six characteristics: "the animal's diet, growth rate, mating habits, disposition, tendency to panic, and several distinct features of social organization."<sup>29</sup> Based on Diamond's finding that these characteristics determine whether a species or subset of that species may be domesticated, I propose that many species are simply incapable of ever reaching full domestication.

### B. Domestication Gone Wrong

Attempts at domestication frequently go horribly wrong. For example, a beloved chimpanzee named Travis, turned on his owner's close friend, mauling her and forcing his owner to stab him with a butcher knife to stop the chimp's attack.<sup>30</sup> A black bear cub named Little Bear almost died from malnutrition and multiple seizures.<sup>31</sup> A South African hippopotamus named Humphrey mauled and killed his owner, seemingly out of the blue.<sup>32</sup> These examples show that humans have repeatedly proved incapable of taming many animal species.

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<sup>24</sup> JARED DIAMOND, GUNS, GERMS, AND STEEL: THE FATES OF HUMAN SOCIETIES, 159 (W.W. Norton & Co. eds., 1st ed. 1999).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 164-65.

<sup>28</sup> *Id.* at 165-66.

<sup>29</sup> *Id.* at 174; see also, Alasdair Wilkins, *Why some animals can never be domesticated*, Gizmodo: Animals, (Feb. 9, 2011), <https://io9.gizmodo.com/5756178/why-can-some-animals-never-be-domesticated> [<https://perma.cc/JU3B-QDJD>].

<sup>30</sup> Michael Paterniti, *Travis the Chimp: The Wild One*, N. Y. Times Mag., (Dec. 23, 2009), <https://www.nytimes.com/2009/12/27/magazine/27travis-t.html>.

<sup>31</sup> Miller and Shah, *supra* note 18, at 36-37.

<sup>32</sup> Nick Carbone, *Humphrey the Pet Hippo Mauls His Owner to Death*, TIME: Animals, (Nov. 15, 2011), <http://newsfeed.time.com/2011/11/15/humphrey-the-pet-hippo-mauls-his-owner-to-death/> [<https://perma.cc/497H-54HG>].

Unfortunate tales involving smaller animals abound as well. Swans, common in many upscale golf courses and housing developments, can be dangerous to humans, even among humans practiced in caring for them. For example, in 2012 a swan rental company employee drowned as a result of an aggressive attack by one of the swans.<sup>33</sup> Dog-wolf hybrids, which are illegal in some states, have maimed and sometimes killed children in recent years.<sup>34</sup> These horrific examples and scientific evidence indicate that some animals may never be capable of domestication. This finding raises the question: what is the impact to humans and animals when humans try to domesticate wild animals that can never be domesticated?

### III. RISKS OF DOMESTICATION

#### A. Threats to Human Health and Welfare

State laws that prohibit keeping wild animals as pets, and those that prohibit the same without a license or permit primarily focus on the health and safety of humans.<sup>35</sup> These states' chief concerns are injuries that wild animals can inflict on humans, the spread of disease and the liability imposed upon owners for public health and safety risks. For example, Georgia prohibits the ownership and possession of wildlife without a permit, and lists wild animals requiring a state permit.<sup>36</sup> The Georgia legislature intended not only to protect wildlife, but to “ensure the public health, safety, and welfare” of the state.<sup>37</sup> More specifically, the state Legislature noted that the regulation addresses problems to other wildlife within the state, physical danger to humans and the spread of diseases.<sup>38</sup>

Furthermore, all states impose liability on pet owners, regardless of whether the pet is a traditional companion pet, or an exotic or wild animal. In

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<sup>33</sup> Jenn Gidman, *He Took Care of Swans for a Living. Then One Turned*, Newser, (Dec. 8, 2017), <http://www.newser.com/story/252615/woman-sues-after-swan-attack-led-to-husbands-death.html> [<https://perma.cc/92AM-XY2W>].

<sup>34</sup> See Annie Andrews, *Parents of 3-Year-old mauled by 'wolf-hybrid' have been breeding wolf-dogs, law enforcement says*, Q13 FOX, <http://q13fox.com/2017/04/04/parents-of-3-year-old-bitten-by-wolf-hybrid-breed-wolf-dogs-say-law-enforcement/> [<https://perma.cc/U8AY-62DT>] (last updated Apr. 4, 2017, 11:24 PM); see also, FOX WJHL/CNN, *Baby, Just 8 Days Old, Mauled to Death by Family's Pet*, (Mar. 18, 2018), <http://www.fox8live.com/story/37698166/baby-just-8-days-old-mauled-to-death-by-familys-pet> [<https://perma.cc/T4LU-TY9M>].

