

THE SURVIVAL OF ANIMAL CARE ORGANIZATIONS IMPACTED BY THE COVID-19 PANDEMIC IN 2020

“This is precisely the time when artists go to work. There is no time for despair, no place for self-pity, no need for silence, no room for fear. We speak, we write, we do language. That is how civilizations heal.”

– Toni Morrison

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I. INTRODUCTION

Undoubtedly the spread of COVID-19 throughout the world in 2020 has presented numerous challenges, to say the least. After experiencing a decline in cases in previous months¹, in November, the United States reported a record high of 196,000 new coronavirus daily cases.² This disease is persistent, but the soon availability of a vaccine keeps people hopeful and resilient.³ Surely the focus of COVID-19 is on how it affects our lives, human lives. However, the spotlight was slightly and shortly shifted when the United States Department of Agriculture’s (USDA) National Veterinary Services Laboratories confirmed in April, that a tiger at a zoo in New York was infected with COVID-19.⁴ The USDA, through the Animal and Plant Health Inspection Service, proposed that “although there have not been reports of pets becoming sick with COVID-19 in the United States, it is still recommended that people sick with COVID-19 limit contact with animals.”⁵ By March 16, 2020, after President Trump declared a state of emergency over the coronavirus, every state had also declared either state of

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¹ Cecelia Smith-Schoenwalder, *New Coronavirus Cases Nationwide Are Down, But Experts Warn Not to Relax Mitigation Measures*, U.S. NEWS (Aug. 28, 2020), <https://www.usnews.com/news/health-news/articles/2020-08-28/new-coronavirus-cases-nationwide-are-down-but-experts-warn-not-to-relax-mitigation-measures>.

² Hannah Knowles et al., *Pfizer Applies for Emergency Vaccine Approval as U.S. Cases Reach New High*, Wash. Post (Nov. 20, 2020), <https://www.washingtonpost.com/nation/2020/11/20/coronavirus-covid-live-updates-us/>.

³ *Id.*

⁴ *USDA Statement on the Confirmation of COVID-19 in a Tiger in New York*, USDA (May 13, 2020), https://www.aphis.usda.gov/aphis/newsroom/news/sa_by_date/sa-2020/ny-zoo-covid-19.

⁵ *Id.*

emergency or a public health emergency.⁶ In efforts to slow down the spread of COVID-19, states, particularly those severely struck by the virus, implemented additional actions including, but not limited to, social distancing, mandatory stay at home orders, closures of non-essential businesses, bans on large gatherings, school closures, and limits on bars and restaurants and other public places.⁷

Different from businesses that can switch to remote work, accredited animal care organizations – such as zoos, animal sanctuaries, and animal shelters – cannot afford that luxury.⁸ Animals need constant care.⁹ Due to government restrictions imposed on businesses and people, animal care organizations confronted a substantial decline in revenue and resources.¹⁰ Several zoos throughout the United States had to lay off or furlough most of their non-essential employees.¹¹ Because of the coronavirus pandemic, the National Aquarium in Baltimore, Maryland, has lost more than \$8 million and furloughed one-third of its employees since closing in March.¹² The Detroit Zoo, in Michigan, laid off half of its staff and is losing more than \$2.5 million a month.¹³ Oakland Zoo, in California, was losing \$2 million a month since March, and executive vice president Nik Dehejia said that the zoo was “at risk of closure.”¹⁴ Similar to zoos, animal shelters, rescues, and sanctuaries reported comparable financial difficulties.¹⁵ The Turtle Hospital, in Florida, which rescues injured and sick sea turtles, had their income severely impacted because their budget relies on visitors, who pay for tours and souvenirs.¹⁶ Beech Brook Farm Equine Rescue, in Connecticut, also stated that they are struggling financially because of a substantial drop in donations since the COVID-19 development in the United States.¹⁷ Furthermore, the American Society for

⁶ Jennifer Tolbert et al., *State Data and Policy Actions to Address Coronavirus*, KAISER FAMILY FOUND. (Nov. 20, 2020), <https://www.kff.org/coronavirus-covid-19/issue-brief/state-data-and-policy-actions-to-address-coronavirus/>.

⁷ *Id.*

⁸ Savannah Young, *The Impact of COVID-19 on Zoological Organizations*, AMERICAN HUMANE: BLOG (June 25, 2020), <http://americanhumane.org/blog/the-impact-of-covid-19-on-zoological-organizations>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Karin Brulliard et al., *Shuttered Zoos Are Hemorrhaging Money And They Want Federal Help for Endangered Species Work*, WASH. POST (June 8, 2020), <https://www.washingtonpost.com/science/2020/06/08/coronavirus-zoos-aquariums/>.

¹² *Id.*

¹³ *Id.*

¹⁴ Steve Rubenstein, *Coronavirus: Oakland Zoo Losing \$2 million a Month at Risk of Closing for Good Officials Say*, S.F. CHRON. (July 1, 2020), <https://www.sfchronicle.com/bayarea/article/Coronavirus-Oakland-Zoo-losing-2-million-a-15380577.php>.

¹⁵ Maya Gottfried, *Animal Sanctuaries Are Struggling Right Now But They're Making It Work*, TENDERLY (May 5, 2020), <https://medium.com/tenderlymag/animal-sanctuaries-are-struggling-right-now-but-theyre-making-it-work-e52bd70ed36d>.

¹⁶ *Id.*

¹⁷ *Id.*

the Prevention of Cruelty to Animals published, in August, information estimating that “4.2 million pets will enter poverty in the next six months as a result of the COVID-19 crisis, a 21% increase from pre-pandemic estimates,” and that the “total number of animals living in poverty could rise to more than 24.4 million dogs, cats, horses, and other animals.”¹⁸ Director of animal services at Pima Animal Care Center in Tucson, Arizona, Kristen Hassen said that they saw an increase in animal admissions due to animal owners been evicted, or having a temporary crisis, or losing their job.¹⁹ “Every single week we do a national leadership call, and we are seeing much of the same things,” said Hassen.²⁰

This note proposes an analysis of the current legislative approaches to help animal care organizations in the United States survive the COVID-19 pandemic. Additionally, it assesses how animal care organizations and the animals in their care were impacted, negatively and positively, by the coronavirus pandemic. Several animal care organizations in the United States—including animal shelters, rescues, sanctuaries, and zoos—were contacted directly, and invited to share their experiences from the COVID-19 pandemic development in 2020. They provided valuable in-depth insight into how government shutdowns and social distancing impacted their facility; if any of the animals in their care tested positive for COVID-19; how the animals in their care were affected indirectly by COVID-19; if they sought and received any government assistance to keep them operational; and, how they project the future of their organization and their resident animals post-pandemic. Moreover, this note evaluates in what way the Coronavirus Aid, Relief, and Economic Security (CARES) Act, the Animal Welfare Act, and the Endangered Species Act helped to ensure that animal care was a top priority among accredited animal care organizations. Furthermore, this note considers bankruptcy relief as a worse-case-scenario option for animal care organizations to continue to provide care for their animals. Therefore, even if emergency financial help provided by the government during the coronavirus pandemic fails to assist animal care organizations, bankruptcy laws would ensure that these organizations, that play a key role in society, have a way to survive and provide appropriate care for their animals.

Part I, provides a brief historical timeline of the COVID-19 pandemic, when it arrived in the United States, some landmark numbers, and federal and state government measures to contain the spread of the virus. Part II presents the results of a direct request for information from animal care organizations throughout the United States about how has COVID-19 impacted their facility and animals in their care in 2020. Part III analyzes legislation that was enacted to provide organizations with financial help to continue operational, and legislation that ensures animals are given appropriate care. Part IV illustrates the relief in bankruptcy laws as a possibility for animal care

¹⁸ Jen Reeder, *Americans are Starting to Give Up Their Pets Because of COVID-19 Hardships*, TODAY (Oct. 2, 2020), <https://www.today.com/pets/americans-are-starting-give-pets-during-covid-19-crisis-t192819>.

¹⁹ *Id.*

²⁰ *Id.*

organizations that have exhausted their options and need to continue functioning. This note will focus especially on animal shelters, rescues, sanctuaries, and zoos and their resilience to provide appropriate care for their animals throughout the COVID-19 pandemic in the United States in 2020.

