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Abstract

We are living through a pivotal moment for captive wild animals in the United States, with increased attention to their wellbeing and major changes by businesses as a result. At the same time, a desire to get up close with wild animals persists and may even be on the rise. These two concurrent phenomena are resulting in a plethora of deceptive claims. Through ‘humane-washing’ – using unregulated terms like ‘sanctuary’ and participating in misleading accreditation programs – captive wildlife facilities are profiting from making consumers feel better. After detailing this state of affairs, this article raises important questions, the answers to which will ultimately determine the extent to which the current moment will yield material differences in the lives of captive wildlife.



Captive Wildlife at a Crossroads — Sanctuaries, Accreditation, and Humane-Washing

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Abstract: *We are living through a pivotal moment for captive wild animals in the United States, with increased attention to their wellbeing and major changes by businesses as a result. At the same time, a desire to get up close with wild animals persists and may even be on the rise. These two concurrent phenomena are resulting in a plethora of deceptive claims. Through ‘humane-washing’ — using unregulated terms like ‘sanctuary’ and participating in misleading accreditation programs — captive wildlife facilities are profiting from making consumers feel better. After detailing this state of affairs, this article raises important questions, the answers to which will ultimately determine the extent to which the current moment will yield material differences in the lives of captive wildlife.*

Keywords: *captive wildlife, humane-washing, sanctuaries, zoos*

We are living through a pivotal moment for captive wild animals in the United States. After 146 years of exploiting lions, tigers, elephants, and other animals, Ringling Bros. recently shuttered (MacLellan). SeaWorld has ended its orca breeding program (Allan). The National Aquarium announced plans to release the dolphins it holds to a seaside sanctuary (Mirabella). Zoos have taken up the language of animal welfare, working with the Humane Society of the United States and other groups in ways that would have been previously unfathomable (for example, Association of Zoos and Aquariums, ‘Statement’ and ‘Zoos’; HSUS). Tour companies left and right are cutting ties with outfits offering elephant rides and other exploiters of captive wildlife (Herrera; Modak; Sablich). ‘Sanctuary’ has become a buzzword. Even Tinder recently banned tiger selfies (Cerullo).

These signs suggest that captive wild animals are headed to a better life – that we have become more sensitive and attuned to their needs – which for many species means vast spaces to roam that zoos simply cannot provide (Clubb and Mason; Stewart) – their desires, and their dignity. And yet, at the same time, there seems to be a resurgence in their exploitation, a renewed and vigorous interest and indeed demand from the public to see and interact with wild animals up close. Zoos across the United States have been touting record-breaking attendance (Oregon Zoo; ‘Idaho Falls’; Nagle; Washington Park Zoo). The number of companies offering encounters with captive wild animals has grown in parts of the world, fueled by tourism despite the negative welfare implications of such encounters (Moorhouse et al.; Platt).

What are we to make of this concurrence of seemingly disparate values? Increased recognition of and dialogue about captive wild animals’ needs and wellbeing coexist alongside persistent and even growing demand and desire to have up-close encounters that put them in harm’s way. Is there an explanation for this seeming incongruity? Is there a way to tackle it?

It seems that we desperately want to believe that we can both be ethical and still enjoy the thrill of getting up close and personal with a wild animal. Time and time again, in discussing the negative impacts of captivity on wild animals like elephants, big cats, and bears, who are genetically programmed to explore vast, complex environments (Clubb and Mason; Stewart), I’ve been asked: ‘Where, then, are the legitimate places to go to see these animals – where can one go to have the pleasure of seeing them up close while resting assured that their needs are being met?’

It doesn't occur to us, at least not right away, that perhaps there is no such place. As consumers raised in a consumer culture, we've come to believe that, so long as we are willing to pay enough, there must be an acceptable way to have what we want: to see captive wild animals up close without contributing to their suffering – to have our cake and eat it too. I'm reminded of a comment that a colleague – a biologist, conservationist, and advocate – once made. While visiting from Africa, where she works as a leading elephant expert, to work with me on circus issues in the United States, she was astounded by the extremely strong sense of entitlement Americans have when it comes to wild animals. A frequent trope when discussing legislative efforts to address the suffering of elephants and other animals in circuses is, 'What about the children? If not in circuses, where will they ever be able to see an elephant?' 'What is this about?' my colleague asked me. 'Most children in Africa have never even seen an elephant.'