<sup>35</sup> Miller and Shah, *supra* note 18, at 59.

<sup>36</sup> Ga. Code Ann. § 27-5-4 (West 2018).

<sup>37</sup> *Id.* at § 27-5-1.

<sup>38</sup> *Id.*

fact, most states impose strict liability on the owner of a wild animal,<sup>39</sup> and even on the owner of a domestic animal that is known to be dangerous or vicious.<sup>40</sup> In negligence and strict liability cases, courts have repeatedly held that the owner's act of keeping the animal which was known to be dangerous lies at the heart of the case.<sup>41</sup> Therefore, regardless of how a particular state defines "domestic animal," "pet," or "wild animal," courts may hold owners liable for injury caused to another human, simply by virtue of owning the animal. The domestication of small, wild mammals that have not truly reached the "other side" of domestication could present legal risks for owners who have no way of knowing when their "pet" may suddenly exhibit natural behaviors endangering others.

### *B. Threats to Animal Welfare: Individual Animals*

As discussed above, many animal species are not capable of full, successful domestication. Demonstrating Diamond's point that true domestication takes place over many stages and a significant span of time, two evolutionary biologists recently published a book on their extension of geneticist Dmitry Belyaev's experiment to create a domestic dog-like animal from wild silver foxes.<sup>42</sup> Belyaev's experiment tested the temperament of the foxes, selected the calm foxes and bred those calmer foxes, increasing the number bred and their genetic diversity over time.<sup>43</sup> The experiment is ongoing and has produced friendlier "domestic" foxes with other traits desirable to humans such as droopy ears and juvenile features.<sup>44</sup>

However, while the experiment appears to be somewhat successful, the biologist noted that the foxes still do not follow commands the way that dogs do.<sup>45</sup> While the foxes have certainly become more docile, this change took more than sixty years.<sup>46</sup> Furthermore, the foxes still exhibit "wild," uncontrollable tendencies.<sup>47</sup> This unpredictable behavior persists despite

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<sup>39</sup> *Collins v. Otto*, 149 Colo. 489, 491 (1962).

<sup>40</sup> *Vendrella v. Astriab Family Ltd. P'ship*, 311 Conn. 301, 314 (2014).

<sup>41</sup> See *Hays v. Miller*, 150 Ala. 621, 623 (1907); see also *Vigue v. Noyes*, 113 Ariz. 237, 239 (1976); *Frobig v. Gordon*, 124 Wash. 2d 732, 735 (1994).

<sup>42</sup> Tina H. Saey, *Fox experiment is replaying domestication in fast-forward: New book recounts nearly 60-Year effort to understand taming process*, ScienceNews, (Apr. 29, 2017), <https://www.sciencenews.org/article/fox-experiment-replaying-domestication-fast-forward> [<https://perma.cc/2MPZ-7MQV>].

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*



decades of training and selective breeding. Furthermore, individuals and breeders who try to domesticate wild animals may hurt animals by trying to train behaviors out of them and keep them as pets.

Certain animal behaviors that humans find undesirable, such as scratching or maintaining a nocturnal existence, may be so innate to the animal that a human simply cannot train the animal to stop these behaviors. Thus, animals will not thrive in a household that punishes or discourages these behaviors, even where humans attempt to replicate the animals' natural habitats, because almost nothing can truly replicate the natural environment a wild animal is used to. To illustrate, "[e]ven with all their resources, many of which are out of reach for most private individuals, zoos are still unable to replicate life in the wild, and maintaining the physical and mental welfare and well-being of wild animals in captivity poses numerous ongoing challenges."<sup>48</sup> An individual's efforts will almost certainly never be enough because they often possess neither the resources nor the advanced education needed to support all of a wild animal's needs. "No matter how well designed a captive habitat may be, it can never replicate the freedom that wild animals require to be complete beings."<sup>49</sup> Moreover, the attempted domestication of wild animals is harmful not only to the humans they attack when the animals revert to their natural behaviors, but it is also harmful to the animals themselves. In many cases, even if authorities do not seize and euthanize animals as a result of an attack, their human companions often abuse, neglect and abandon them.<sup>50</sup>

Individuals sometimes take raccoons in as pets, for example, especially when they find raccoons as babies. One notorious raccoon even made it to the White House long before rabies became a major concern within the species.<sup>51</sup> Another raccoon has recently become the subject of debate and a drawn-out legal battle in Seattle, Washington after a family took her in, and authorities later seized the animal.<sup>52</sup> Most baby raccoons do not survive their

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<sup>48</sup> Miller and Shah, *supra* note 18, at 27.