A. Historical Timeline of the COVID-19 Pandemic

A new strain of coronavirus surfaced in China in late 2019.²¹ On January 11, 2020, Chinese media reported the first death from sickness caused by the new coronavirus.²² Later in January, the first confirmed cases outside China appeared in Japan, South Korea, Thailand, and the United States, where a man from Washington State developed symptoms after coming back from a trip to Wuhan, China.²³ Also in January, the World Health Organization (W.H.O.) declared a “public health emergency of international concern” and the United States government restricted travel from China.²⁴ In February, the first coronavirus death was reported outside China; the W.H.O. proposed the acronym COVID-19, referring to coronavirus disease 2019; Europe faced its first major outbreak, particularly Italy; Middle Eastern countries such as Iraq, Iran Afghanistan, Bahrain, Kuwait, Oman, and others also reported first cases; Brazil reported the first Latin America case; and—the United States reported the first COVID-19 related death.²⁵

The W.H.O. declared the COVID-19 pandemic on March 11, 2020.²⁶ Further, in March, President Trump declared a national emergency; the Centers for Disease Control and Prevention (CDC) advised no gatherings of fifty or more people; the European Union closed its borders to visitors from the rest of the world; the United States became officially the country “hardest hit by the pandemic;” President Trump signed into law the CARES Act; and states started to issue orders requiring their residents to stay home.²⁷ By April, the coronavirus pandemic had “put ten million Americans out of work;” and, the International Monetary Fund (IMF) advised that the global economy “headed for its worst downturn since the Great Depression.”²⁸ In May, the United States coronavirus death toll passed 100,000; and, in June, COVID-19 continued to spread and grow through “regions previously spared.”²⁹ In July, a vaccine “enter[ed] phase 3 testing.”³⁰ In August, the Federal Drug Administration (FDA)

²¹ Tolbert, *supra* note 6.

²² Derrick B. Taylor, *A Timeline of the Coronavirus Pandemic*, N.Y. TIMES (Aug. 6, 2020), <https://www.nytimes.com/article/coronavirus-timeline.html>.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ Tolbert, *supra* note 6.

²⁷ Taylor, *supra* note 22.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Editorial, *Coronavirus Outbreak Timeline Fast Facts*, CNN (Oct. 13, 2020), <https://www.cnn.com/2020/02/06/health/wuhan-coronavirus-timeline-fast-facts/index.html>.

authorizes the use of “convalescent plasma” for COVID-19 treatment.³¹ Also in August, reports indicate that new coronavirus cases were going down steadily.³² But in November, the United States “reported a record high of more than 196,000 new coronavirus cases” in one day, as Pfizer and BioNTech “became the first companies to seek emergency authorization for a coronavirus vaccine.”³³ In December, opposing actions were taken by states, some have quickly rolled back social distancing and business closures measures (*i.e.* Massachusetts, New York, and Georgia), while others have “reopened” cautiously (*i.e.* Florida, Alaska, and Tennessee).³⁴ Further, in December, the FDA authorized two COVID-19 vaccines for emergency use—Pfizer and Moderna—as the United States death toll surpassed 300,000.³⁵ In January 2021, with over forty-eight million vaccine doses distributed, states and the CDC reported that “twenty-two million people have received one or both doses of the vaccine in the United States.”³⁶

II. THE IMPACT OF COVID-19 ON ANIMAL CARE ORGANIZATIONS THROUGHOUT THE UNITED STATES

When the COVID-19 pandemic emerged, little was known about the virus, of how it would affect our lives and the lives of our loved ones—including our loved animals. As 2020 transpired, every person, family, and business faced their specific insecurities and fears. Due to the novelty of the coronavirus, information about the virus and its impact is still scarce. To have a clear understanding of how COVID-19 impacted animal care organizations and the animals in their care it was better to ask them directly. In this section, animal care organizations share their experience and how they face the challenges presented by COVID-19 in 2020.

A. *First Impact: Government Restrictions*

States have taken a variety of measures to prevent the spread of COVID-19 including, but not limited to, social distancing, stay-at-home orders, ban on large gatherings, non-essential business closures, school closures, restaurant limitations, and restricted access to other public places.³⁷ Zoos across the United States had to lay off or furlough most staff members keeping only the essential ones that care for animals.³⁸ Nashville Zoo, in Tennessee, suffered a significant revenue loss, said Jim Bartoo

³¹ *Id.*

³² Smith-Schoenwalder, *supra* note 1.

³³ Knowles, *supra* note 2.

³⁴ Tolbert, *supra* note 6.

³⁵ Taylor, *supra* note 22.

³⁶ Dan Keating et al. *Vaccine Tracker*, WASH POST (Jan. 31, 2021),

<https://www.washingtonpost.com/graphics/2020/health/covid-vaccine-states-distribution-doses/>.

³⁷ Tolbert, *supra* note 6.

³⁸ Brulliard, *supra* note 11.

marketing and public relations director.³⁹ “We had to cancel special events, fundraisers, summer camps, educational programming, and other revenue streams resulting in a giant revenue hole. Many employees were furloughed during the early months and others were asked to cut hours,” Bartoo said.⁴⁰ Nashville Zoo closed its doors to the public in mid-March, but animal care staff worked through the entire shutdown, ensuring that 3,000 animals received proper care daily.⁴¹

A similar challenge was faced by ZooMontana, closed for two months, which needed to retain sufficient staff and supplies to care for their animals, and lost more than \$250,000 in revenue from special events.⁴² “We could not simply shut the gates and secure the facility, meaning that we continued incurring 40% or more of our operational costs, even when closed. This was concerning, to say the least, especially when 100% of our revenue dried up,” said executive director Jeff Ewelt.⁴³ Similarly, to reduce operating costs Santa Barbara Zoo, in California, laid off all non-essential part-time staff and a few non-essential full-time employees, but kept all animal care and health employees because they are classified as essential, said president and CEO Rich Block.⁴⁴ Santa Barbara Zoo closed its doors to the public on March 17, 2020; during a normal year the zoo spends about \$1 million per month on all expenses; this year, through lay-offs and cutting non-essential expenses, they were able to lower monthly expenses to roughly \$600,000, Block said.⁴⁵

Moreover, because of travel restrictions, stay-at-home orders, and lost revenue, Grizzly & Wolf Discovery Center, in Montana “was not able to hire the amount of seasonal staff” that they would ordinarily have, said naturalist Tut Fuentevilla.⁴⁶ Director Sue Wahlgren of Cosley Zoo, in Illinois, also reported lost revenue, reduced staff, and hold on “major repairs and capital projects.”⁴⁷ Unlike most zoos, Cameron Park Zoological & Botanical Society, in Texas, “did not have to lay any employees off due to COVID-19,” said executive director Terri Cox.⁴⁸ Despite the great news, the zoo

³⁹ E-mail from Jim Bartoo, Mktg. & Pub. Relations Dir., Nashville Zoo, to Juan Torrico, Assoc. Editor, *Barry Env'tl. & Earth Law Journal* (Nov. 9, 2020, 16:12 EST) (on file with author).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² E-mail from Jeff Ewelt, Exec. Dir., ZooMontana, to Juan Torrico, Assoc. Editor, *Barry Env'tl. & Earth Law Journal* (Nov. 9, 2020, 16:26 EST) (on file with author).

⁴³ *Id.*

⁴⁴ E-mail from Rich Block, President & CEO, Santa Barbara Zoo, to Juan Torrico, Assoc. Editor, *Barry Env'tl. & Earth Law Journal* (Nov. 9, 2020, 21:29 EST) (on file with author).

⁴⁵ *Id.*

⁴⁶ E-mail from Tut Fuentevilla, Naturalist, Grizzly & Wolf Discovery Ctr., to Juan Torrico, Assoc. Editor, *Barry Env'tl. & Earth Law Journal* (Nov. 7, 2020, 13:02 EST) (on file with author).

⁴⁷ E-mail from Sue Wahlgren, Dir., Cosley Zoo, to Juan Torrico, Assoc. Editor, *Barry Env'tl. & Earth Law Journal* (Nov. 9, 2020, 10:15 EST) (on file with author).