What is the source of this drive to persistently seek out of opportunities to spend time near wild animals? To be sure, it is rooted, at least in part, in colonialism and imperialism (Bruce; Hanson; Rothfels). But what else is at play, and how can we begin to disentangle and make good on our sincere concern for the wellbeing of these animals?

I myself am guilty of this impulse. A few years back, after years of advocating for captive elephants, I rewarded myself with a vacation to Thailand. The highlight of my trip was to be a visit to a well-regarded elephant sanctuary. Once on site, with a little poking behind the scenes and talking to staff, I soon discovered that the facility wasn't all that it purported to be. Despite publicly decrying chaining, the facility chained elephants – who in the wild are active for up to 22 hours a day and roam many miles (Gravett et al.) – for many hours a day. When unshackled, instead of roaming free, the animals were herded to a river so that tourists could bathe them. Indeed, as the public increasingly becomes aware of the cruelty inherent in elephant rides, outfits are increasingly offering tourists the option of bathing them instead, touting it as a more humane option (Schmidt-Burbach). While welfare conditions at such facilities have been found to be an improvement, we must not lose sight of the fact that the elephants would still prefer to bathe themselves, and that they submit to the indignity only because they have been subjected to cruel training (Schmidt-Burbach).

Without a doubt, there are facilities that are doing everything they can for captive wild animals. But the best and most honest of them will tell you that no matter how much they do, it will never be enough, that their goal is to become obsolete, that they await the day when we no longer have wild animals who cannot live in the wild and are thus relegated to the best we humans can do, which will always be second best (Stewart). I applaud and admire these facilities, and work with them. They are providing critical services to animals who have no other option. And we need more such facilities. But we must not lose sight of the fact that they are not the endgame.

Yet, increasingly, public discourse seems to suggest that they are – that sanctuaries are the solution to all that ails when it comes to captive wildlife. For instance, more and more often, switching to a sanctuary model is touted as the path forward for zoos (see, e.g., Kagan; Margodt). In fact, ‘sanctuary’ and similar terms are deployed by animal exhibitors of all stripes. For example, a review of animal dealers and exhibitors regulated under the federal Animal Welfare Act (AWA) reveals that no fewer than 78 such entities use the term ‘sanctuary’ in their business name. Another 17 utilize the term ‘haven’, while 12 more opt for the term ‘refuge’ (USDA). Of these 107 entities, only eight – or fewer than eight percent – are actually accredited by the Global Federation of Animal Sanctuaries, a process that involves third-party audits to assess for compliance with rigorous animal welfare standards (GFAS). Absent a unifying legal definition of such terms, the remaining majority of facilities are free to use the terms as they see fit. Thus, while terms like ‘haven’, ‘refuge’, and ‘sanctuary’ help to attract customers and assuage animal welfare concerns, they are often meaningless. Consider the following examples:

- Summer Wind Farm Animal Sanctuary: this Michigan animal exhibitor recently shuttered following the U.S. Department of Agriculture’s (USDA) revocation of its license to exhibit animals.¹ For more than a decade, this so-called sanctuary routinely abused and neglected animals, racking up scores of citations for AWA violations, including: shooting a tiger in the head; keeping a tiger in a basement; failing to provide sick and injured animals, including tigers, lemurs, a macaque, and a cougar, with

adequate veterinary care; holding bears, big cats, primates, and other animals in filthy enclosures; and much more.²

- Big Cat Habitat & Gulf Coast Sanctuary: this Florida facility is operated by the Rosaire family, members of which have been repeatedly cited for AWA violations, including failing to provide chimpanzees with sufficient space and restraining them with rope nooses around their necks.³ Footage recently taken at the facility reveals Chance – the chimpanzee who appeared in *The Wolf of Wall Street* – being yanked by a leash around his neck and forced to perform circus-style tricks, a capuchin monkey with severe hair loss, and a tiger who appeared to have large calluses from being held on concrete and who was sucking his tail, a self-injurious behavior (Kretzer; Parry).
- Catty Shack Ranch Wildlife Sanctuary: the USDA recently cited this Florida exhibitor for failing to provide adequate veterinary care to two tigers who were paralyzed in both rear legs and dragged their hindquarters and legs behind them.⁴ Because of the substrates in their enclosures, this resulted in ulcers, wounds, scrapes, and exposed muscle mass.⁵ One of the enclosures was also wet and muddy, increasing the risk of infection and irritation.⁶ This facility has also repeatedly been cited in the past, including for failing to provide veterinary care to a cougar who had multiple swollen, pus-filled, open wounds on her right rear leg and was not bearing any weight on the leg.⁷