<sup>49</sup> PAWS, *Keeping Wild Animals – Unsafe, Illegal and Inhumane*, <https://www.paws.org/library/wildlife/keeping-wild-animals/> [<https://perma.cc/7CWF-LJKJ>].

<sup>50</sup> Miller and Shah, *supra* note 18, at 29-30.

<sup>51</sup> Christopher Klein, *The Thanksgiving Raccoon That Became a Presidential Pet*, History: History Stories (Nov. 18, 2016), <https://www.history.com/news/the-thanksgiving-raccoon-that-became-a-presidential-pet> [<https://perma.cc/T5ZP-WUF2>].

<sup>52</sup> Alison Morrow, *Pet raccoon's fate uncertain after tearful final hearing*, KGW8 News: Local, (Apr. 6, 2018), <http://www.kgw.com/article/news/local/pet-raccoons-fate-uncertain-after-tearful-final-hearing/281-535806638> [<https://perma.cc/2PAS-27JM>].

first year in a human home.<sup>53</sup> Even if the young raccoons do survive the separation from their mothers and the drastic change in environment, however, their human companions often stop wanting them because of their natural behaviors that are incompatible with living as a human's pet. But Diamond's fourth and sixth factors are what cause attempted domestication of raccoons to ultimately fail: the animal's disposition and features of social organization.

Raccoons are naturally curious, and they will often destroy furniture and other household items to create a nest.<sup>54</sup> Furthermore, scratching and biting are normal and essential parts of raccoons' social interactions.<sup>55</sup> Humans are unlikely to tolerate these behaviors, but they are innate behaviors that training or taming cannot simply eliminate. People have abused raccoons in an attempt to drive out their natural behaviors, and eventually neglected and abandoned them.<sup>56</sup> Those that survive, having been raised in a human home, have no hope of survival in the wild having adjusted to life with a human (e.g., they do not know how to acquire their own food, protect themselves from predators, etc.).<sup>57</sup> Such feral animals, or "domesticated species released into the wild,"<sup>58</sup> can then cause problems within wild populations, such as new competition for the same food and water supply or damage to habitat,<sup>59</sup> often requiring federal and state governments to address these problems by euthanizing the feral populations.<sup>60</sup>

### *C. Threats to Animal Welfare: Long-Term Effects on Species*

Evolutionary science studies have also shown that even where domestication is successful over time, the process may harm an entire species resulting in impairments such as a reduction in genetic diversity and the destruction of natural traits and behaviors. For example, a University of Wyoming study found that in North America and Australia, where ferrets are routinely inbred, the result is lower genetic diversity among ferrets.<sup>61</sup> Further,

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<sup>53</sup> Miller and Shah, *supra* note 18, at 29 (cited in *Raccoons as Pets*, American Raccoon Association, at <http://www.geocities.com/EnchantedForest/Glade/9378/pets.html>).

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 29-30.

<sup>57</sup> *Id.*

<sup>58</sup> Judy Lehmborg, *Nature up close: Feral animals*, CBS News: Sunday Morning, (June 22, 2017), <https://www.cbsnews.com/news/nature-up-close-feral-animals/> [<https://perma.cc/4V3B-964R>].

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> Kyle D. Gustafson, et al., *Founder events, isolation, and inbreeding: Intercontinental genetic structure of the domestic ferret*, 11 *Evolutionary Applications* 694 (2017), DOI: 10.1111/eva.12565.

the study found that because lower genetic diversity has been linked to certain disorders and diseases, the U.S. could be at serious risk of producing increasingly unhealthy ferrets.<sup>62</sup> According to the author of the study, “the majority of domestic ferrets’ contract cancer by age 5 or 6.”<sup>63</sup> Continued inbreeding would only make matters worse.

Other studies have found that not only are undesirable traits suppressed by domestication, but even if domestication is successful over a long period of time, those traits that are natural and inherent to a species may vanish forever. In one of the few proven cases of successful domestication, scientists found that humans have forced dogs to adapt to human behavior and by doing so, may have eliminated the pack instincts essential to their wild ancestors’ survival.<sup>64</sup> Dogs are one of the primary examples of successful domestication. Centuries of training and breeding wolves for desired physical and behavioral traits domesticated “man’s best friend.” However, a recent University of Vienna study found that dogs, unlike wolves, can no longer work together to achieve a common goal.<sup>65</sup>