⁴⁸ E-mail from Terri Cox, Exec. Dir., Cameron Park Zoological & Botanical Soc'y., to Juan Torrico, Assoc. Editor, *Barry Env'tl. & Earth Law Journal* (Nov. 12, 2020, 13:59 EST) (on file with author).

was “affected in almost every area of operations” and loss of revenue was a “big impact,” Cox said.⁴⁹

Animal shelters, rescues, and sanctuaries also suffered financially when confronted with government restrictions.⁵⁰ “We have lost nearly all our revenue and donations during shut down,” said CEO Jill Davis of Animals Helping Humans & Humans Helping Animals, in Gainesville, Florida.⁵¹ Further, Davis said that he had to forbid volunteers and deal with additional personal protective equipment (PPE) costs that the organization had to incur to protect their essential employees.⁵² Also, Katherine Gregory, executive director of Colorado Horse Rescue said COVID-19 and social distancing restrictions “significantly impacted revenue, [because] we were not able to host our gala event which typically brings in 15% of our overall revenue for the year.”⁵³ Fundraising is a key component of an animal rescue organization's revenue, said Gregory.⁵⁴ Likewise, Kathy Harter of Orlando Rabbit Care & Adoptions, in Florida, said that they had to organize a *virtual* fundraising event, but that only raised approximately 10% of what typical fundraising would raise.⁵⁵ Moreover, executive director Chris Septer of South Florida SPCA Horse Rescue said that they had to suspend their volunteer program, open-house, and fundraisers.⁵⁶ “This has significantly impacted our ‘in-kind’ labor support as well as impacted our ability to raise funds;” and, “our donations have dropped approximately 60% since then so we are experiencing real financial challenges,” said Septer.⁵⁷

Similarly, executive director Christopher Soucy of The Raptor Trust, in New Jersey, stated that their “biggest toll was on human resources,” having to furlough the entire volunteer staff in March, during their “busiest season.”⁵⁸ “With all 85 of our volunteers furloughed, our regular salaried and hourly employees . . . had to work much, much harder for many more hours to care for the animals here,” said Soucy.⁵⁹ Further, Soucy also acknowledged that they struggled with the many new COVID-19 protocols they had to adhere. Moreover, procedures were “definitely impacted,” said

⁴⁹ *Id.*

⁵⁰ Gottfried, *supra* note 15.

⁵¹ E-mail from Jill Davis, CEO, Animals Helping Humans & Humans Helping Animals, to Juan Torrico, Assoc. Editor, *Barry Env'tl. & Earth Law Journal* (Nov. 9, 2020, 13:25 EST) (on file with author).

⁵² *Id.*

⁵³ E-mail from Katherine Gregory, Exec. Dir., Colo. Horse Rescue, to Juan Torrico, Assoc. Editor, *Barry Env'tl. & Earth Law Journal* (Nov. 9, 2020, 15:48 EST) (on file with author).

⁵⁴ *Id.*

⁵⁵ E-mail from Kathy Harter, Orlando Rabbit Care & Adoptions, to Juan Torrico, Assoc. Editor, *Barry Env'tl. & Earth Law Journal* (Nov. 9, 2020, 16:12 EST) (on file with author).

⁵⁶ E-mail from Chris Septer, Exec. Dir., S. Fla. SPCA Horse Rescue, to Juan Torrico, Assoc. Editor, *Barry Env'tl. & Earth Law Journal* (Nov. 8, 2020, 22:50 EST) (on file with author).

⁵⁷ *Id.*

⁵⁸ E-mail from Christopher Soucy, Exec. Dir., The Raptor Trust, to Juan Torrico, Assoc. Editor, *Barry Env'tl. & Earth Law Journal* (Nov. 10, 2020, 16:25 EST) (on file with author).

⁵⁹ *Id.*

communications manager Casey Waugh of Wayside Waifs, in Missouri.⁶⁰ “Due to CDC guidelines, we . . . only have a certain amount of employees in the building which put a daily cap on how many animals could be adopted,” and “we instilled further measures to ensure safety [such as] extra sanitizing stations, mask-wearing, etc.,” said Waugh.⁶¹ Furthermore, to abide by government regulations and ensure safety, director Erika Leckington of Tallahassee Animal Services, in Florida, gave a detailed description of what it took for the organization to stay safe and operational:

We have changed our procedures in a number of ways including limiting services to by appointment only; expanding our hours and being open daily (rather than 6 days a week prior); doing temp checks and screening of all visitors; requiring adoption questionnaires to be approved in advance of scheduling an appointment to meet with an animal; scheduling all owner surrenders so we can manage intake; moving all lost & found reporting of animals to an online platform; limiting the number of volunteers per shift; animals that aren't altered are permitted to go home and come back for altering; splitting all volunteers and employees into A & B teams to preserve safety; making masks required while in the building; disinfecting “people” surfaces more regularly; installation of plexiglass on the front desk; disallowing customers to walk through the shelter to visit with animals; moving all foster parent visits to curbside; implementing telemedicine and telehealth for foster animals; conducting all drop off of surgery and heartworm treatment animals to curbside; discontinuing all events including monthly clinics; work from home for all those in administration positions; all staff meetings are conducted via zoom; desktops are being phased out with laptops; employees need to remain in their “silos” and not move around the building to minimize potential exposures to each other; mailing spay/neuter vouchers rather than having people receive them in person; and, mailing notices of nuisance complaints to animal owners rather than visiting in person on the first contact.⁶²

⁶⁰ E-mail from Casey Waugh, Commc’ns Manager, Wayside Waifs, to Juan Torrico, Assoc. Editor, *Barry Env’tl. & Earth Law Journal* (Nov. 13, 2020, 12:19 EST) (on file with author).

⁶¹ *Id.*

⁶² E-mail from Erika Leckington, Dir., Tallahassee Animal Services, to Juan Torrico, Assoc. Editor, *Barry Env’tl. & Earth Law Journal* (Nov. 10, 2020, 10:55 EST) (on file with author).

Although animal care organizations faced similar problems when dealing with government restrictions, a unique sanctuary shared an exclusive story. Founder and president of Bat World Sanctuary, in Weatherford, Texas, Amanda Lollar, said that the organization—an accredited nonprofit sanctuary and rehabilitation center for bats—lost public support and donations because “bats were unfairly blamed for the [COVID-19] pandemic.”⁶³ Moreover, Lollar explains:

Early on, many state and federal agencies in the U.S. took steps to restrict bat rescue and rehabilitation activities citing an “abundance of caution” regarding the perceived risk that humans who are infected with the COVID-19 virus may infect North American bat species, resulting in the bats becoming a new natural reservoir for the virus and leading to new outbreaks of disease in humans (note that current studies are proving that North American bats cannot contract or spread COVID-19 to humans). Some of these restrictions have already had disastrous long-term implications for conservation in that public was directed to contact local Animal Care and Control agencies if a bat is found on the ground, regardless of the bat’s condition, so that the bat can be humanely euthanized by a veterinarian. In other cases, states have directed bat rehabilitators to stop taking in new admissions and to advise the public to leave the bat where they found it, again, regardless of its condition. In Idaho alone entire colonies of bats, consisting of hundreds of individuals, have been needlessly killed by pest control agencies. There are also many dangerous risks inherent in this approach. Bat World Sanctuary, together with the Humane Society of the United States, National Wildlife Rehabilitators Association, Merlin Tuttle’s Bat Conservation, veterinarians, biologists, and bat rehabilitators across the US, issued a position statement in response to restricting the rehabilitation of bats. We urged a rational, scientific, and humane approach to the management and handling of grounded bats and bats in rehabilitation during the COVID-19 pandemic. We

⁶³ E-mail from Amanda Lollar, Founder & President, Bat World Sanctuary, to Juan Torrico, Assoc. Editor, *Barry Env'tl. & Earth Law Journal* (Nov. 9, 2020, 10:59 EST) (on file with author).

have yet to receive a response from the states involved.⁶⁴

Animal care organizations continue to adapt, adjust, and innovate to survive the coronavirus pandemic.⁶⁵ Even if the pandemic has challenged these organizations, “animals still need to be cared for, and recovery efforts and conservation efforts still need to push forward.”⁶⁶ All animal care organizations agree that the road ahead will be difficult “as the financial crisis is far from over and lingering effects are a certainty.”⁶⁷

B. *The Impact on Animals*

The animal shelters, rescues, sanctuaries, and zoos researched for this note were asked if they observed any positive and/or negative effects that COVID-19 had on animals in their care. Certain zoos reported that some animals were influenced by the changes happening around them when the organization had to close its doors, and later when it reopened. At Cosley Zoo, although no animals have had symptoms or diagnosis of the new coronavirus, additional precautions were put in place for working with some animals that could potentially be susceptible to COVID-19.⁶⁸ Cosley Zoo reported that a negative effect was felt by two animals that showed signs of stress when the zoo reopened to the public; but, by using welfare assessments, the zoo was able to implement plans to reduce these effects on animals.⁶⁹ Similarly, Nashville Zoo described that “keepers working with animals at a higher risk of catching the virus had to alter their care program to lessen close proximity and contact.”⁷⁰ Director Jim Bartoo said that “[t]here were various behavior changes while we were closed, [and] [t]he lack of crowds made some animals more interested when a staff member happened to walk by.”⁷¹ Assistant zoological manager Darren Minier of Oakland Zoo, in California, stated a similar situation where “[t]he lack of guests was not initially disruptive, but animals did seem to be more tuned into people on the pathways than they would have been prior to the temporary closure of the zoo.”⁷² “Oakland Zoo’s primary aim was to minimize impacts on animals . . . [o]ur guiding principle was for the animals to not

⁶⁴ *Id.*

⁶⁵ Gottfried, *supra* note 15.