Alongside this unregulated deployment of terms designed to make consumers feel better there is another, perhaps even more insidious, phenomenon: the creation of various bodies that purport to accredit facilities holding captive wild animals. The Association of Zoos and Aquariums (AZA), long regarded as the gold-standard accrediting body for zoos, has garnered competition in recent years. The similarly named and acronymed Zoological Association of America (ZAA) was formed in 2005, in part to defend animal exhibitors against ‘those with political agendas’ (‘Mission’). While claiming that ‘ZAA accreditation is predicated on promoting the highest standards of animal welfare’ with a ‘focus’ on ‘superior animal husbandry’ (‘About ZAA’), ZAA’s standards (‘Animal Care’) are in fact weak and vague, and

the body accredits notorious animal exhibitors with records of abuse, neglect, and endangerment. ZAA counts among its accredited members ('Accredited Facilities'):

- Have Trunk Will Travel: this California-based company supplies elephants for fairs, circuses, weddings, and the film industry. Its owners were caught on video attacking elephants with bullhooks – weapons that resemble fireplace pokers, with a sharp metal hook on one end – and electric prods (Animal Defenders International). They have also admitted to routinely chaining elephants for more than twelve hours a day,⁸ defended Ringling Bros' elephant abuse,⁹ and actively opposed elephant protection laws ('California Lawmakers').¹⁰
- Wildlife World Zoo: the USDA has repeatedly cited this Arizona roadside zoo for AWA violations, including just recently for failing to provide veterinary care to prairie dogs who were stumbling, falling, struggling to right themselves, and wobbling from side to side. The facility's voluminous other AWA violations include repeatedly holding animals in enclosures so riddled with faeces that they couldn't lie down without becoming contaminated, making animals eat from the feces-covered ground, and failing to provide adequate veterinary care to animals with hooves so overgrown that they caused abnormal gaits.¹¹
- Wright Park Zoo: this Kansas roadside zoo operated by Dodge City has faced enforcement action for AWA violations.¹² Recent violations by the facility include failing to provide adequate veterinary care to numerous animals, including a Japanese macaque who routinely plucks his own skin and hair, confining numerous species of animals in enclosures with mud and standing water, and forcing animals to drink from containers containing floating clumps of algae and algae growing on the sides.¹³

More recently, in 2016, American Humane launched its own zoo certifying body, 'Humane Conservation'. Long known for its 'No Animals Were Harmed' stamp of approval on movies – which has been awarded despite horrific animal deaths and injuries (Baum) – American Humane has also certified Butterball turkeys as 'humane' even though the company grinds baby

male turkeys up alive and slices off the top of turkeys' beaks (Philpott). Continuing in this humane-washing vein, the Humane Conservation program claims to be 'devoted solely to verifying the welfare of animals in human care' (American Humane, 'Arks'). The program's 'independent' (American Humane, 'About') board includes representatives from many of the very exhibitors it certifies, as well as a Ringling Bros Circus veterinarian and another veterinarian who defended the circus's use of bullhooks and chains on elephants as a paid expert witness in court and who the USDA has described as 'closely associated [with] and supported by the circus industry' (American Humane, 'Humane'; Goldentyer).¹⁴ The program's standards are vague, cursory, and vacuous (see American Humane, 'American Humane'). As a result, exhibitors that American Humane has seen fit to certify include:

- Pittsburgh Zoo and Aquarium: Over less than a six-year span, this zoo faced three separate USDA enforcement actions for AWA violations, including for routinely holding marine mammals in water with elevated chlorine levels.¹⁵ Most of these animals had corneal issues, and some had a prolonged history of such issues and of squinting – a sign of pain – all likely a result of the excessive chlorine.¹⁶ Just days after American Humane announced its certification of the zoo in November 2016 ('Pittsburgh Zoo'), a facility holding bats at the zoo flooded, and 36 bats were found dead due to hypothermia.¹⁷ Other recent AWA violations by the zoo include failing to provide adequate shade to sea lions, who were locked out in direct sunlight without shelter on a daily basis, and using dogs to handle elephants even though the dogs had bitten the elephants, and the elephants showed signs of distress when charged by a dog.¹⁸ The zoo also recently came under fire after a baby elephant died after being separated from her mother (Hamill).
- Loro Parque: this zoo and marine park in the Canary Islands features orcas who were taken from their mothers and shipped to Spain from SeaWorld (Morris). An inbred orca was born at the facility, only to die as an infant (Batt). Surviving orcas at Loro Parque suffer fractured teeth and rake marks, and routinely engage in abnormal behaviors that are well-recognized signs of poor welfare, including mouthing and biting

the sides of tanks, floating motionless at the water's surface, and listlessly bobbing (Gutteridge; PETA).