The experiment studied fifteen dogs and fifteen wolves, giving them the common task of accessing a tray of food that is just out of reach and unattainable alone; to acquire the food, the pairs of animals must work together, pulling on the string at the same time, sliding the tray close enough for both animals to reach.<sup>66</sup> While five out of seven of the wolf pairs succeeded by working together, only one of the eight pairs of dogs succeeded, even after training in the task.<sup>67</sup> The study notes that while the wolves explored the task and the string-tray mechanism thoroughly until they figured out how to use it to their benefit, the dogs explored it as well, but did not “engage with the task at the same time, which is why they almost never succeeded.”<sup>68</sup> Humans seem to have effectively eradicated dogs’ pack instincts, having domesticated them to work cooperatively with humans in exchange for a caring companion relationship.<sup>69</sup> According to the author of

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<sup>62</sup> *Id.*

<sup>63</sup> Robert Church, *Low genetic diversity in domestic ferrets*, ScienceDaily, (Nov. 1, 2017), <https://www.sciencedaily.com/releases/2017/11/171101151222.htm> [<https://perma.cc/7B3G-RE7H>].

<sup>64</sup> Ed Yong, *How Domestication Ruined Dogs’ Pack Instincts*, The Atlantic, (Oct. 16, 2017), <https://www.theatlantic.com/science/archive/2017/10/how-domestication-ruined-dogs-pack-instincts/542994/> [<https://perma.cc/R7CT-4X4Q>].

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

the study, ““they adapted to the niche we provided for them and it changed their sociality.””<sup>70</sup>

#### IV. REGULATION OF DOMESTICATION: POWER DELEGATED TO STATES OR A FEDERAL LOOPHOLE?

As mentioned above, the Animal Welfare Act (AWA) provides a broad definition of “animal” and provides for the protection and humane treatment of those animals. As discussed earlier, what the AWA fails to do is to define “domestic animal” and differentiate between domestic and wild animals. The AWA also does not proscribe any conduct related to the domestication of wild animals, nor does it deal with the concept of domestic animals as pets. Indeed, the AWA does not even mention the act of domestication. While there is a section entitled “Protection of Pets,” that section refers only to dogs and cats in requiring certain types of facilities to certify information about the pet.<sup>71</sup>

The USDA’s regulations, however, come closer to addressing the animals of interest here. The regulations include specifications for the humane treatment of dogs, cats, guinea pigs, hamsters, rabbits, nonhuman primates, marine mammals, and warm-blooded animals not mentioned in the earlier subparts.<sup>72</sup> However, none of these subparts actually addresses or attempts to regulate the domestication of these animals. The applicable rules simply set out standards of humane care and handling for dealers and facilities that deal with these types of animals.<sup>73</sup> While the USDA regulations neither define domestic animal, nor specifically address the act of domestication, in defining “wild animal” the regulations do indicate that certain species are not considered domestic.

According to the USDA’s definitions, “wild animal means any animal which is now or historically has been found in the wild, or in the wild state, within the boundaries of the United States, its territories, or possessions . . . [including], but not limited to, animals such as: Deer, skunk, opossum, raccoon, mink, armadillo, coyote, squirrel, fox, wolf.”<sup>74</sup> These animals are precisely the types of small mammals that people are domesticating. And as

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

<sup>71</sup> Animal Welfare Act, 7 U.S.C. § 2158 (West 2018).

<sup>72</sup> USDA Animal Welfare, 9 C.F.R. § 3 (West 2018).

<sup>73</sup> *Id.*

<sup>74</sup> USDA Animal Welfare, 9 C.F.R. § 1.1 (West 2018).

the USDA's definition of "wild state" points out, they are "not domesticated."<sup>75</sup> While these regulations still fail to define "domestic animal," or to proscribe any conduct related to the domestication of wild animals (or animals in a wild state) the USDA at the very least draws a dividing line between animals that are wild and domestic.

## V. DOMESTICATION: DO STATES REGULATE THIS TYPE OF CONDUCT?

### A. Defining "Domestic Animal" Effectively

Because most states prohibit the taking and possession of wild animals or wildlife without a license or permit the first step in analyzing the adequacy of protections for wild animals is to determine which animals are "wild" and which are "domestic." As discussed above, no federal law or regulation defines "domestic animal" to provide a universal starting point. Furthermore, many states define the term only through regulations, and only about half of the states clearly define "domestic animal" by statute, though some states do delegate this duty to state departments of agriculture or fish and wildlife.

However, even those that define the term via statute do so with wide variation. These differences prevent national uniformity and weaken protections for wild animals statewide. Without a clear, narrow and accurate definition of "domestic animal," states can ensure neither the protection of wild animals from domestication, nor the clarity of what is legal and permissible conduct under the laws of the state. By far, the most problematic definition of "domestic animal" is one that is too broad, causing ambiguities and gaps in the law. For example, Michigan defines "domestic animals" as "those species of animals that live under the husbandry of humans."<sup>76</sup> Many more states also define "domestic animal" as an animal that is tame or lives in a human household. While these aspects may certainly be part of what makes an animal domestic, they are by no means comprehensive, particularly in the scientific context of Diamond's definition of domestication.