⁶⁶ Brulliard, *supra* note 11.

⁶⁷ Young, *supra* note 8.

⁶⁸ See E-mail from Sue Wahlgren to Juan Torrico, *supra* note 47.

⁶⁹ *Id.*

⁷⁰ See E-mail from Jim Bartoo to Juan Torrico, *supra* note 39.

⁷¹ *Id.*

⁷² E-mail from Darren Minier, Assistant Zoological Manager, Oakland Zoo, to Juan Torrico, Assoc. Editor, Barry Env'tl. & Earth Law Journal (Nov. 12, 2020, 18:17 EST) (on file with author).

know there was anything going on, that their lives were not interrupted, or diminished.”⁷³

A different negative effect of the coronavirus pandemic on animals was reported by Cameron Park Zoological & Botanical Society, where COVID-19 disrupted animal transports.⁷⁴ Executive director Terri Cox explained that “[s]ome animals that were scheduled to be transferred to other institutions are being held here because the receiving institutions are short-staffed and cannot take additional animals at this time.”⁷⁵ This could affect breeding programs and new exhibit openings, said Cox.⁷⁶ Similarly, naturalist Tut Fuentevilla of Grizzly & Wolf Discovery Center stated that they experienced a delay in an animal transfer coming from another facility, in a different state, caused by a COVID-19 temporary closure.⁷⁷

Additionally, animal shelters, rescues, and sanctuaries described their distinct negatives impacts of COVID-19 on animals in their care. CEO Jill Davis of Animals Helping Humans & Humans Helping Animals said that “there is a direct correlation of dogs who stayed home and lack of socialization, [this] has made dogs fearful and reactive . . . [the] lack of gatherings and connecting with other people has caused regression in our dogs.”⁷⁸ Similarly, communications manager Casey Waugh of Wayside Waifs said that “[w]hen animals are in the shelter environment for a long time they can get depressed, anxious, nervous, or begin to shut down.”⁷⁹ Furthermore, director Erika Leckington of Tallahassee Animal Services said that they did not test any animals for COVID-19, but when they received animals from suspected or confirmed positive homes they would isolate and quarantine the animals before adoption.⁸⁰

Furthermore, some organizations reported that visitors and volunteers, and their lack thereof, affected animal morale. “Our pigs enjoy visitors and the attention they get when visitors and volunteers come here,” said president Mary Schanz of Ironwood Pig Sanctuary, which cares for 615 pigs, in Tucson, Arizona, and had to stop tours and visits because of the coronavirus pandemic.⁸¹ Likewise, program coordinator Diane Gagliano of Seminole County Animal Services, in Florida, stated that the animals in their care “miss the volunteers coming in to give them more yard time and walks.”⁸² Additionally, manager Anna Wallace of Chimpanzee Sanctuary Northwest, in

⁷³ *Id.*

⁷⁴ See E-mail from Terri Cox to Juan Torrico, *supra* note 48.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ See E-mail from Tut Fuentevilla to Juan Torrico, *supra* note 46.

⁷⁸ See E-mail from Jill Davis to Juan Torrico, *supra* note 51.

⁷⁹ See E-mail from Casey Waugh to Juan Torrico, *supra* note 60.

⁸⁰ See E-mail from Erika Leckington to Juan Torrico, *supra* note 62.

⁸¹ E-mail from Mary Schanz, President, Ironwood Pig Sanctuary, to Juan Torrico, Assoc. Editor, Barry Env'tl. & Earth Law Journal (Nov. 24, 2020, 20:08 EST) (on file with author).

⁸² E-mail from Diane Gagliano, Program Coordinator, Seminole County Animal Services, to Juan Torrico, Assoc. Editor, Barry Env'tl. & Earth Law Journal (Nov. 12, 2020, 11:22 EST) (on file with author).

Washington State—a sanctuary for chimpanzees discarded from the entertainment and biomedical testing industries—said that because they are “very concerned about [their] elderly group of chimps becoming exposed to the virus” the chimpanzees in their care have a smaller human social circle at the moment.⁸³ In March they had to lay off the majority of their volunteer staff, but it is difficult to say if this has affected their chimps, said Wallace.⁸⁴

Another negative impact of COVID-19 on animals, reported by animal care organizations, was pet owners having to surrender their pets because of loss of income or relocation.⁸⁵ “We have seen some pet owners needing to return their pets as a result of the economic effects of the pandemic including lost wages, eviction, or having to move to housing that is not pet friendly,” said director of advancement Margot DeConna of Humane Society of North Central Florida.⁸⁶ Similarly, co-founder Kit Collins of Out to Pasture Animal Sanctuary, in Oregon, said that people were “unable to afford to care for their animals and some have been abandoned.”⁸⁷ Moreover, public relations director Karen Hirsch of LifeLine Animal Project, in Atlanta, Georgia, said that “[m]ore people were bringing in animals to our shelter in tears, because the pets were sick or injured and the owners didn't have money to cover it due to job loss.”⁸⁸ None of the animals in their care were negatively affected by the coronavirus pandemic because they were able to provide veterinary care at their low-cost veterinary clinic for free or whatever people could afford to pay, said Hirsch.⁸⁹

The coronavirus pandemic also triggered a positive impact on the life of some animals.⁹⁰ Shelters, rescues, and breeders registered an increased demand as Americans sought to cure desolation with animal companionship.⁹¹ This sudden surge in demand started to show in mid-March, and by mid-July, it had become a “sales boom.”⁹² Either because they were stuck working from home with kids who needed something to do, or had no job and plenty of free time, or felt lonely with no place to socialize, Americans continued trying to fill voids with canine companions.⁹³ Further, Barbara

⁸³ E-mail from Anna Wallace, Manager, Chimpanzee Sanctuary Northwest, to Juan Torrico, Assoc. Editor, *Barry Env'tl. & Earth Law Journal* (Nov. 11, 2020, 19:59 EST) (on file with author).

⁸⁴ *Id.*

⁸⁵ Reeder, *supra* note 18.

⁸⁶ E-mail from Margot DeConna, Dir. of Advancement, Humane Soc’y of N. Cent. Fla., to Juan Torrico, Assoc. Editor, *Barry Env'tl. & Earth Law Journal* (Nov. 12, 2020, 21:46 EST) (on file with author).

⁸⁷ E-mail from Kit Collins, Co-founder, Out to Pasture Animal Sanctuary, to Juan Torrico, Assoc. Editor, *Barry Env'tl. & Earth Law Journal* (Nov. 10, 2020, 10:06 EST) (on file with author).

⁸⁸ E-mail from Karen Hirsch, Pub. Relations Dir., LifeLine Animal Project, to Juan Torrico, Assoc. Editor, *Barry Env'tl. & Earth Law Journal* (Nov. 10, 2020, 15:59 EST) (on file with author).

⁸⁹ *Id.*

⁹⁰ Kim Kavin, *Dog Adoptions and Sales Soar During the Pandemic*, WASH. POST (Aug. 12, 2020), <https://www.washingtonpost.com/nation/2020/08/12/adoptions-dogs-coronavirus/>.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

Hastings of Paws Rescue Group said that “[t]he only thing good that has come from the COVID-19 pandemic is that more people have opened their homes to animals in need, either as a foster or adoptive homes.”⁹⁴

Similarly, executive director Angie Friers of the SPCA of Brevard said “[t]he positive outcome [of the coronavirus pandemic] was that we gained new foster homes that marketed our animals to their friends, and on their social media channels, and we adopted 130 of those animals out to loving homes even while we were closed to the public.”⁹⁵ Furthermore, public relations director Karen Hirsch of LifeLine Animal Project said that when they found out that quarantine would be happening they called for adopters and fosters, and this “resulted in over 1,100 animals getting adopted or fostered in just one week.”⁹⁶ “We found out that this happened at similar sheltering organizations nationwide,” said Hirsch.⁹⁷ Also, Hirsch mentioned that LifeLine accommodated over 730 animals from rural shelters that were shut down due to the pandemic and otherwise would have been euthanized.⁹⁸ She further stated that her organization was selected as one of fourteen pilot shelters to join the Human Animal Support Services (HASS), their goal is to implement the most successful ideas from animal welfare, social services, education, public health, and various other fields to create a whole new range of services to help pets and people stay together.⁹⁹ During the coronavirus pandemic in 2020, the HASS coalition found new ways to support animals through community-focused efforts such as 2,680 shelter animals moved into foster homes, 3,000 animals adopted, and 92% of lives saved at open intake shelters.¹⁰⁰

Vaccinations also started to make a positive impact on animals susceptible to COVID-19.¹⁰¹ In January 2021, San Diego Zoo, in California, reported that eight gorillas were diagnosed with the coronavirus and had mild symptoms limited to coughing, congestion, and fatigue.¹⁰² A few weeks after testing positive, the great apes were vaccinated, and the troop has since fully recovered.¹⁰³ Darla Davis, a spokeswoman for the zoo, said that the animals are doing well, and they have not shown adverse reactions from the vaccine.¹⁰⁴

⁹⁴ E-mail from Barbara Hastings, Paws Rescue Group, to Juan Torrico, Assoc. Editor, *Barry Env'tl. & Earth Law Journal* (Nov. 9, 2020, 10:08 EST) (on file with author).