- Siegfried and Roy's Secret Garden and Dolphin Habitat at the Mirage: American Humane certified this Las Vegas, Nevada, facility despite its insistence on inbreeding white tigers and lions, a practice that results in animals who are prone to injury, deformity, and birth defects, including kidney abnormalities, and that is universally condemned by experts (Association of Zoos and Aquariums; British and Irish Association of Zoos and Aquariums; Begany and Cricuolo; Sahney; Tilson).

Clearly, as public and especially consumer concerns for animal welfare increase in the United States, so too do efforts to attract dollars through animal-friendly marketing claims. Such humane-washing claims are hardly a new phenomenon – indeed, I wrote over a decade ago about the proliferation of misleading 'cruelty-free' claims on cosmetics products (Winders) – but their prevalence in the captive wildlife context is new and warrants further consideration and study. Among the questions to explore are:

- What does the general public think words like 'sanctuary' signify? Do they believe such terms are legally regulated? Are they more inclined to visit a facility that employs such terminology? Are they familiar with the concept of pseudo-sanctuaries – i.e. facilities that claim to provide sanctuary for animals but in fact harm and exploit them?
- How aware is the general public of accrediting bodies, and, importantly, of the differences between them? Is there work to be done to increase knowledge in this area?
- For those of us working in the legal arena, should we be focusing efforts on seeking regulation of terms like sanctuary? If so, through what mechanisms? Similarly, should facilities that are misleading the public through their use of sanctuary-type terminology be held legally accountable?

We are living through a pivotal moment for captive wild animals in the United States, but the extent to which this moment will yield material differences in the lives of these animals remains

unclear. Will concerns about animal wellbeing ultimately be used simply to reinscribe exploitation, through the deployment of misleading terms and accreditations? Will we instead see a fundamental shift in our relationship with these animals? Might we overcome our sense of entitlement? I'd like to think the answer is yes, but we have questions to grapple with and work to do.

Notes

¹ See Summer Wind Farm Sanctuary. USDA Consent Decision and Order, No. 16-0036, July 25, 2017.

² See Summer Wind Farms Sanctuary. USDA Inspection Reports for Nov. 9, 2016; Sept. 28, 2016; Sept. 6, 2016; July 26, 2016; May 31, 2016; May 17, 2016; Feb. 23, 2016; January 19, 2016; January 8, 2016; Nov. 18, 2015; Oct. 6, 2015; July 22, 2015; June 30, 2015; May 5, 2015; Mar. 24, 2015; Feb. 12, 2015; Feb. 10, 2015; Dec. 6, 2014; Nov. 4, 2014; Sept. 9, 2014; Aug. 13, 2014; July 1, 2014; June 19, 2014; May 8, 2014; Apr. 24, 2014; Mar. 18, 2014; Mar. 5, 2014; Mar. 4, 2014; Jan. 29, 2014; Jan. 9, 2014; Dec. 3, 2013; Sept. 9, 2013; Aug. 5, 2013; June 25, 2013; Apr. 11, 2013; Mar. 11, 2013; Feb. 4, 2013; Jan. 15, 2013; Dec. 5, 2012; Nov. 6, 2012; July 2, 2012; June 28, 2012; Mar. 8, 2012; Feb. 13, 2012; Jan. 17, 2012; Nov. 21, 2011; June 20, 2011; May 10, 2011; Jan. 19, 2011; Aug. 19, 2010; May 4, 2010; Jan. 6, 2010; Nov. 9, 2009; Au. 3, 2009; Apr. 6, 2009; Dec. 2, 2008; July 29, 2008; Apr. 7, 2008; Mar. 25, 2008; Dec. 11, 2007; Dec. 10, 2007; June 4, 2007.