On the opposite end of the spectrum, however, several states such as Montana, Georgia, Ohio, Rhode Island, South Dakota and West Virginia provide a definition that accurately describes true domestication, effectively

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<sup>75</sup> *Id.*

<sup>76</sup> Animal Industry Act: Definitions, M.C.L.A. § 287.703(19) (West 2018).

limiting the types of animals that residents may legally possess as household pets. For example, Montana defines “domestic animal” as

an animal that, through long association with humans, has been bred to a degree that has resulted in genetic changes affecting color, temperament, conformation, or other attributes of the species to an extent that makes the animal unique and distinguishable from wild individuals of the species and that is readily controllable if accidentally released into the wild.<sup>77</sup>

This type of distinction between what makes an animal scientifically wild or domestic is much more effective in protecting wild species because it prevents wild animals such as raccoons and skunks from being taken in as pets, while still protecting genuinely domesticated household pets such as cats, dogs, ferrets, mice, and gerbils. While this definition is a more effective starting point, states must pass statutes or regulations that adequately address domesticating and owning wild animals as pets to fully protect wild species.

### *B. Addressing the Act of Domestication*

While about 25 states and territories (including Puerto Rico) define the term “domestic animal,” only a small fraction of those states address the act of domestication itself, and not all of these states do so in a way that protects wild animals. California, for example, does not prohibit but rather specifically allows for the state to sell wild animals to those engaged in domestication.<sup>78</sup> South Carolina also allows domestication of wild animals, explaining in the prohibition on transporting animals unlawfully killed, that “nothing herein prohibits persons from having in their possession for the purpose of domestication and propagation any birds or animals.”<sup>79</sup>

Some states, on the other hand, have prohibited the domestication of wild animals without the properly-acquired license or permit. North Dakota, Wyoming, and Iowa, all expressly prohibit domestication or “raising” animals without a license or without following state regulations for such a practice.<sup>80</sup> However, North Dakota’s prohibition applies only to raising animals for their fur while the statutory scheme allows for the taking of

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<sup>77</sup> Fish and Wildlife, MCA § 87-5-702(2) (West 2018).

<sup>78</sup> Cal. Fish & G. Code, § 1004 (West 2018).

<sup>79</sup> Fish, Game, and Watercraft, S.C. Code Ann. § 50-11-1720 (West 2018).

<sup>80</sup> Game, Fish, Predators, and Boating, NDCC § 20.1-07-02 (West 2018); *see* Fur Dealers, W.S. 1977 § 23-2-305 (West 2018); *see also* Game Breeders, I.C.A. § 481A.60 (West 2018).

animals if they are possessed and tamed,<sup>81</sup> and Iowa's prohibition applies only to certain protected animals.<sup>82</sup> Georgia, however, has implemented a statute that adequately defines "domestic animal," and grants a property interest in animals tamed and domesticated, but excludes wildlife from any such property right.<sup>83</sup> The statute defines wildlife as "any vertebrate or invertebrate animal life indigenous to this state or any species introduced or specified by the board."<sup>84</sup>

### *C. Regulating the Ownership of Wild Animals as Pets*

While a small fraction of U.S. states address the act of domestication itself, even fewer states regulate the keeping of wild animals (other than exotics) as pets. Georgia narrows the types of animals that residents may keep as household pets by defining "pet" as "those taxa of animals which have traditionally lived in a state of dependence on and under the domination and control of humans and have been kept as tame pets, including cats and dogs,"<sup>85</sup> effectively ruling out any domestication of wild animals not traditionally kept under human control. New York took a similar approach by prohibiting the possession of a wild animal as a pet,<sup>86</sup> defining "pet" as a "companion animal," and "any dog or cat, and . . . any other domesticated animal normally maintained in or near the household of the owner or person who cares for such other domesticated animal."<sup>87</sup> The law broadly defines the term "pet" here, leaving a potential opening for residents to live with wild animals.

Two of the other states that regulate wild animals as pets do so only to prevent rabies. For example, Kansas regulations prohibit the possession of foxes, skunks, raccoons, and coyotes,<sup>88</sup> and further prohibit removing musk glands to domesticate skunks.<sup>89</sup> Although these regulations achieve the desired result in that they protect certain mammals that are often victims of attempted domestication, they protect only these four species and only do so in the interest of protecting humans and their pets from the detrimental health effects of rabies. Utah similarly protects coyotes and raccoons from taking

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<sup>81</sup> Ownership, NDCC § 47-01-08.