⁹⁵ E-mail from Angie Friers, Exec. Dir., SPCA of Brevard, to Juan Torrico, Assoc. Editor, *Barry Env'tl. & Earth Law Journal* (Nov. 11, 2020, 14:17 EST) (on file with author).

⁹⁶ See E-mail from Karen Hirsch to Juan Torrico, *supra* note 88.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ LIFE LINE ANIMAL PROJECT, <https://lifelineanimal.org/human-animal-support-services> (last visited Jan. 30, 2021).

¹⁰¹ Stella Chan et al., *Great Apes at The San Diego Zoo Receive a Covid-19 Vaccine for Animals*, CNN (Mar. 5, 2021), <https://www.cnn.com/2021/03/05/us/great-apes-coronavirus-vaccine-san-diego-zoo-trnd/index.html>.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

Another positive effect that the coronavirus pandemic brought on some animal care organizations during 2020 was the strengthening of community support. Because of a great re-opening visitation and a successful donation appeal, Cosley Zoo “will end the year in the black without touching operating reserves,” said director Sue Wahlgren.¹⁰⁵ Similarly, ZooMontana hit record attendance when it re-opened in the summer, as families felt safe at their extensive facility grounds, said executive director Jeff Ewelt.¹⁰⁶ Further, marketing director Joey Powell of Dickerson Park Zoo, in Springfield, Missouri, said that “things are much better,” particularly because, after being compelled to quarantine, people want to be outside.¹⁰⁷ Furthermore, strong community support was also described by assistant zoological manager Darren Minier of Oakland Zoo, he said that “community donations of money and food ensured animals had normal diet variety, and at times we had more food for animals than we could feed out.”¹⁰⁸

Community donations were key to help animal care organizations survive the COVID-19 pandemic in 2020. “[W]e are grateful to our generous community for continuing to help sustain our critical programming for pets and people,” said director of advancement Margot DeConna of the Humane Society of North Central Florida.¹⁰⁹ Likewise, Angie Friers, executive director of the SPCA of Brevard, said that the outpouring of love and support from their community and donors was overwhelming.¹¹⁰ Also, because of its strong donor base, Cameron Park Zoological & Botanical Society was provided a substantial amount in donations, and they do not predict future funding problems, said executive director Terri Cox.¹¹¹

Unquestionably, community support was essential to the sustainability of animal care organizations, however, because of the novelty of COVID-19, this help alone was not sufficient to ensure that animal care organizations survive the pandemic; consequently, it was urged upon Congress and the federal government to consider the importance of local and regional animal care organizations; especially because of their role in making every American community better and safer for people and animals.¹¹²

III. LEGISLATIVE ACTIONS: THE CARES ACT, ANIMAL WELFARE ACT, AND ENDANGERED SPECIES ACT

¹⁰⁵ See E-mail from Sue Wahlgren to Juan Torrico, *supra* note 47.

¹⁰⁶ See E-mail from Jeff Ewelt to Juan Torrico, *supra* note 42.

¹⁰⁷ E-mail from Joey Powell, Mktg. Dir., Dickerson Park Zoo, to Juan Torrico, Assoc. Editor, Barry Env'tl. & Earth Law Journal (Nov. 9, 2020, 17:09 EST) (on file with author).

¹⁰⁸ See E-mail from Darren Minier to Juan Torrico, *supra* note 72.

¹⁰⁹ See E-mail from Margot DeConna to Juan Torrico, *supra* note 86.

¹¹⁰ See E-mail from Angie Friers to Juan Torrico, *supra* note 95.

¹¹¹ See E-mail from Terri Cox to Juan Torrico, *supra* note 48.

¹¹² Kitty Block et al., *Coronavirus Aid Relief and Economic Security Act (CARES) Passes With Potential Benefits for Animal Protection Sector*, A Humane World: Kitty Block's Blog (Mar. 27, 2020), https://blog.humanesociety.org/2020/03/coronavirus-aid-relief-and-economic-security-act-cares-passes-with-potential-benefits-for-animal-protection-sector.html?credit=blog_post_032720_id11304.

A. The Coronavirus Aid, Relief, and Economic Security (CARES) Act

The CARES Act signed into law on March 27, 2020, by President Trump was very consequential for animal care organizations.¹¹³ From their perspective, such relief was critical, and they were grateful that the stimulus package brought vital support to millions of Americans, that included “direct payments, child care credits, expanded unemployment aid, support for health care providers and hospitals under duress, and financial assistance for small businesses and distressed companies.”¹¹⁴ These benefits were very significant not only for individuals, but also for animal care organizations including sanctuaries, humane societies, rescues, zoos, animal shelters, and veterinary care providers around the country.¹¹⁵ The pressure for resources and operational funds for the animal care sector has never been greater—there are an estimated 3,500 animal shelters and 10,000 rescue groups in the United States.¹¹⁶ Furthermore, animal care organizations are the main source for accurate information and guidance to people seeking to safeguard the well-being of animals in their homes and their community; thus, the justification for supporting these institutions is self-evident.¹¹⁷

The animal care organizations that contributed to this note were asked if they procured *any* governmental assistance during the COVID-19 pandemic, including, but not limited to, the CARES Act Paycheck Protection Program (PPP). Moreover, the inquiry results show that from the organizations researched, 70% received some type of governmental assistance—including CARES Act PPP; but only because 21% of the remaining organizations researched did not apply for assistance; 6% did not answer this question; and, the last 3% informed that, although they applied for aid, their application was denied. Furthermore, when looking only at the animal care organizations researched that applied for support, 96% were successfully granted assistance, and only 4% had their request denied.

Executive director Jeff Ewelt of ZooMontana stated that the facility obtained a PPP loan, and he also explained that the funding was “critical to the survival of the organization.”¹¹⁸ Additionally, “ZooMontana received state CARES funding, [and] [t]his ensured we would have the staff necessary to continue the high level of care required for our animal collection; [t]his funding helped the zoo cover expenses normally covered by operations . . . [a]gain, this funding was critical in the survival of ZooMontana,” said Ewelt.¹¹⁹ Similarly, president and CEO Rich Block of Santa Barbara Zoo reported that they successfully obtained a PPP loan for just over \$1.5

¹¹³ *AZA Member Resources for COVID-19*, ASS’N OF ZOOS & AQUARIUMS, <https://www.aza.org/covid-19-resources> (last visited Jan. 30, 2021).

¹¹⁴ Block, *supra* note 112.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ See E-mail from Jeff Ewelt to Juan Torrico, *supra* note 42.