³ See, e.g., Rosaire-Zoppe Chimpanzees USDA Inspection Reports for June 29, 2015; Nov. 25, 2005; Sept. 22, 2005; Aug. 29, 2005; Dec. 7, 2004; Feb. 18, 1998; Jan. 28, 1997; Dec. 18, 1996; *see also* Kay Rosaire Mowry USDA Inspection Reports for June 21, 2017; Sept. 27, 2016; Nov. 11, 2011; Apr. 3, 2008; May 14, 2007; Apr. 19, 2007; June 22, 2006; June 23, 2005; June 2, 2004; Nov. 20, 2003; June 3, 2003; Apr. 26, 2002; June 5, 2001; Nov. 2, 2000; Feb. 10, 1999.

⁴ See the Catty Shack Ranch Wildlife Sanctuary USDA Inspection Report for Aug. 18, 2017.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ See The Catty Shack Ranch Wildlife Sanctuary USDA Inspection Reports for Dec. 15, 2015; July 9, 2015; Sept. 18, 2014; Aug. 18, 2010; Dec. 11, 2008; Aug. 9, 2007; July 15, 2007; Feb. 24, 2006; Jan. 5, 2006; Dec. 19, 2005; Oct. 24, 2005; Feb. 22, 2005; Jan. 24, 2005; Nov. 23,

2004; Oct. 25, 2004; June 30, 2004; May 24, 2004; Oct. 6, 2003; May 1, 2003; Jan. 10, 2002; Aug. 28, 2001; Feb. 8, 2001; Dec. 7, 2000; Nov. 14, 2000; July 25, 2000; Jan. 27, 2000.

⁸ American Society for the Prevention of Cruelty to Animals v. Feld Entertainment, No. 10-70007, Trial Tr. 81:3-81:11 (D.D.C. Mar. 5, 2009, a.m.) (Testimony of Kari Johnson).

⁹ See generally American Society for the Prevention of Cruelty to Animals v. Feld Entertainment, No. 10-70007, Trial Tr. (D.D.C. Mar. 4, 2009, p.m.) (testimony of Kari Johnson); American Society for the Prevention of Cruelty to Animals v. Feld Entertainment, No. 10-70007, Trial Tr. (D.D.C. Mar. 5, 2009, a.m.) (testimony of Kari Johnson); American Society for the Prevention of Cruelty to Animals v. Feld Entertainment, No. 10-70007, Trial Tr. (D.D.C. Mar. 5, 2009, a.m.) (Testimony of Gary Johnson).

¹⁰ See also Connecticut Joint Favorable Committee Report, H.B. 6555, An Act Concerning the Humane Treatment of Elephants (Mar. 24, 2009).

¹¹ See Wildlife Word Zoo USDA Inspection Reports for May 24, 2017; Apr 13, 2016; Jan. 14, 2016; May 4, 2015; July 7, 2014; Sept. 5, 2013; June 7, 2013; Apr. 1, 2013; Feb. 28, 2013; Dec. 14, 2012; Sept. 16, 2008; Nov. 2, 2007; June 6, 2006; Feb. 20, 2003; Aug. 2, 2002; Feb. 14, 2000; June 21, 1999; May 3, 1999; Mar. 9, 1999; Apr. 9, 1998.

¹² See USDA Official Warning, Violation of Federal Regulations, City of Dodge City (Aug. 28, 2015);

¹³ See City of Dodge City USDA Inspection Reports for Mar. 27, 2017; Feb. 8, 2016; June 1, 2016; Mar. 3, 2016; June 1, 2015; Feb. 26, 2015; Oct. 29, 2014; Nov. 4, 2013.

¹⁴ See also American Society for the Prevention of Cruelty to Animals v. Feld Entertainment, No. 10-70007, Trial Tr. 81:3-81:11 (D.D.C. Mar. 9, 2009, p.m.) (Testimony of Theodore Friend).

¹⁵ USDA Official Warning, Violation of Federal Regulations, Zoological Society of Pittsburgh (June 14, 2016); USDA Citation and Notification of Penalty, Zoological Society of Pittsburgh (Dec. 5, 2013); USDA Official Warning, Violation of Federal Regulations, Zoological Society of Pittsburgh (Nov. 19, 2010).

¹⁶ See Zoological Society of Pittsburgh USDA Inspection Reports Mar. 23, 2016, and Jan. 6, 2015.

¹⁷ See Zoological Society of Pittsburgh USDA Inspection Report for Jan. 4, 2017.

¹⁸ See Zoological Society of Pittsburgh USDA Inspection Reports for Sept. 15, 2016; Mar. 23, 2016; Jan. 6, 2015; Sept. 12, 2012.

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