<sup>82</sup> Game Breeders, I.C.A. § 481A.60.

<sup>83</sup> Property: Wild Animals, Ga. Code Ann. § 44-1-8 (West 2018).

<sup>84</sup> Game and Fish: Definitions, Ga. Code Ann. § 27-1-2 (West 2018)

<sup>85</sup> Protected Wildlife Habitats, Ga. Comp. R. & Regs. 391-4-7-02 (West 2018).

<sup>86</sup> N.Y. Env'tl. Conserv. Law § 11-0512(1)(a) (McKinney 2012).

<sup>87</sup> N.Y. Agric. & Mkts. Law § 350(5) (McKinney 1999).

<sup>88</sup> Kan. Admin. Regs. § 28-1-14 (1996).

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

and possession, and lists a wide array of wild animals not protected by the rule.<sup>90</sup>

Wyoming protects wild animals by regulating their capture for purposes of domestication, requiring a special license to do so.<sup>91</sup> While the state's Game and Fish Commission allows for the possession of many species of animals without a permit, it considers all of these species "domestic" or "domesticated."<sup>92</sup> The Commission makes an important and unique distinction, defining domestic animals as "those populations of animals which through long association with humans have been bred to a degree which has resulted in genetic changes affecting the color, temperament and conformation, or other attributes of the species to an extent that makes them unique and distinguishable from wild individuals of their species"<sup>93</sup> (similar to Montana's statutory definition), and lists every species it considers "domestic."<sup>94</sup> The agency defines "domesticated" as "those individual animals which have been made tractable (easily managed or controlled) or tame,"<sup>95</sup> and again lists every species it considers "domesticated."<sup>96</sup> This distinction is important in understanding domestication as a process and establishing appropriate protections for wild animals based on where the species is in that process.

#### *D. Current Best Practices*

Wyoming, Georgia and Montana have each attempted in some way to protect animals and their owners from the dangers of domestication and possession of wild animals as pets. These states' solutions may not be perfect, but the use of some combination of their solutions could help other states make great strides in protecting wild species. The use of Montana's scientifically accurate definition of "domestic animal," in combination with Wyoming's distinction between an animal that is "domestic" or "domesticated," and Georgia's comprehensive protections and narrowing of the term "pet" could together spell out a new future for wild species, free from the harms of domestication.

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<sup>90</sup> Utah Admin. Code r. 657-3-1 (2018).

<sup>91</sup> 10 Wyo. Code R. § 3 (LexisNexis 2018).

<sup>92</sup> *Id.*

<sup>93</sup> § 2 (l).

<sup>94</sup> *Id.*

<sup>95</sup> § 2(m).

<sup>96</sup> *Id.*



Where Wyoming has succeeded in providing protections for wild animals, however, other states have failed in some respect by leaving unintended gaps and ambiguities in the law. For example, the North Carolina regulations also require a license to raise or keep wild animals in captivity. However, those regulations do not expressly allow or prohibit the keeping of those wild animals as “pets.” A state’s citizens cannot know with certainty that their conduct is improper when the laws regarding the possession of wild animals as pets and domestication of wild animals are unclear or ambiguous. This ambiguity can result in owners who hold an improper permit for the possession of wild animals. The uncertainty can also create unintended loopholes wherein the state intends to prohibit the possession of wild animals, but the definition of “domestic animal” is so broad that the umbrella of domestic pets or companion animals covers many wild animals that citizens have taken in, possessed and tamed. If authorities discover individuals with the wild animal, owners may face legal liability and emotional strain from authorities’ removal of the animal from the home, and the animal may suffer as well. These ambiguities arose recently in the state of Washington, causing harm and distress to a wild raccoon as well as her owners.<sup>97</sup>

## VI. A REGULATORY CASE STUDY: WASHINGTON

The state of Washington prohibits the ownership, breeding and possession of a “potentially dangerous wild animal,”<sup>98</sup> whether bred in the wild or in captivity, including: big cats, wolves, bears, hyenas, rhinoceroses, non-human primates and elephants.<sup>99</sup> While this prohibition applies only to dangerous and potentially dangerous wild animals, these regulations more directly address domestication. The Washington Department of Fish and Wildlife (“WDFW”) classifies its wild animals by naming all native game animals, and further describing furbearing animals within the game animal category.<sup>100</sup> The law includes among these wild animals certain mammals of particular import to this article, namely foxes, raccoons, beavers, muskrats, weasels, mink, badgers, river otters and bobcats.<sup>101</sup>

The Department then prohibits the taking of live wildlife “without a permit issued by the director.”<sup>102</sup> The rules prohibit the possession of wild

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<sup>97</sup> Morrow, *supra* note 52.