¹¹⁹ *Id.*

million, which expanded their viability to the end of 2020.¹²⁰ “Our cash reserves were strong enough to get us through August, but after that, we would be raiding investments,” said Block.¹²¹

The CARES Act Paycheck Protection Program was the most cited benefit received from the animal care organizations that contributed to this note. The government dedicated, from the outset, \$350 billion to prevent layoffs and business closures, and companies with 500 employees or less that maintained their payroll during the coronavirus pandemic could receive up to eight weeks of cash-flow assistance.¹²² If these companies maintained payroll, the “portion of the loans used for covered payroll costs, interest on mortgage obligations, rent, and utilities would be forgiven.”¹²³ Executive director Angie Friers of the SPCA of Brevard stated that they applied for and were awarded a PPP loan to support their payroll, and, because of that, they did not have to lay any of their employees off during the coronavirus pandemic.¹²⁴ Likewise, the president of Ironwood Pig Sanctuary, Mary Schanz, said that they also applied and received the CARES Act PPP loan, and, for that reason, they did not have to lay anyone off during the pandemic.¹²⁵ “[T]he funds helped a great deal,” said Schanz.¹²⁶

Because earlier provisions of the CARES Act were set to expire at the end of 2020, Congress passed, and the Senate approved more than \$900 billion for coronavirus assistance in December 2020; including “roughly \$300 billion for the popular Paycheck Protection Program and expand[ing] the kinds of businesses that can qualify for forgivable loans and grants.”¹²⁷ However, CEO Jill Davis of Animals Helping Humans & Humans Helping Animals is concerned that when the loans run out the future will “look bleak,” if services and donations do not pick up.¹²⁸ Further, as described by executive director Jeff Ewelt of ZooMontana and their experience throughout 2020, the survival of animal care organizations impacted by the COVID-19 pandemic will likely arise out of a combined effort of federal and state government together with community support.¹²⁹

B. Compliance with Animal Welfare Act and Endangered Species Act

¹²⁰ See E-mail from Rich Block to Juan Torrico, *supra* note 44.

¹²¹ *Id.*

¹²² Leon LaBrecque, *The CARES Act Has Passed: Here Are The Highlights*, FORBES (Mar. 29, 2020), <https://www.forbes.com/sites/leonlabrecque/2020/03/29/the-cares-act-has-passed-here-are-the-highlights/>.

¹²³ *Id.*

¹²⁴ See E-mail from Angie Friers to Juan Torrico, *supra* note 95.

¹²⁵ See E-mail from Mary Schanz to Juan Torrico, *supra* note 81.

¹²⁶ *Id.*

¹²⁷ Deirdre Walsh, *Congress Passes \$900 Billion Coronavirus Relief Bill, Ending Months-Long Stalemate*, NPR (Dec. 21, 2020), <https://www.npr.org/2020/12/21/948862052/house-passes-900-billion-coronavirus-relief-bill-ending-months-long-stalemate>.

¹²⁸ See E-mail from Jill Davis to Juan Torrico, *supra* note 51.

¹²⁹ See E-mail from Jeff Ewelt to Juan Torrico, *supra* note 42.

The Animal Welfare Act (AWA) is a federal law that “establishes requirements concerning the transportation, sale, and handling of certain animals.”¹³⁰ Regulations created under the AWA established criteria for the humane care and treatment of certain animals that are “exhibited to the public, sold for use as pets, used in research, or transported commercially.”¹³¹ Organizations that fall within the purview of the AWA must provide their animals with adequate housing, sanitation, nutrition, water, and veterinary care.¹³² Furthermore, “[t]his is a federal law of limited purpose and scope . . . [i]t does not deal with all species of animals, . . . [i]nstead, the law focuses upon several very specific activities that have been shown in the past to be potential areas of animal abuse.”¹³³ Animals included in the AWA consist of dogs, cats, primates, and other mammals, but the Act excludes birds, rats, and mice.¹³⁴

In essence, the AWA is a monitoring law that aims to govern who may possess or sell certain animals and the living conditions in which the animals shall be kept.¹³⁵ The law stipulates “criminal penalties, civil penalties, and revocation of permits for violations of the AWA.”¹³⁶ Typically, inspections are the main method to ensure regulatory compliance; and the Animal and Plant Health Inspection Service (APHIS) by their Investigative and Enforcement Services (IES) staff, conduct unannounced visits to facilities “where they review all areas of care and treatment covered under the law.”¹³⁷ If an organization violates the AWA an official warning letter is issued, and “IES investigations may lead to the issuance of a regulatory compliance or enforcement action.”¹³⁸ However because of the coronavirus pandemic, “if a State or locality has issued a shelter-in-place order, like [in] San Francisco, inspectors will honor that order and not conduct inspections in that area at [that] time.”¹³⁹

Within the animal care organizations that contributed to this note, *all* of them conveyed that animal care remained the main concern. President Mary Schanz of Ironwood Pig Sanctuary stated that they were able to sustain their operation and did not have to restrict any of their animals' necessities including food, medication, nutritional supplements, and veterinarian care.¹⁴⁰ Moreover, naturalist Tut Fuentesvilla

¹³⁰ ANIMAL AND PLANT HEALTH INSPECTION SERVICE, *Animal Welfare Act*, USDA (July 23, 2020), https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/awa/ct_awa_program_information.

¹³¹ *Id.*

¹³² *Id.*

¹³³ David Favre, *Overview of U.S. Animal Welfare Act*, MICH. ST. U. C. OF L. ANIMAL LEGAL & HIST. CTR. (2002), <https://www.animallaw.info/article/overview-us-animal-welfare-act>.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ See ANIMAL AND PLANT HEALTH INSPECTION SERVICE, *supra* note 130.

¹³⁸ *Id.*

¹³⁹ *Animals and Plants*, USDA, <https://www.usda.gov/coronavirus/animals-and-plants> (last visited Jan. 31, 2021).

¹⁴⁰ See E-mail from Mary Schanz to Juan Torrico, *supra* note 81.

of Grizzly & Wolf Discovery Center said that although they have animal populations that are known to be vulnerable to COVID-19, animal care and wellbeing are always their top priority.¹⁴¹ “It [is] very important for us to do everything we can to keep our facility and workspace safe,” said Fuentevilla.¹⁴² Further, director Erika Leckington of Tallahassee Animal Services, said that the COVID-19 pandemic caused a positive impact on animal care in their facility; because their intake of animals was reduced to half from previous years numbers, the animals in their care are receiving better and more thorough care, and with fewer visitors animals’ stress was reduced.¹⁴³

Furthermore, director of advancement Margot DeConna of the Humane Society of North Central Florida stated that they had to change adoption procedures significantly to accommodate all CDC guidelines and help keep their staff, animals, and the public safe.¹⁴⁴ “As a result of these adjusted adoption policies, we have been able to sustain the same number of adoptions in 2020 as we were able to conduct in 2019 which we consider a big win,” said DeConna.¹⁴⁵ Similarly, program coordinator Diane Gagliano explained that a two-shift system was implemented at the facility to continue to ensure the safety of their employees and the animals in their care.¹⁴⁶ “We have split our staff into two shifts so the entire staff is not working together, that way if someone on A shift comes down with COVID-19 and their teammates have to self-quarantine, we still have B shift staff to come in and care for the animals,” said Gagliano.¹⁴⁷ Likewise, executive director Angie Friers of the SPCA of Brevard said that although their shelter was close to the public, their staff continued to work seven days a week to care for the animals that remained at the shelter, and there was never a loss of staff or veterinarians.¹⁴⁸

The Endangered Species Act (ESA) was passed by Congress in 1973 to protect and recover imperiled species and the ecosystems upon which they depend.¹⁴⁹ With this landmark Act, the legislature acknowledged that our rich natural legacy is of “esthetic, ecological, educational, recreational, and scientific value to our Nation and its people.”¹⁵⁰ When the ESA became law the government expressed concern that numerous native plants and animals were at risk of becoming extinct.¹⁵¹ Further, the ESA is administered by the U.S. Fish and Wildlife Service and the Commerce

¹⁴¹ See E-mail from Tut Fuentevilla to Juan Torrico, *supra* note 46.

¹⁴² *Id.*

¹⁴³ See E-mail from Erika Leckington to Juan Torrico, *supra* note 62.

¹⁴⁴ See E-mail from Margot DeConna to Juan Torrico, *supra* note 86.

¹⁴⁵ *Id.*

¹⁴⁶ See E-mail from Diane Gagliano to Juan Torrico, *supra* note 82.

¹⁴⁷ *Id.*

¹⁴⁸ See E-mail from Angie Friers to Juan Torrico, *supra* note 95.

¹⁴⁹ Loren Naftali, *COVID-19 & Its Spiraling Effect on Endangered Species*, FORDHAM ENVTL. L. REV. BLOG (Aug. 9, 2020), <https://news.law.fordham.edu/elr/2020/08/09/covid-19-its-spiraling-effect-on-endangered-species/>.

¹⁵⁰ U.S. Fish & Wildlife Service, *Endangered Species Act*, USDOJ (Jan. 30, 2020), <https://www.fws.gov/endangered/laws-policies/>.

¹⁵¹ *Id.*

Department's National Marine Fisheries Service (NMFS).¹⁵² Moreover, under this Act, all species of plants and animals, except to pest insects, may be listed as either *endangered*, that is, “in danger of extinction throughout all or a significant portion of its range;” or *threatened*, meaning “a species is likely to become endangered within the foreseeable future.”¹⁵³

When the COVID-19 pandemic became a national concern in 2020, many organizations had to reduce their employees’ attendance to avoid the spread of the virus.¹⁵⁴ That became an issue to ESA regulated entities because, in some instances, they had to “refrain from routine compliance monitoring, integrity testing, sampling, lab analysis, training, and reporting or certification,” asserting that these procedures were “not reasonably practicable due to COVID-19.”¹⁵⁵

Additionally, zoological organizations are among the entities that support federal efforts to restore endangered species populations, and, because of the coronavirus pandemic in 2020, many zoos had to lay off or furlough most staff members, while considerably losing money even as some partially reopen, according to the Association of Zoos and Aquariums (AZA)—which represents 229 facilities in North America.¹⁵⁶ For example, the National Aquarium in Baltimore, Maryland, had to halt rescuing federally protected marine animals, such as seals and sea turtles, because the organization has lost more than \$8 million in revenue and furloughed one-third of its staff since closing in March 2020, due to the COVID-19 pandemic.¹⁵⁷ Furthermore, the director of animal care and conservation at the Endangered Wolf Center in St. Louis County, Missouri, Regina Mossotti, said that, because the organization has fewer donated deer carcasses coming in from hunters to feed their resident canines, the diet of the animals in their care “has changed a bit,” and the forty-one Mexican and red wolves are eating more dry food.¹⁵⁸

Moreover, Saint Louis Zoo expends more than \$500,000 a year caring for animals on the endangered species list, and president Jeffrey P. Bonner said that “[i]f it weren’t for zoos, the federal government couldn’t take care of species that face extinction in the wild”¹⁵⁹ Further, the chief zoological officer at SeaWorld, Dr. Chris Dold, said that it costs as much as \$300,000 to rehabilitate *one* manatee.¹⁶⁰ Nevertheless, manatees have been down-listed from endangered to threatened classification because of efforts such as SeaWorld’s.¹⁶¹

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ Naftali, *supra* note 149.

¹⁵⁵ *Id.*

¹⁵⁶ Brulliard, *supra* note 11.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ Young, *supra* note 8.

¹⁶¹ *Id.*

Among animal care organizations that participated in the research for this note, Santa Barbara Zoo's president and CEO, Rich Block, said that their organization projected a revenue loss between \$1 and \$1.5 million for 2020, but throughout the year the staff that cared for animals was not reduced, monetary resources to maintain animal care facilities were not shortened, veterinary visits were maintained regularly, and all animal needs were addressed.¹⁶² Similarly, executive director Terri Cox of Cameron Park Zoological & Botanical Society said that, although the loss of revenue was "a big impact" for their organization, one of their main concern was to keep animal care staff healthy to provide for the animals, and, for this reason, protocols and procedures were modified to prevent the spread of COVID-19.¹⁶³ Further, at this zoo particularly, training sessions with animals that are susceptible to COVID-19 were modified and reduced; also, animal encounters and "behind the scenes" tours were eliminated together with special events and zoo education courses.¹⁶⁴ Likewise, assistant zoological manager, Darren Minier, of Oakland Zoo said that their organization adopted measures—such as social distancing, hand cleaning, and masks—to prevent the spread of coronavirus with species that may be susceptible to COVID-19 strains, but training and enrichment schedules were maintained.¹⁶⁵ "Our aim is to continue to provide the high standards of care our animals expect, . . . austerity is a question of prioritization and we all agree animals come first," said Minier.¹⁶⁶

As it was evidenced by the organizations' professionals' testimonials above, the cost of caring for animals is not small, thus what would happen if an animal care organization could no longer continue its operation. Next, a proposed solution is discussed for this potential issue.

IV. BANKRUPTCY RELIEF AS A SOLUTION TO SUSTAIN ANIMAL CARE ORGANIZATIONS

Bankruptcy is a type of legal proceeding intended to settle the financial issues of a "bankrupt" debtor, and it has two main objectives: settling creditors' claims, and "freeing the debtor from its financial past."¹⁶⁷ The United States Constitution vests in Congress the competence to enact uniform laws "on the subject of bankruptcies."¹⁶⁸ Consequently, Congress legislated the Bankruptcy Code ("the Code") with a variety of possible debt reliefs.¹⁶⁹ However, on this note, the focus will be on a possible animal care institution reorganization under Chapter 11 of the Code, and also a liquidation

¹⁶² See E-mail from Rich Block to Juan Torrico, *supra* note 44.

¹⁶³ See E-mail from Terri Cox to Juan Torrico, *supra* note 48.

¹⁶⁴ *Id.*

¹⁶⁵ See E-mail from Darren Minier to Juan Torrico, *supra* note 72.

¹⁶⁶ *Id.*

¹⁶⁷ CHARLES JORDAN TABB, LAW OF BANKRUPTCY 2 (4th ed. 2016).

¹⁶⁸ *Id.*

¹⁶⁹ 1 COLLIER PAMPHLET EDITION 2020 (Richard Levin & Henry J. Sommer eds., Matthew Bender).

scenario under Chapter 7. Moreover, in a Chapter 7 liquidation bankruptcy case—the most common type of bankruptcy—the “debtor’s existing assets are sold, or ‘liquidated,’ and the net proceeds are distributed to creditors.”¹⁷⁰ Additionally, the main objective of a Chapter 11 bankruptcy case is to provide distressed companies the opportunity to reorganize, giving them time and room to resolve problems that trouble their business and establish a new capital structure that the organization can support going forward.¹⁷¹

The COVID-19 pandemic in 2020 forced businesses to temporarily close, decreasing—if not eliminating—consumer demand, affecting the cash flow necessary to cover debt payments owed to creditors.¹⁷² Professor Stuart C. Gilson at Harvard Business School said that “[a]n expected explosion in bankruptcy proceedings over the coming months could overwhelm the courts.”¹⁷³ Also, he stated that the global economic effects of the coronavirus pandemic have already been devastating in regards to industrial production, employment, and financial wealth; however, the impact is projected “to be followed by significant aftershocks” in the future, including record numbers of businesses and individuals defaulting on their obligations.¹⁷⁴ Moreover, the number of bankruptcy cases filed in the first quarter of 2020 is already substantially higher than in previous years, and some experts believe that the number of court filings could surpass what was observed during the 2008-2009 Global Financial Crisis,¹⁷⁵ but that particular crisis did not lead to “any meaningful amendments to the bankruptcy law.”¹⁷⁶

Although *all* animal care organizations that contributed to this note reported that they do not foresee the necessity of bankruptcy relief when considering their current and prospective financial scenario, bankruptcy cases were filed by institutions in animal care in the past. In 2011, Honorable Leif M. Clark, bankruptcy judge for the U.S. Bankruptcy Court for the Western District of Texas, authorized the transfer of 113 primates to Born Free USA sanctuary after the previous sanctuary that cared for the primates had to file for bankruptcy alleging overpopulation, underfunding, and inadequate housing.¹⁷⁷ Executive vice president of Born Free USA, Adam Roberts said that it was one of the largest single rescues that they performed.¹⁷⁸ Also, that was a

¹⁷⁰ TABB, *supra* note 167, at 3.

¹⁷¹ Dina Gerdeman, *Coronavirus Could Create a 'Bankruptcy Pandemic,'* HARV. BUS. SCH. (May 28, 2020), <https://hbswk.hbs.edu/item/coronavirus-could-create-a-bankruptcy-pandemic>.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ TABB, *supra* note 167, at 53.

¹⁷⁷ *112 Monkeys Baboon to Get New Home After Bankruptcy*, MSNBC (Nov. 21, 2011), http://www.nbcnews.com/id/45388016/ns/us_news-environment/t/monkeys-baboon-get-new-home-after-bankruptcy/#.X29GrGhKjIV; *See also* Vincent T. Davis, *Court Approves Transfer of Primates from Closed Sanctuary*, MY SAN ANTONIO (Nov. 21, 2011), https://www.mysanantonio.com/news/local_news/article/Court-approves-transfer-of-primates-from-closed-2281277.php.