<sup>98</sup> Wash. Rev. Code § 16.30.030(1) (2017).

<sup>99</sup> Wash. Rev. Code § 16.30.010(2)(2017).

<sup>100</sup> Wash. Admin. Code § 220-400-020 (2017).

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

<sup>102</sup> Wash. Admin. Code § 220-450-030(1) (2018).

animals in captivity “unless lawfully acquired,”<sup>103</sup> and further require that anyone possessing such animals be able to provide proof of “lawful acquisition” (e.g., a permit or other documentation from the department).<sup>104</sup> This rule neither bans the possession of live wild animals outright (as it allows for such possession through a permitting process), nor does it specifically address domestication. The regulatory scheme does, however, reach all wildlife and wild animals, rather than a particular species or subset of game animals, as in other states. This system ensures that the WDFW has knowledge of those possessing wild animals, allowing the Department to keep track of these animals and strictly regulate their treatment (by prohibiting their improper release from captivity, in other words, abandonment).

The state does not expressly prohibit the attempted domestication of wild animals or the possession of wild animals as pets, but the WDFW does not issue permits for live wild animals as pets. While this may seem like a near-perfect regulatory proscription on wildlife as pets, the case of Mae the Raccoon demonstrates that such a system unfortunately still allows individuals to slip through the regulatory cracks. The Greers found a newborn raccoon in a park in June of 2010.<sup>105</sup> The couple believed that the infant raccoon would not survive on her own and thought their only choice was to care for the wild animal.<sup>106</sup> Eventually the couple became sub-permittees of a wildlife rehabilitation facility licensed within Washington, allowing them to care for Mae in their West Seattle home; but when the rehab facility closed its doors, the Greers no longer held a valid permit.<sup>107</sup> Therefore, when they were camping with Mae on a leash, and a WDFW officer asked to inspect their permit, the couple no longer had any way to demonstrate lawful acquisition and possession of the now fully grown raccoon.<sup>108</sup>

The family asked the state of Washington to allow Mae to return “home” in an emotional legal battle.<sup>109</sup> Although Washington regulations define a “domestic animal” as one “lawfully possessed and controlled by a person,”<sup>110</sup> the Greers no longer lawfully possessed Mae because of the expiration of their previously-held permit. Furthermore, the WDFW, the state agency that

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<sup>103</sup> *Id.* at (4).

<sup>104</sup> *Id.*

<sup>105</sup> Morrow, *supra* note 52.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> Wash. Admin. Code § 220-440-020 (2010).

permits and enforces in such cases, “believes Mae belongs in a wildlife rehab for the safety of other animals and humans, calling raccoons disease-carriers [sic] as well as potentially violent.”<sup>111</sup> Veterinary records may also demonstrate a lack of understanding of the proper care for the wild animal, showing that Mae suffered a broken tooth as well as obesity and other health defects.<sup>112</sup> WDFW further explained that “while [they] understand that the family is upset by the loss, the department has no permit that would allow for the personal possession of wildlife as a pet,” and the agency sent the raccoon to a licensed rehab center.<sup>113</sup>

This case serves as an example of how the lack of any clear prohibition on domesticating wild animals or keeping wild animals as pets muddies the waters. The Greers, shocked by the seizure of their long-time pet, claim that they did not know they had done anything wrong<sup>114</sup> and they would not have been able to acquire a permit for personal pet possession, had they applied for one. Their first permit was valid only because the wildlife rehabilitation facility held it. Indeed, in their lawsuit, the Greer family did not argue that they had a valid permit; rather, they argued that no permit was necessary because after seven years of taking care of Mae as if she were their own child, the family owned Mae, essentially by adverse possession.<sup>115</sup>

The risk remains, however, that without a clear prohibition on the ownership and possession of wild animals as pets, individuals and families may continue to take in animals they believe they are rescuing and in doing so violate state law. The Greers likely did not extensively research the species' physical and mental needs before deciding to adopt the wild animal, which they were probably not equipped to care for. While the family in this case may have performed admirably in attempting to care for the animal, the initial findings by WDFW indicate that the Greers' home was not a suitable environment for the raccoon for many reasons. As a result, authorities ripped Mae from her second home, displacing her for the second time in her young life.

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<sup>111</sup> Morrow, *supra* note 52.

<sup>112</sup> *Id.*

<sup>113</sup> Alison Morrow, *Couple Sues WDFW for Taking Pet Raccoon*, K5News (Dec. 6, 2017), <http://www.king5.com/article/news/local/seattle/couple-sues-wdfw-for-taking-pet-raccoon/281-497473370>.

<sup>114</sup> Morrow, *supra* note 52.

<sup>115</sup> Complaint for Declaratory and Injunctive Relief at 6, Greer v. State, No. 17-2-06464-34 (filed Dec. 5, 2017)

## VII. ALTERNATIVE LEGAL APPROACHES &amp; RECOMMENDATIONS

As discussed above, one of the obstacles to adequately addressing domestication is that each state differs slightly not only in how it regulates wild animals, but more fundamentally, in how it defines the terms “animal,” “wild animal,” and “domestic animal.” Therefore, what has resulted from the high variation among the several states is a complex, confusing patchwork of state laws and more frequently, regulations that proscribe *some* conduct in relation to possession of wildlife, but exempt other conduct, leaving gaps in the law.

One possible solution to this complex patchwork system currently in place is for the U.S. Congress to pass comprehensive legislation. Legislators could incorporate the law into the AWA, perhaps most logically in the sections dealing with humane treatment of animals, or protection of pets. An affirmative definition of “domestic animal” would help in clearing up much of the confusion surrounding the keeping of wild animals as pets. The ultimate protection for wild animals on the federal level would involve a congressional policy finding that important public health reasons exist to prevent domestication, but further, that animal welfare concerns go beyond human health, and attempted domestication of wild animals may harm these small mammals individually as well as each species as a whole. Such a finding is unlikely to be successful currently, but may be a long-term goal as the American electorate becomes increasingly supportive of animal rights.

Another possible alternative would involve advocating for statutory protections for wild animals across the country on the state and local levels. One further drawback to the comprehensive federal legislation proposal (and possible reason for the current patchwork system) is that states obviously possess a wide variety of climates, geography, and topography and therefore different varieties of native species. The protection of wild animals on the state and local levels would still allow states to specifically address native species of particular concern. Statutory protections would also strengthen and clarify many of the regulatory protections already in place in some states, and provide better awareness to citizens of what does and does not constitute legal possession and treatment of wildlife. Furthermore, statewide legislation would have a much higher likelihood of succeeding, and the states could model the prohibition on domestication and private ownership of wild species from state laws that already ban the same conduct for exotic, wild animals. Many states already have full prohibitions in place for large and exotic animals. They could simply extend those same protections to the oft-

overlooked small mammals facing the same dangers and abuses. States could also work towards recognizing that domestication *is* a process (as Wyoming has), and fully ban domestication itself where domestication simply is not possible.

A compromise that would provide both a temporary solution and, ultimately, full protection for all wild animals incapable of domestication would involve advocacy for statewide legislation in each state, working eventually towards either total uniformity or a movement so powerful that it prompts the passage of comprehensive federal legislation. The prohibition on domestication nationwide (whether all at once or piece by piece) would slowly but surely combat the problems of abuse, neglect and abandonment or accidental release that so often results from unsuccessful taming or domestication. Furthermore, with such clear prohibitions in place, the research and experimentation associated with domestication (such as the silver fox experiment above) may become more deliberate. This potential attempt to pursue true domestication *where it is warranted* would directly address the dangers attempted domestication poses to entire species over the long term.

### VIII. CONCLUSION

Given the popularity of “fad pets,” pygmy pets, and other pet trends that are exacerbated by popular box office hits and social media, a complete federal ban on the domestication of wild animals is unlikely to succeed, at least in the legal and political present. However, this analysis exposes the wide range of potential solutions that states can use to improve protections for wild animals. Looking at animal rights in the U.S., there is an odd dichotomy regarding domestication. Courts have recently begun honoring legal instruments and practices that value animals in their own right, and not just as human property (e.g., provisions for pet trusts, pet custody in divorce proceedings, etc.). However, the regular practice of domestication of wild animals persists where successful domestication might not even be possible; and beyond that, by definition, domestication changes and weakens a species for the purpose of human use.

The growth of animal rights in the U.S. is inconsistent with the continued practice of adapting animals for human needs and desires. Whether this eventually means allowing domestication under certain circumstances through a permitting process; making factual determinations about which

species are capable of domestication and prohibiting domestication for the species without that capability; banning domestication of wild animals altogether; or fully recognizing and protecting the dignity of animals,<sup>116</sup> this is an important conceptual contradiction in U.S. animal rights jurisprudence that we must address and reconcile if we are to adequately prevent the harm and extinction of valued wild species as they exist in their natural habitats.

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<sup>116</sup> Gieri Bolliger, *Legal Protection of Animal Dignity in Switzerland: Status Quo and Future Perspectives* (Schulthess Publishing House 2016).