¹⁷⁸ *Id.*

“heartbreaking situation particularly for this large group of primates who would otherwise likely be euthanized without our humane intervention,” said Roberts.¹⁷⁹ In this bankruptcy case, Animal Sanctuary of the United States—the debtor, and previous home for the primates—filed a voluntary petition for relief under Chapter 11 of the Code.¹⁸⁰

When a debtor files a bankruptcy petition under a particular chapter of the Bankruptcy Code “an automatic stay against all sorts of creditor collection actions” is triggered.¹⁸¹ “The stay is essential to the effective realization and implementation of the two core functions of a bankruptcy case: the equitable treatment of multiple creditor claims, and the provision of a financial fresh start for an honest debtor.”¹⁸² Nevertheless, the stay is neither absolute nor permanent, it operates only to provide temporary protection for creditors *and* the debtor while the bankruptcy case is pending.¹⁸³ For example, in 2013, Central Illinois Small Animal Rescue filed for Chapter 11 bankruptcy and, at the moment of filing, the automatic stay started to prevent creditors from trying to collect, but later in the case, Honorable Mary P. Gorman, the judge for the U.S. Bankruptcy Court for the Central District of Illinois, granted an order for relief from stay petitioned by a creditor.¹⁸⁴ A court may grant an order of relief from the stay if “fulfilling the purposes of the bankruptcy case no longer requires maintaining the stay of acts against property, . . . or if the need to protect the moving party becomes paramount.”¹⁸⁵

Throughout the bankruptcy process, creditors cannot use the remedies normally afforded to them when there is a default from a debtor, such as calling in loans or seizing company assets.¹⁸⁶ Surely, this freeze on creditor actions could be found to inconvenience certain creditors, but ultimately it allows the debtor company to resolve its financial problems and come out from bankruptcy as a sustainable organization going forward.¹⁸⁷ Furthermore, under a Chapter 11 traditional point of view, “[a] robust, effective and efficient bankruptcy system rebuilds companies, preserves jobs, and facilitates economic growth,” in short, “a business is worth more alive than dead.”¹⁸⁸

The bankruptcy “estate” is comprised of all debtor’s property,¹⁸⁹ but a different approach of how to manage “property” needs to account for the fact that animal care

¹⁷⁹ *Id.*

¹⁸⁰ *In re Animal Sanctuary of the United States*, No. 10-54400, 2010 WL 6559989 (Bankr. W.D. Tex. 2010).

¹⁸¹ TABB, *supra* note 1677, at 118.

¹⁸² *Id.* at 236.

¹⁸³ *Id.*

¹⁸⁴ *In re Central Illinois Small Animal Rescue*, No. 13-70855, 3:13-BK-70855 (Bankr. C.D. Ill. 2013).

¹⁸⁵ TABB, *supra* note 167, at 236.

¹⁸⁶ Gerdeman, *supra* note 171.

¹⁸⁷ *Id.*

¹⁸⁸ TABB, *supra* note 167, at 8.

¹⁸⁹ *Id.* at 118.

organizations are a different breed of business because their so-called “property” is composed of living creatures. For example, when Safe Haven Animal Sanctuary of Sussex County, a no-kill animal sanctuary in Georgetown, Delaware, filed for Chapter 7 bankruptcy it had to ask for community support to adopt their remaining dogs.¹⁹⁰ Additionally, sanctuaries are overflowing, they lack sufficient funding, and “yet are most captive animals' only hope for a humane future.”¹⁹¹ Animals need to be rescued daily from pet owners, laboratories, roadside zoos, and other cruel circumstances; and, when a large sanctuary has to close its doors completely, it just increases the odds against the survival of animals.¹⁹²

Further, such as “food banks, houses of worship, domestic violence shelters, early childhood care and education centers, after-school facilities and senior centers, . . . animal care and service providers are the guarantors of public health and safety in communities across this nation.”¹⁹³ Hence, this note suggests that if an animal care organization would find itself in dire straits that bankruptcy relief is necessary, it would be beneficial for both the organization and the community that a solution under Chapter 11 of the Code is preferred, opposed to a Chapter 7 solution. Because, among other things, it would increase the chances of animal survival, it would continue to provide a service that the government alone would not be capable to bring forth, it would preserve jobs, enable economic growth, and it would serve the idea that an active and productive business is better than a closed business. Even if creditors generally are asked to make some financial sacrifices—such as waiting longer for repayment, and/or reducing the amount of what is owed—they will nevertheless obtain more value than what they would have gotten had the business been shut down.¹⁹⁴ Therefore, as this note suggests, if this assumption proves to be valid, then it is in the best interest of animal care organizations, the animals in their care, the government, and society to find common ground on a plan that restructures the organization’s debts and legitimizes the continuance of their business.¹⁹⁵

V. CONCLUSION

The coronavirus pandemic raised many challenges to all types of businesses throughout the world in 2020.¹⁹⁶ However, not only were human beings affected by this treacherous virus but also animals suffered from the effects of the COVID-19 pandemic.¹⁹⁷ When state and federal governments declared a state of emergency, they

¹⁹⁰ *In re Safe Haven Animal Sanctuary of Sussex County, Inc.*, No. 14-10147, 1:14-BK-10147 (Bankr. D. Del. 2014).

¹⁹¹ See Davis, *supra* note 177.

¹⁹² *Id.*

¹⁹³ Block, *supra* note 112.

¹⁹⁴ Gerdeman, *supra* note 171.

¹⁹⁵ *Id.*

¹⁹⁶ Knowles, *supra* note 2.

¹⁹⁷ Young, *supra* note 8.

must impose restrictions aimed to slow down the spread of the coronavirus.¹⁹⁸ These actions including, but not limited to, social distancing, mandatory stay-at-home orders, closures of non-essential businesses, bans on large gatherings, school closures, and limits on bars and restaurants and other public places caused a severe economic and social impact across the nation.¹⁹⁹ Distinctive from businesses that could switch to remote work, animal care organizations could not afford that luxury because animals need constant care.²⁰⁰ Further, because of government-imposed restrictions, animal care organizations faced a significant decrease in revenue and resources.²⁰¹ Several zoos, animal sanctuaries, and animal shelters throughout the United States had to lay off or furlough most of their non-essential employees, and many researched animal care organizations said that although the future is uncertain, the animals in their care remain the top priority.²⁰²

Numerous animal shelters, rescues, sanctuaries, and zoos across the United States were contacted directly and invited to share their COVID-19 pandemic experiences. These animal care organizations provided a valuable understanding of how government shutdowns and social distancing impacted their facility; if any of the animals in their care tested positive for COVID-19; how the animals in their care were affected indirectly by COVID-19; if they sought and received any government assistance to keep them operational; and how they project the future of their organization and their resident animals post-pandemic.

All of the animal care organizations that contributed to this note reported that they suffered revenue loss due to statewide mandatory business shutdowns. But even if the COVID-19 pandemic has tested the limit of these organizations, animals still need help, and conservation efforts still need to move forward. Each animal care organization agreed that the road ahead will be challenging as the economic injuries felt in 2020 are far from healed.

Animals experienced negative and positive impacts caused by the coronavirus pandemic. On the negative side were depression, anxiety, nervousness, closeness, to cite a few. On the positive side shelters and rescues showed a surge in demand caused by Americans seeking companionship, and many organizations said that they have strengthened their community support. However, this public support alone is not sufficient to ensure that animal care organizations survive the pandemic; hence, Congress and the federal government stepped in to help.

The overwhelming majority of animal care organizations that sought governmental assistance have received some sort of help, including, but not limited to, the CARES Act Paycheck Protection Program. The popular PPP program was essential to many organizations to continue to be able to provide for the animals in their care. Other federal regulations such as the Animal Welfare Act and the Endangered Species Act

¹⁹⁸ Tolbert, *supra* note 6.

¹⁹⁹ *Id.*

²⁰⁰ Young, *supra* note 8.

²⁰¹ Rubenstein, *supra* note 14.

²⁰² Brulliard, *supra* note 11.

helped to ensure that the organizations that are regulated by these laws continued to comply, or otherwise, they could lose their license.

In the end, even if community and government support were not sufficient, this note suggested that animal care organizations could seek help in bankruptcy laws under the Bankruptcy Code. Moreover, this note suggested that by choosing Chapter 11—reorganization—over Chapter 7—liquidation—an animal care institution would increase the chances of animal survival, it would continue to deliver a service that the government alone would not be able to bring forth, it would sustain jobs, and empower economic growth. Furthermore, even if creditors had to compromise with a Chapter 11 bankruptcy plan, they would be better off than if a Chapter 7 was chosen by the debtor.²⁰³

In conclusion, the interests of animal care organizations, the animals in their care, the government, and society are better served when businesses are kept active and productive. As one author said “[animal care organizations] and other entities and institutions are the compassionate faces of a great nation. *They are beacons of hope in a dark time.*”²⁰⁴

²⁰³ Gerdeman, *supra* note 171.

²⁰⁴ Young, *supra* note 8.